THE SCIENCE AND ART OF DEAL EXECUTION: WHERE METRICS AND INNOVATION CONVERGE

VALUABLE GUIDANCE FROM THE MOST ACTIVE MIDDLE MARKET M&A PRACTITIONERS

SECOND EDITION: PART 5
When it is operating smoothly, the deal execution process is as holistic in design and function as one of Leonardo da Vinci’s hybrid works of science and art.
Drawing on the experience and expertise of the “best in class” dealmakers, The M&A Advisor (http://www.maadvisor.com), together with the leading provider of virtual deal management services, Merrill DataSite® (http://www.datasite.com), publishes the quintessential dealmakers’ guide series — “The Best Practices of The Best Dealmakers.” Profiling the proven strategies and unique experiences of the leading M&A practitioners, “The Best Practices of The Best Dealmakers” series is distributed in regular installments for M&A industry professionals in both print and interactive electronic media. Previously published features and chapters are also available in the online library of Merrill DataSite and The M&A Advisor. We are pleased to present The Science and Art of Deal Execution: Where Metrics and Innovation Converge. This installment discusses the quantitative foundations of dealmaking, the metrics and measures that underpin each phase of the deal process. These fundamental elements allow corporate finance professionals to create their version of transactional art in an M&A setting. On the following pages you’ll find helpful observations from leading buyers, sellers, and advisors, as well as timely insights into the most current trends.
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Introduction

Scientist, painter and quintessential Renaissance man, Leonardo da Vinci successfully merged science and art. Today’s corporate finance professionals ought to feel some kinship with the great Leonardo. What they do to guide M&A deals from inception to integration has elements of the two spheres in which Leonardo was an archetypal master. “I think deal negotiations are 50% science and 50% magic—or art,” declares deal veteran Lorie Beers, Senior Managing Director and leader of the investment banking practice at Variant Capital Advisors. The science of deal execution, she notes, “is about running a disciplined, organized, robust process that begins even before the negotiation phase commences.” Although speaking of deal negotiation, Ms. Beers’ observation can also be applied to the other critical components of the deal execution process: valuation, structure and post-close target integration. When it is operating smoothly, the process they compose is as holistic in design and function as one of Leonardo’s hybrid works of science and art.

In both Leonardo’s era and our own, scientific and artistic achievements require information as a foundation for the formal process of creation that follows. That information reservoir helps today’s corporate finance professionals—buy-side and sell-side investment bankers, attorneys, accountants, valuation professionals and others—to assemble the quantitative ingredients that form a deal’s DNA and help deal participants achieve the highest possible level of preparation. Deep preparation, they agree, works to the best advantage of buyers and sellers. The science aspects of deal execution, Beers points out, “are more about the process than about the art of negotiation.” If the transaction process is optimized, deal negotiation becomes easier, even when the process runs into the weeds, as it sometimes
Best Practices of the Best Dealmakers

Solid preparation enables deal participants to anticipate many of the unknowns. Constant communication with the bidders ensures that there will be few surprises in the negotiation phase, thus keeping the process dynamic. Preparation also facilitates transparency and disclosure, both of which are critical to the success of any deal.

This chapter of *The Best Practices of the Best Dealmakers* spotlights the quantitative foundations of dealmaking, the metrics and measures that underpin each phase of the deal process and that allow corporate finance professionals to create their version of transactional art in an M&A setting.

**Part I: The Science of Deal Negotiation**

**A. The Goal: Getting the Deal Done**

*“The second bite of the apple—the upside—can actually be greater than an earlier cash-out.”* - Dennis Graham, Private Equity Group Practice Leader, Plante Moran

In an M&A transaction, sellers want to sell their companies for the highest possible price; buyers want to pay the lowest possible price. Despite the apparent disparity of their objectives, sellers and buyers share a goal that greases the gears of all M&A negotiations: they want to get a deal done that benefits them and their shareholders.

Although the valuation of the target company understandably captures the attention of sellers and buyers, there are other points of negