FIFTH EDITION | CHAPTER 5

BEST PRACTICES OF THE BEST DEALMAKERS

"Some would argue that, paradoxically, the close is actually just the beginning! While getting a deal to the finish line is often worthy of trumpeting success, the CEO and his closest advisors, know only too well, the real work has just begun!"
~ David A. Fergusson

AFTER THE CLOSE

MAKING DEALS WORK FOR BUSINESS

David A. Fergusson | Editor

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BEST PRACTICES OF THE BEST DEALMAKERS

Drawing on the experience and expertise of the "best in class" M&A professionals, The M&A Advisor, the world's premier financial leadership organization, together with Merrill Corporation, the leading provider of technology-enabled platforms for secure content sharing, regulated communications, and disclosure services, publishes the quintessential dealmakers guide series – *The Best Practices of the Best Dealmakers*. Profiling the proven strategies and unique experiences of leading M&A practitioners, this series is distributed in regular installments for industry professionals in both print and interactive electronic media. Previously published features and chapters are also available in the online libraries of Merrill Corporation and The M&A Advisor.

INTRODUCTION

This final chapter of the fifth edition of the Best Practices series, *"Dealing with the CEO,"* focuses on the roles of CEOs, corporate development executives, and advisors in proving—one way or another—the premise of a CEO's original M&A strategy to achieve growth. This installment examines the crucial roles these M&A professionals play in the post-close phase of deals.

To guide the narrative, we called upon an international CEO based in Canada who has enjoyed a storied careeer in investment banking, venture capitalism, media, and technology. G. Scott Paterson's successes have been numerous, but he also is the first to admit that he makes mistakes and tries not to repeat them. From the corporate offices of Fujitsu Ltd, we interviewed Tarang Patel, recently appointed director of mergers and acquisitions in London. Before joining Fujitsu, Tarang worked on scores of cross-border deals as an advisor with PwC over a decade.

Stalwart advisors were also consulted to share their experience in dealing with the CEO and corporate development teams during the crucial post-closing period. Joshua Benn is a managing director at Duff & Phelps and head of the firm's New York corporate finance practice. Thomas Bonney is the founder and managing director of CMF Associates, a Philadelphia-based firm that specializes in being an outsourced operating partner for finance, reporting, and leadership for private equity-backed companies throughout North America. Mark J. Epley is the US chairman of London-based Jamieson Advisory with more than two decades of M&A advisory leadership experience from Deutsche Bank and Nomura Securities. Allan J.P. Rooney, a former commodities trader, is a partner at Rooney Nimmo, a transatlantic law firm in New York that specializes in M&A and corporate finance advisory work with middle and lower middle market firms.

As this edition draws to a close, I want to thank all the readers of the *Best Practices of the Best Dealmakers* series– now over 500,000 in more than 60 countries, for sharing your experience as and in dealing with the CEO in global M&A.

David A. Fergusson
Editor
Best Practices of the Best Dealmakers
dfergusson@maadvisor.com
@dafergusson @themaadvisor

After the Close: Making Deals Work for Business

Part I: A Serial Entrepreneur's Views of Post-Closing Integration

"I'm going to be somewhat provocative and posit that the key to M&A success is common sense. My specific theme along these lines is that the success of an M&A transaction is almost 100 percent linked to the macroeconomic environment that results following the completion of the transaction." – G. Scott Paterson, Canadian Venture Capitalist and Serial Entrepreneur

The M&A strategy was executed, the deal sourced, the diligence done, and the closing papers signed. But did the strategy actually work? Only time will tell, and that's why the post-closing period in any merger or acquisition can be the most critical part of the deal. The CEO and executive team that emerge with the new company play the critical role in this phase. This final chapter of the fifth edition of *Best Practices of the Best Dealmakers* examines how CEOs, corporate development leaders, and advisors plan and measure progress, deal with internal and external issues that arise, and foster a new corporate culture combining the best of the buying and selling company.

G. Scott Paterson, one of Canada's top venture capitalists and a serial entrepreneur for three decades, has been involved in multiple transactions as both buyer and seller. He began his career in 1985 as a stockbroker, then moved into investment banking, completing his first solo mandate by successfully leading a $15 million institutional financing for Kevin O'Leary's SoftKey Software. By 1993, Paterson was regarded as one of the leading technology investment bankers in Canada. Beginning in 1995, he transformed Yorkton into Canada's leading technology investment bank and became chairman and CEO in 1998 at the age of thirty-four. In his capacity as an investment banker and as a private investor (after 2001), Paterson has financed more Canadian technology companies than anyone in Canadian history.

"I've always been drawn to the next thing that I think might change the world," Paterson told The M&A Advisor. "I've had a lot of successes, and I've made a lot of mistakes. You learn as you make mistakes and try not to repeat them. I've done stuff in virtually every industry, but I have tried to focus on technology, where it overlaps with media and entertainment and where it overlaps with financial services." Today, Paterson serves as a director of

Lions Gate Entertainment (NYSE:LGF) and chair of the company's Audit & Risk Committee. He is also chairman of Symbility Solutions (TSXV:SY), a cloud-based SaaS provider of software to the insurance industry; chairman of Engagement Labs (TSXV:EL), a cloud-based SaaS provider of software for marketers; chairman of FutureVault Inc., a cloud-based solution affording structured digital storage of personal, legal, and financial documents; chairman of the QYOU, a multiscreen entertainment network that brings made-for-web video to TV providers; and a director of Giftagram, a fast-growing mobile app that affords consumers a personal gifting concierge.

Paterson continues to innovate and his latest initiative FutureVault is a prime example of his foresight. As digital data volume grows and cyberattacks proliferate, this business was developed to provide a secure white label, cloud-based platform for consumers and their advisors to digitally deposit, store, collaborate on, and manage important financial, legal, and personal documents on a. For financial service organizations, it helps to acquire, retain, and reward clients while yielding actionable data and analytics.

Paterson's experience with "elephant hunting" in M&A extends back more than a decade. He was chairman and CEO of JumpTV, which he led to a successful IPO, secondary financing and ultimately their takeover of NeuLion Inc. (TSX:NLN).

Interviewed about his M&A philosophy, particularly in the post-closing phase of a deal, Paterson said he believes that "price is absolutely meaningless." "I've been amazed at how much opposition my thesis has," he joked. "I'm going to be somewhat provocative and posit that the key to M&A success is common sense. My specific theme along these lines is that the success of an M&A transaction is almost 100 percent linked to the macroeconomic environment that results following the completion of the transaction. As a board member, I will ask the CEO for the strategic rationale for an acquisition, and how that fits into the macro environment that's going to exist after we close and over the next few years. It doesn't matter what you pay. Stop telling me we can't pay ten or fifteen times the EBITDA. If the strategy is right and the macro environment pans out the way we anticipated, pricing metrics associated with the acquisition are irrelevant."

"I do agree strongly with having a post-closing plan," he continued. "All businesses have a culture. You need to set what that culture is in the new company. Do we shrug off failure and focus on success? Do we give stock

"The success of an M&A transaction is almost 100 percent linked to the macroeconomic environment that results following the completion of the transaction." ~ G. Scott Paterson

options to everyone or just senior people? The day of closing, the surviving leadership must know what to do on establishing the culture. If they take too long or put it off until later, they're missing an opportunity. Because this is the period when people expect change and are most open-minded to it."

A big challenge in the integration is deciding who stays and who goes. "One of the toughest things to do, but where I've seen great success, is where a company can take advantage of the fact that in an acquisition typically two people have essentially the same skill sets," Paterson observed. "You have your two CFOs, heads of marketing, heads of sales. The buyer's team is typically involved in doing diligence and giving feedback on the deal. This makes it difficult to pick the best of the two candidates performing the same role. What should happen is that the best CFO, best marketing head, best sales head, and best head of every other discipline are the executives to retain after the acquisition. It's very hard to do, however, because some of them or their compatriots who helped build the rationale for the acquisition may not be retained."

For CEOs of newly acquired companies, Paterson said a best practice should be to create a forum where all employees of the new company can make recommendations for improvement. "We've got all these new colleagues via the acquisition—so here's the forum in which we want your recommendations," he said. "Really create an environment in which the people touching the customers are giving you feedback. It helps to avoid surprises."

As a best practice for all CEOs, Paterson recommends taking advantage of continuing education. "Years ago, when I came in to take over Yorkton Securities, I first took a one-month executive management course." He said every quarter he takes a day or two to attend courses at the Institute of Corporate Directors, Rotman Business School, University of Toronto. "I learn what other companies are doing. It gives me more tactical, on-the-ground feedback."

Part II: A Veteran Advisor Joins an Increasingly Acquisitive Multinational

"Acquisitive companies establish and reinforce incentives for both the acquired management teams and the sponsoring business management to extract the value associated with an acquisition. Measurement and reporting on integration progress should be part of both team and individual ongoing performance reviews. Consequences of not doing so will prevent the enterprise from maximizing the value of deals." – Tarang Patel, Director of Corporate Development, Fujitsu (London)

Fujitsu is the largest IT services provider in Japan and fifth in the world. What started in 1935 as a Japanese telecommunications equipment manufacturer evolved into one of the world's leading information and communications technology companies offering a full range of technology products, solutions, and services. It has more than 150,000 employees, and its products and services are available in more than 100 countries. Although Fujitsu has utilized M&A to grow throughout its history, it recently has stated its intentions to become a much more acquisitive company. In 2016, Tatsuya Tanaka became the president and CEO and signaled plans for a more aggressive strategy for inorganic growth and strategic investments with a focus on diversifying outside of the Japanese market.

Fujitsu has recruited Tarang Patel as a director of corporate development based in London, focused on deal execution in the company's EMEIA and Americas regions and leading post-merger integration of global deals. Tarang Patel is responsible for driving Fujitsu's post-merger integration, transformation, and value-capture initiatives associated with acquisitions. Patel cut his teeth in M&A from 2008 to 2016 at PriceWaterhouseCoopers (PwC) based out of their London, Chicago, and Boston offices, where he advised clients in delivering deal value by supporting the planning and execution of strategic initiatives to maximize revenues and drive cost savings. He advised clients on operational due diligence, business case and synergy analysis, stranded and stand-alone cost analysis, integration/separation planning, and execution and functional area process improvement. Before PwC, he was a member of General Electric's Financial Management Program supporting its NBC Universal business in New York.

Patel has worked with C-suite executives as an advisor on deals all over the world. When it comes to the integration phase of a deal, he said a key success factor for any C-suite executive is to hold their respective integration teams accountable by demanding efficient and timely integration of acquisitions, including frequently reporting and escalating issues for effective resolution. "As Fujitsu is planning to become more acquisitive, we are driving initiatives to incorporate post-merger integration as a strategic and competitive advantage across the organization, accelerating the company's capability to capture the value associated with deals, enabling us to make even more competitive offers and ultimately drive a higher win rate for deals," Patel said. "We are establishing organizational structures, leading practices, and systems that will enable Fujitsu to skip levels in its deal-making maturity—often a very costly and painful realization of more acquisitive companies after a series of trial and error."

Patel has been focusing on how to establish and increase accountability and incentives for integration teams and key individuals while staying true to the Fujitsu culture. "Acquisitive companies establish and reinforce incentives for both the acquired management teams and the sponsoring business management to extract the value associated with an acquisition. Measurement and reporting on integration progress should be part of both team and individual ongoing performance reviews. The consequences of not doing so will prevent the enterprise from maximizing the value of deals."

Post Transaction Stress Disorders

By Marshall Sonenshine

There are certain bits of business wisdom one retains forever because they are just so damned true. One of my favorites, which I read as a first-year banking associate at Salomon Brothers in 1986, was by the lawyer-turned-acquirer Theodore Cross, who made his fortune buying out a largely forgotten pile of fixed-income newspapers called Investment Dealers' Digest and creating from them a fixed-income electronic database that he would later sell at an enormous profit to Thomson. "The principle is that information about money is as valuable as money itself," Mr. Cross observed.

Of course, the observation presumed the knowledge, which Cross possessed, of what precisely to do with that information after acquiring it.

A few years later, I read another unforgettable insight, this one in the 1990s, from buyout leader Henry Kravis: "Look, don't congratulate us when we buy a company, congratulate us when we sell it. Because any fool can overpay and buy a company, as long as money will last to buy it."

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Another element that Patel has established is significantly more transparent reporting both from a financial (i.e., synergy reporting) and operational (i.e., *"There is no such thing as under-communicating. A lot of assumptions are made across the board when deals are made. The biggest gap organizations face is the handover from the deal execution team to the business as usual team. The more you communicate why you're doing the deal the better." ~ Tarang Patel*

how well the integration is proceeding) perspective. "If there is not a lot of reporting, that probably means the integration is not being managed very well," he said. "I have seen successful integrations with laser-like focus by management that did not require the administrative overhead of work plans and status reports; however, this is the exception rather than the rule in a majority of circumstances."

Patel said the preference at Fujitsu has traditionally been for organic growth driven by its world-class research and development capabilities; however, with the advent and variety of emerging technologies that can be scaled globally relatively quickly, a combined organic and inorganic growth approach is required to establish both strategic and competitive advantages. "Our goal is to be a trusted partner for enterprises as they undertake their digital transformation journeys, and, to do this in today's technological environment, we believe our focus on growing our digital, cloud, IoT, and cybersecurity capabilities will help us establish Fujitsu as a market leader. Tanaka-san has a strategic plan including inorganic growth that has provided the organization with a clear direction in an ever-changing technological environment and disruption of business models."

For the smaller deals, Fujitsu mainly uses its in-house M&A talent, but on larger deals it brings in outside support, Patel said. "From my consulting experience, some of the more acquisitive clients have used the same advisors over and over again. The advisor gets to know the company and vice versa. PwC partnered with strategic buyers like Walgreens and General Electric on a number of their transactions. Private equity houses also tend to have long-term relationships with advisors—at PwC we knew exactly what those clients wanted from a deal execution and integration perspective and were able to respond and deliver results quicker as a result." Cross-border deals add more complexity to the M&A process, which advisors can help deal with, Patel observed. "You have to plan at the country or even the sub-country level sometimes. Here you can use advisors who are familiar with the territory."

A detailed integration plan and governance structure is another key success factor for any acquisition, Patel said. “From the corporate perspective, you should already have a standard, semi-generic integration plan that considers the typical scenarios in a potential acquisition—financial integration, communications, people integration, and so on. You should start integration planning as soon as due diligence commences, and you should move to a joint integration planning phase once you have entered into an exclusivity period, and especially after signing.”

For companies that are not as acquisitive, this is normally more of a challenge. “How do you instill integration as a business process?” Patel added. “Research shows that companies that are more acquisitive outperform companies that are not in regard to the value they generate.”

Communication—external and internal—is a crucial element in any integration, Patel added. “There is no such thing as under-communicating. A lot of assumptions are made across the board when deals are made. The biggest gap organizations face is the handover from the deal execution team to the business as usual team. The more you communicate why you’re doing the deal the better.” For the first 100 days, he recommends weekly communications with managers and employees. “Speak with each functional area on a weekly basis. How are they doing? What are their challenges? What risks need to be mitigated?” Every week, an hour spent on the phone or in person with integration team leaders is also beneficial. “It works,” he said. “You’re motivating people to communicate around a common cause and all that information gets reported up and across the organization.” After the first 100 days or so, if all is going well, these meetings can be scaled back to bi-weekly, then monthly and quarterly.

What warning signs do investors and management of a newly merged company need to heed in the early stages of integration? “Employee turnover, especially when acquiring companies that have talent in high market demand,” Patel said. “You can tell things aren’t going well if a lot of people are leaving.” Also, another warning sign will come from how customers are reacting to the announcement. “Are customers leaving? Customers sometimes prefer dealing with smaller companies because they have more leverage.”

In contrast, he noted smooth integration processes exhibit the following signs: “Customers are happy, the sales pipeline increases, the synergies expected are being captured quickly." Another good sign is recruitment of new talent. In a recent deal, Patel said Fujitsu "did a brilliant job" in announcing the deal through press releases, social media campaigns, and media and analyst outreach, resulting in a resounding support for our strategy and approach and attracting employees from competitors.

In his years at PwC, Patel said that one of the most fulfilling "but painful" deals he worked on was the "merger of equals" of two US-based specialty retailers. PwC was brought in to do finance and accounting integration planning. The messaging externally was that the merger would be a "merger of equals" and was reinforced internally by the management of both companies. "Everything we had to do from an advisor perspective took two to three times longer than required compared to a more traditional acquisition. For example, agreeing on how the combined company would measure their combined same store sales KPI, a relatively straightforward calculation, required multiple meetings to discuss, external analysis, and executive reviews and approvals. At the end of the day, once the deal closed, the larger company won from a leadership and business process and systems perspective. Lesson reinforced: there is no such thing as a 'merger of equals'; however, you can spend a lot of time, money, and resources pretending there is."

Part III: Advisors' Roles and Responsibilities in the Integration Process

A. The Recommended Role of the CEO

"Take what the company has in terms of process and systems and make them better. Don't pull the plant up by its roots because you want the flower to bloom earlier. Water it and clip it and tend it so you get a flower in thirty days."
– Thomas Bonney, Founder and Managing Director of CMF Associates

The post-closing period is often compared to a honeymoon by M&A professionals. But there are many types of honeymoons—those following hasty weddings, arranged marriages, shotgun unions—you know the stories. In reality, the success or failure of the integration phase in a merger or acquisition depends on many variables, some of which may have been baked into the deal pre-closing, some that result from macro or micro events, and others that call for creative management and solutions. To help them succeed in this critical period, CEOs and corporate development teams turn to trusted advisors. The

M&A Advisor interviewed four of them for their views of best practices in the final phase of the deal.

Joshua Benn is a managing director at Duff & Phelps and head of the firm's New York corporate finance practice. He has more than eighteen years of investment banking experience and has worked on scores of deals, particularly in the restaurant, food, and consumer industries. Benn said that the CEO's role in providing strategic direction and communication before and after the closing is critical to successfully integrating an acquisition. "Having a clear vision of how the asset fits into the long-term plan for the business is critical, as well as clearly articulating objectives and priorities," he said.

Mark J. Epley has held numerous management roles in M&A advisory over more than two decades at Deutsche Bank and Nomura Securities USA. He recently joined London-based Jamieson Advisory as its US chairman, based in New York. Much of his work has involved advising management teams in private equity-backed transactions. "Management teams really value the analytics and hand-holding through the whole process. They're trying to run their business and keep their integration teams together," Epley said. He sees the CEO's role during the integration as "trying to minimize the infighting and making sure both companies are on the same page. I've seen both personally, as well as with clients, and that's the biggest single issue. When I joined Deutsche Bank, they had acquired Alex Brown and Bankers Trust. We had to focus deliberately on integrating the three very different cultures. Most companies want to grow through acquisition—and keep costs down. There is tension around that. People management is the key." The CEO should set "a very clear tone" on the goals of the merger, Epley said. "Get feedback. Listen to the management team from the acquiring company, then formulate a mission that everybody buys into. Everyone should be on the same page and have economic incentives that align with that so people will feel stable in their jobs, not feeling like they're getting fired tomorrow."

Thomas Bonney, founder and managing director of CMF Associates in Philadelphia, Chicago, New York, and Vancouver, also works exclusively with private equity companies, delivering transaction and transition-focused financial, operational, and human capital solutions. Since founding CMF Associates in 2001, CMF has provided services to over 135 private equity (PE) funds at more than 500 companies. "Either the CEO or the fund principal must take control," Bonney said of the integration process. "It's just the simple act of taking control and laying out the strategy, talking with the team, laying out a plan at least for the first four to six months." He also noted that communication is critical. "People get nervous. Lose my job? New boss? The CEO needs to share what's great for the company over the next six months. In a lot of PE deals, the PE fund is walking a tightrope. There is a heritage culture that got the (acquired) business to where it is. You want to keep what's great but infuse it with PE attributes—more accountability, expanded sales and operational capabilities, a robust back office, and reporting functions. I've seen funds try and change too quickly. We have a rule: never ever start an IT system change out within the first 120 days. The seller's financial accounting system is usually antiquated. For sure, the PE firm is going to change it out, but don't do it in the first 120 days—it's just too disruptive for the business. Take what the company has in terms of process and systems and make them better. Don't pull the plant up by its roots because you want the flower to bloom earlier. Water it and clip it and tend it so you get a flower in thirty days."

Allan J.P. Rooney is a partner at Rooney Nimmo law firm in New York who specializes in M&A and corporate finance. He worked as a commodities trader before beginning his legal career at Deloitte & Touche LLP, where he advised several Fortune 500 companies on international tax and compensation issues. He founded Rooney Nimmo in 2007 to help middle and lower-middle market companies in growth strategies. By the time a deal is closed, Rooney said, "The goalposts will have been set, so a lot of antecedent work is done. In the smaller arena, the owner issues often dominate the post-closing. Are the buyers doing what they said they would do?" He recommends a team of five to ten key people, reporting to the CEO, be appointed to bring the integration to a successful conclusion. "In a rosy world, best-case scenario is smooth integration, synergies achieved, rebranding, retention, allocated cash, or clearly defined earn-outs. But too often it doesn't go in that direction. The buyer may not be getting the support he thought he would get post deal."

When asked how advisors can best collaborate with the CEO and integration teams, Jamieson's Epley said a key role is to identify and recommend who to keep on the new company's management team. "Who do you want to keep—or who will be impeding progress?" he asked. "Help them set up the incentive program so that people feel rewarded. If it's a private company, have an effective mechanism to evaluate equity over time. If the new management improves profitability significantly over three years, have an advisor come in and evaluate their equity shares. Well-performing management should get a growing share of the equity pie."

"As advisors, we are change agents. We have the opportunity to recommend course corrections on the plan – in a coordinated way without people getting their feathers ruffled." ~ Thomas Bonney

“Our job as the advisor to the company either on the acquiring or selling side is to create as much foresight and visibility into what is going to happen as possible so both sides have their eyes wide open,” said Duff & Phelps’s Benn. “Public entities are going to have to report to the street on what impact the acquisition will have and what the financial implications are. Advisors need to ensure that all assumptions are achievable and set reasonable projections. Managing expectations is a very important role that we can play as part of that closing process.”

CMF Associates’ Bonney recommends that companies undertake a “deep diagnostic dive into different functions—sales, manufacturing, deliverables, finance and reporting, and human resources. Create a report that gives visibility to how a company digests transactions and goes about its work. In situations where that hasn’t been done, you can have false assumptions and differences of opinion.” He also recommends that a steering committee headed by the CEO or CFO meet weekly with the integration team and advisors for progress reports and signs of problems. “As advisors, we are change agents,” Bonney said. “We have the opportunity to recommend course corrections on the plan— in a coordinated way without people getting their feathers ruffled. It’s also a good way to remove institutional barriers. Maybe they will want to change the way the company deals with returned goods, which can be large expense items and not good for financial visibility. The returns manager may be resistant to change. The advisor can work with the returns manager to affect change before it needs to be bounced up to the steering committee.”

Rooney, as an M&A lawyer, added: “As early as possible you want to be collaborating with the top management of the buyer or seller—pre LOI if possible. Investment banking agreements can have traps. Lawyers aren’t necessarily at the table in the financial discussions. You’ll get strands of information and updates, but one of the first substantial documents you’ll see is the LOI. At that stage you say to the client, ‘not all sales go through so you may want to think about a breakup fee.’ Then there’s due diligence, the purchase agreement, five to ten critical points. Post-closing, usually the sellers are happy just because they got a large check. It kind of goes quiet—but then you get a call because of a problem. Maybe a tax issue. You always want a positive collaboration throughout the deal. I've never seen a seller bring in new counsel after the closing."

Epley had one more recommendation for buyers' management in cross-border deals. "Having worked at two international banks, a key thing is for the acquirer to meet the [sellers'] management where they live," he said. "The parent company needs to recognize the local cultural dynamic and can't impose their national culture on the acquired company. It's just going to alienate—more so in services, maybe less so in manufacturing. This must be more than just paying lip service. The acquirer should recognize that the seller has been successful, that's why we bought them. They should own them but not undermine their culture."

CEOs and corporate development executives generally tout the importance of 100-day plans. Do advisors feel the same? "They definitely should have a 100-day plan," Benn said. "Most PE firms will have a plan that they will have tried to organize and get ready for execution before they close on a transaction. Sophisticated corporate buyers will have a whole team to evaluate and implement a plan on day one. Sometimes the plan spans 150 days, sometimes 100. Milestones need to be met at various points in time. This is an important discipline. You don't want to have any undefined period during which you're losing time and losing stewardship. The more discipline there is at closing, the greater likelihood of meeting goals. It's also advisable to develop a cautiously optimistic plan that you can slightly exceed during the transaction and post-transaction process. One of the most critical elements of any transaction is that management hit their numbers. Continuing to hit numbers out of the gate is important. So, prepare projections that you feel good about. Be cautiously aggressive."

"Absolutely," agreed Bonney. "When you have a plan, you lay it out to the whole company and people get less worried about unknowns. If you don't put a plan on paper, everyone in the company is going to put a plan in their head. Secondly, you can benchmark your plan against resources to make sure you can get work done and don't burn people up right out of the gate. Finally, when you get to the end of the first 100 days, it will provide a mechanism for getting to the next 270-day plan, where you have the discipline to make more substantial changes. You can change out that antiquated IT system—because the team is feeling progress early."

Epley said that in the private equity world, 100-day plans are fine, but "it's more important in my experience to be planning for eighteen months to three years. You need to have the right metrics that you want to have measured—sales versus margins, for example—and there's a lot of value creation when a public company is taken private. It's having the right metrics and making sure everybody understands and everybody sees the metrics on an ongoing basis."

Rooney added that in deals involving small, entrepreneurial companies, he has sometimes seen 100-day plans not go over well with sellers who stay with the new company. "They can create a corporate culture clash if not executed properly. You want collaboration and regular discussions. You want to hear about problems, but you need to establish trust and agreement."

DEAL NOTE

Advisor to CEOs: Best Practices in the Use of Outsourcing

In the fall 2016 issue of SOLVE Magazine, a quarterly publication of Spectrum Enterprise, Tom Bonney offered advice to CEOs on the use of outsourcing services. The following are a few excerpts:

The most precious resources of any business are the time and mindshare of the owner or CEO. That's always been true, but it's even more so today as technology and globalization accelerate innovation and competitive threats. Top executives need to spend most of their time dealing with core business challenges and opportunities. They also need to understand where not to spend their time.

Enter outsourcing, the practice of partnering with an outside company to take care of specific tasks that would otherwise be done in-house. It's an arrangement that has become increasingly available to midsize companies in a range of functions: payroll and benefits, help desk support, server maintenance and backup, IT security, call center activity, customer loyalty programs, and more.

In midsize companies, a leader's time is too often consumed by functions like these, which, although important, should not require the CEO's hands-on involvement. This tends to happen when a department, such as IT or HR, is small. The department head often reports directly to the CEO, who then finds him- or herself providing strategic and tactical management in that area. As a business grows, it needs to rethink its processes to accommodate greater needs.

All of this takes time—time that the CEO would better spend focusing on core competencies that have an impact on revenue generation, customer service, and product innovation.

But how does a business leader decide what function to outsource and when to do it?

As a first step, the CEO should review the workflow associated with any function being considered for outsourcing. How much of leadership's time is involved in these areas? How core are the areas to the customer experience, or to product or service innovation? One question to ask may be: Does your company have the depth and breadth of expertise required to be best in class in a fast-evolving area, such as web-based marketing?

If your business is like most, a certain institutional inertia will impede your ability to identify and execute on outsourcing opportunities. These are some of the more frequent objections:

- "We need to have this function in-house." (This may mean an executive feels he or she needs to have people on the premises reporting to him or her to maintain power in the company.)
- "I feel more comfortable knowing that ABC function is right down the hall."
- "What would we do without Mary? She has been with us for ten years."
- "I don't have the time to transition it out."
- "I don't know who the potential outsourcers are, or how to evaluate them."

The "keep it in-house" argument is becoming ever weaker as technology continually advances and because the labor market is tightening. If you have an "A" player in a noncore function, there is a good chance he or she will be hired away by an organization that can offer a better career track—and that person will be hard to replace.

For all its beneficial aspects, outsourcing can have its downsides. Here are some ways to avoid some of the most common negative outcomes:

- Perform due diligence on the service provider through online and direct reference checking. Don't rely on vendor-supplied references. Any group can provide you with a few people who will say good things about the company. Do your own online research for news and reviews. Ask peers in your industry who they use and how it's working out.
- Be clear on what remains in-house versus what is outsourced.
- Do upfront work to minimize the potential for misunderstanding. Ask specific questions. For example, if the outsourcing agreement includes onboarding and new employee education, at what point does the process get turned over to the company?
- Engage an attorney with experience in negotiating outsourcing contracts. A good lawyer will bring up legitimate business points on your behalf—for example, pre-negotiating rates for integration of future growth. He or she can also make sure that your contract gives you a way out if the service levels deteriorate, or if either you or the service provider goes through a merger or acquisition.

Over the past three years, we have seen outsourcing become more acceptable even to CFOs, traditionally the most risk-averse members of an executive team. Increasingly, corporate ecosystems are evolving beyond employees, vendors, and customers to include outsourcing partners. When you release resources—people, capital, and time—you allow yourself and your staff to focus on core competencies.

B. Early Warning Signs in the Post-Closing Period

"Nobody left and the sales teams integrated. It was quite seamless. The only issue was the furniture industry suddenly got softer right after the deal closed. There was no perspective on either side that anyone did anything wrong."
– Joshua Benn, Managing Director, Duff & Phelps

Close collaboration, clear communication, incentives, and 100-day plans are valuable tools for executing the integration process. Still, things can and will go wrong. What do advisors see as the warning signs of trouble, post-closing?

"In my experience, it's almost always working capital," said Duff & Phelps' Benn. "I've seen many disputes on the key terms." To minimize the post-closing disputes over working capital, Benn recommends the seller negotiate a substantial break-up fee in the purchase agreement. Additionally, macro- and microeconomic issues can wreak havoc on the best mergers during the integration. "I worked on the sale of a furniture business last year to a publicly traded company," he said. "The integration went well and the relationship was positive and everything was going quite smoothly. Nobody left and the sales teams integrated. It was quite seamless. The only issue was the furniture industry suddenly got softer right after the deal closed. There was no perspective on either side that anyone did anything wrong."

CMF's Bonney agreed that working capital negotiations are usually contentions, particularly for private equity deals. "It can swing, but generally sellers and buyers should have a pretty good sense for what it has been on a twelve- or six-month average basis, and during business cycles, and how it compares to average."

In contrast, Bonney said the biggest issues he's experienced in post-closing relate to interpersonal disputes, "Whether it's a PE fund or corporate folks and the seller's management team." He said issues often arise because of errors or incorrect assumptions during the deal negotiations. "Maybe the checklist wasn't fully communicated," he said. "If it's a family-owned business being acquired, sometimes these things just don't get done." On occasion, an entrepreneur who has sold his company but agreed to remain in management will balk at being put in a subordinate role. "It's helpful to have an adult in the room who recognizes the motivations and characteristics of a founder and puts in place a plan to either transition that person out or move him or her up to the chairman role. It often requires a bit of gray hair around the PE shop. A best practice is to really get to know the CEO/founder and what his desires and goals are. These guys generally have no idea what it's like to work in PE-levered business. And a PE fund that sits and works with the founder to really describe what it's like to work in companies within that fund can encourage the founder to talk to peers in other companies within the fund. That really helps in the first six months." Bonney added that in his estimation there is no such thing as a "smooth transition—if you're thinking it's a smooth transition you haven't done enough diligence. There are always going to be things that pop up—customers leaving, financing, visibility on reporting, personalities, additional bolt-on acquisitions. So, I would never be deluded into thinking I am working on a smooth transition."

Epley said the biggest warning sign is "when people start leaving, people the company doesn't want to leave—customers, suppliers, employees." This usually occurs when the new owner becomes overly aggressive in imposing cost constraints, he said. "Corporate egos can cause trouble. I have seen it." Conversely, companies that strive to understand the seller's culture and management can and do avoid conflicts in the integration. "At Nomura, the Japanese management team made a conscious effort to demonstrate its understanding of Western leadership styles," Epley said. "In cross-border deals, I have seen senior managements try to show more of a global approach. Deutsche Bank tried to maintain cultural norms in the US and UK. Jeff Immelt talks about GE being a global company, not a US company."

As an outside counsel, Rooney said he is not involved in the day-to-day of the integration process "so I can't see the writing on the wall—but you do get that phone call. None of predeal promises are happening. We're not getting resources. Not getting retentions." The problems are viewed through the prism of the purchase agreement, he said: "Earnouts, intellectual property. Buyers often want the seller there awhile—one to three years. Earnouts should be a good thing, work well for everyone. But for whatever reason, strategies change. The buyer's team may be on to the next deal and yours is not the hottest deal in town anymore. The problems most often are solved with negotiated solutions. But I've rarely seen the earnouts fulfilled exactly as contemplated in the deal documents."

But, Rooney added, "Remember—the lawyer's world is a bit jaded because we get the calls when the wheels are falling off. We're not getting the calls when everything's going well."

In the end, it falls to the CEOs to make sure the deals work as originally designed—or work at all. "I've seen lots of transactions where one CEO is not willing to yield and the transaction tanks," Benn said. "From a fiduciary standpoint, if you have a buyer willing to pay a compelling price, and the CEO is no longer going to have a role, that shouldn't cause a problem, but it often does. In some cases, the CEO of the seller is looking to retire and it's fine. Again, good communication and clarity are critical to making sure that happens."

"At some point, there has got to be a base level of trust," Rooney said. "The seller CEO is going to be reporting to someone, maybe the global CEO. You must go in with positive attitude. A lot goes into personality and the degree of collaboration and support that the buyer and seller promised. A lot of people who've worked for themselves like what they've done and have confidence. I know best. It's not easy for them to transition. There will inevitably be clashes. In one case, our seller was a very difficult person to deal with. He was such a grabby, pushy person. But he ended up getting a better deal than many people do. And he had a great earnout—this guy had a deal and got an earnout in a year!"

When entrepreneurial companies are acquired by private equity funds, Bonney said the seller CEO should "want to understand what the governance standards, processes, and culture are like for the fund. Some funds are data animals, and you can't feed them enough. They send an analyst and keep asking for more information—that always ends up sucking up a lot of time. In theory, a seller would have figured it out before the closing, but that's not always the case. And if you get into trouble how does the PE firm react? Everybody's friends when you're winning, but when you're in the foxhole you find out who your real friends are."

CONCLUSION

The M&A Advisor is proud to have presented *Best Practices of the Best Dealmakers* for a fifth edition. Our focus in this edition has been on the role of the CEO in setting M&A strategy for business growth, as well as steering the deal through the sourcing, letter of intent, due diligence, purchase agreement, closing – and finally the crucial post-closing period that proves the efficacy of the initial strategy. We are indebted to the contributions of four CEOs that we have showcased in these chapters – Mark Zeffiro, President and CEO, Horizon Global; Steve Townes, CEO and founder of Ranger Aerospace; Carlos Creus Moreira, founder and CEO of cybersecurity provider WISeKey; and G. Scott Paterson, Canadian venture capitalist and serial entrepreneur. Likewise, we are thankful for the invaluable advice and counsel of veteran M&A advisor, scholar and attorney Marshall Sonenshine for his contributions to all five of our editions of *Best Practices of the Best Dealmakers*. Finally, we wish to acknowledge the wisdom we gained in the pages of this and previous chapters from the dozens of professional global M&A advisors who were interviewed for this edition. The stalwarts are the bulwark of our ongoing mission at The M&A Advisor to foster knowledge, advice, enthusiasm and professionalism to the art of dealmaking in today's global economy.

AN ESSAY BY MARSHALL SONENSHINE

Post Transaction Stress Disorders

There are certain bits of business wisdom one retains forever because they are just so damned true. One of my favorites, which I read as a first-year banking associate at Salomon Brothers in 1986, was by the lawyer-turned-acquirer Theodore Cross, who made his fortune buying out a largely forgotten pile of fixed-income newspapers called Investment Dealers' Digest and creating from them a fixed-income electronic database that he would later sell at an enormous profit to Thomson. "The principle is that information about money is as valuable as money itself," Mr. Cross observed.[1]

Of course, the observation presumed the knowledge, which Cross possessed, of what precisely to do with that information after acquiring it.

A few years later, I read another unforgettable insight, this one in the 1990s, from buyout leader Henry Kravis: "Look, don't congratulate us when we buy a company, congratulate us when we sell it. Because any fool can overpay and buy a company, as long as money will last to buy it."[2]

What happens between the buying and selling of a company can determine whether even a well bought company was worth the price of entry. Indeed, as the buyout business matured and competition for companies reached fuller and fuller prices, winning could be losing unless one could wrest operational improvements.

The adviser who stays with his client post-close is there when the value is realized. In today's transaction-driven banking culture, that truism is too often forgotten by both bankers and clients. But the adviser/client teams that work post-close and through integration can build in practice the value that the deal was engineered to create in theory. This is where the money sought is made or not.

I have been fortunate to be present for many of these integrations. We bought out and integrated numerous optical chains for LensCrafters before selling the company to global optical frame leader Luxottica. We bought out Control Data's 50 percent interest in Metaphase product lifecycle solutions group and

1. http://www.nytimes.com/1986/09/06/business/the-deal-for-dealer-s-digest.html

2. https://www.brainyquote.com/quotes/quotes/h/henrykravi332769.html

helped integrate that platform into our client, Structural Dynamics, driving its subsequent value in a $2 billion merger with EDS's Unigraphics group. In a recent financial technology deal, we went deep with our client in figuring out and modeling with specificity precisely how to wrest value from an acquisition. A recent retail client asked us to finance acquisitions that we could use to drive value in a still larger follow-on deal.

In my early years as a partner with Paul Volcker at leading M&A boutique Wolfensohn & Co, we accepted an offer to merge our own firm into the much larger Bankers Trust. Here, as a principal, I felt the stress of integration, and this made me a better banker for life. When we were done, and Deutsche Bank took over BT, they asked me to be one of the coheads of M&A for the combined banking behemoth. I felt that was a validation of the work of integration.

I would not forego the chance to have a ringside seat in an integration program, even though in theory, for dealmakers, the money is made at the closing. That is because value (as opposed to compensation) is driven post-closing. The adviser who works that part is the real adviser, the one who not only got the client what he wanted but also helped ensure he would get from it what mattered.

Getting value post-closing is stressful. This is where synergies imagined need to be made real, where management teams need to integrate and accommodate to new ways of doing business, where cultures can clash and failures can be orphaned. Results must be delivered and attention to integration must be paid. Call it PTSD—Post-Transaction Stress Disorder. This is where deals succeed or fail. One ought not to miss out on this PTSD, for it is where congratulations, if they are to be due, are earned.

Marshall Sonenshine
Chairman of New York M&A firm Sonenshine Partners
Lecturer on Law at Harvard Law School

CONTRIBUTORS' BIOGRAPHIES

Joshua Benn is a managing director at Duff & Phelps and head of the firm's New York corporate finance practice. In addition, he leads the firm's global consumer, retail, food, and restaurants industry practice. Benn has more than eighteen years of investment banking experience. Prior to joining Duff & Phelps in 2004, Benn was a partner at Stone Ridge Partners LLC, a middle market merger and acquisition advisory firm. Prior to Stone Ridge Partners, he was in the M&A and PE coverage groups at Thomas Weisel Partners and Furman Selz. He has managed merger, acquisition, divestiture, and recapitalization transactions and transaction opinions for a variety of public and privately owned clients including Rock Bottom Restaurants; Noodles & Company; Tourneau; Marlin Firearms co.; Traeger Wood Pellet Grills; Eastern Mountain Sports; SBE, Inc.; Gristede's Supermarkets; Balducci's, LLC; Friendly Ice Cream Corporation; Steak 'n Shake; and Salant Corporation. He holds a BA in political science and French from Dartmouth College and is a FINRA Series 7, 24, and 63 registered representative. In 2012, Benn was the winner of the 40 UNDER 40 M&A Advisor Recognition Awards, which honors leading M&A, financing, and turnaround professionals.

Thomas Bonney is founder and managing director of CMF Associates in Philadelphia. CMF is a preferred operating partner for finance and financial leadership in private equity, delivering transaction and transition-focused financial, operational, and human capital solutions to PE-backed portfolio companies. Seeing a need in the market for interim and consulting-based finance and accounting services, Bonney founded CMF in 2001 and began marketing himself as an interim CFO, securing multiple projects with PE-backed and publicly traded organizations. Some of his first assignments included Prince tennis racquets, a carve out of the Benetton Sports Group; 3SI Security, a carve out of ICI Americas; and Management Recruiters International, a subsidiary of a publicly traded CDI. Today, CMF's three divisions focus entirely on serving middle market private equity-backed portfolio companies. The firm is recognized as a market leader in this segment and has worked with over 110 PE funds with committed capital of approximately $112B. Bonney is a member of the Pennsylvania Institute of certified public accountants and a University Scholar at Penn State University, where he graduated magna cum laude in 1987. He holds a masters in liberal arts from the University of Pennsylvania, graduating in 2011.

Mark J. Epley recently joined London-based Jamieson Advisory as its New York-based US chairman. Prior to Jamieson, he served as global head of Financial Sponsors and cohead of Corporate Finance Americas for Nomura Securities, where he helped found its US investment banking business in 2010 and grow the business from zero revenues to $200 million in five years. Prior to that, he was global head of Financial Sponsors (2007) and Americas Head (2003) at Deutsche Bank, where he increased revenues from $100m to more than $900m. Previously he spent almost ten years at Morgan Stanley, where he served as COO of Global Financial Sponsors Coverage (1998–2001) and Global Equity Capital Markets (1995–1998) in addition to his banking duties. Epley has more than twenty-five years of investment banking transaction experience and covered the PE industry for almost twenty years. He has financed/advised on more than eighty leveraged buyouts and recapitalizations, with transaction valuing more than $165 billion. Notable deals include the LBOs of Harrah's Entertainment ($27bn), SunGard Data ($11.5bn), and Nielsen ($11bn). He has led or participated in more than 100 IPOs and follow-on equity offerings. Mark holds an MBA from Columbia University and a BA from Princeton.

Tarang D. Patel is director of corporate development at Fujitsu, based in London. He is responsible for developing key deal strategies, including business case development focused on emerging technologies (e.g., digital, cloud, IoT, cybersecurity). He also has end-to-end deal responsibility for sourcing, valuation, deal structuring, due diligence, and negotiations, with a preliminary focus on integration and transformation planning and value capture. From 2008–2016, Patel was an M&A consultant at PwC, based in its London, Chicago, and Boston offices, where he advised on the value of M&A transactions by supporting the planning and execution of strategic initiatives to maximize revenues and drive cost savings. He advised clients on operational due diligence, business case and synergy analysis, stranded and stand-alone cost analysis, integration/separation planning and execution, and functional area process improvement. Patel began his career as an analyst in the financial management program at NBC Universal (then part of General Electric) in New York in 2007, performing strategic planning, analysis, reporting, and financial consolidation for cable properties. He has a BS in business management from Bryant University in Smithfield, Rhode Island, and an MBA from the Kellogg School of Management at Northwestern University in Evanston Illinois.

G. Scott Paterson is a media and technology entrepreneur, recognized for decades as one of Canada's leaders in technology and media finance. He serves as a director of Santa Monica-based Lions Gate Entertainment (NYSE:LGF); chairman of Toronto-based Symbility Solutions (TSXV:SY), New Jersey-based Engagement Labs (TSXV:EL), Toronto-based FutureVault Inc., and LA-based QYOU Media; and lead director of Toronto/LA-based Giftagram. Mr. Paterson was instrumental in the evolution of NeuLion Inc. (TSX:NLN), having led the company's predecessor company JumpTV as chairman & CEO through a successful August 2006 US$65 million IPO led by Morgan Stanley. In 2008, he negotiated JumpTV's takeover of NeuLion, becoming vice chairman of the board, a role he held until June 2015. Mr. Paterson is currently special consultant to the chair of the board. Mr. Paterson previously served as chairman and CEO of Yorkton Securities Inc., raising over $3 billion as lead underwriter and an additional $9 billion as managing underwriter. Mr. Paterson has also served as chairman of the Canadian Venture Stock Exchange, vice chairman of the Toronto Stock Exchange, a governor of the Investment Dealers Association, a director of the Canadian Investor Protection Fund, and a director of the Canadian Securities Institute.

Allan J.P. Rooney is a partner at Rooney Nimmo law firm in New York who specializes in M&A and corporate finance. He is an honors graduate of the Edinburgh University Law School in Scotland, and he studied at the University of Texas Law School in Austin through a merit-based scholarship awarded by the University of Texas in conjunction with the University of Edinburgh. Upon relocating to New York, Rooney worked as a commodities trader before beginning his legal career at Deloitte & Touche LLP. At Deloitte, his practice concentrated on international tax and compensation issues and securities-related matters, advising several Fortune 500 companies. He later worked at a boutique, commercial litigation and corporate firm representing corporate clients. With the backing of his clients, Allan founded Rooney Nimmo in 2007 and attributes its growth to its commitment to providing the highest possible level of client service coupled with sophisticated business-focused legal advice.

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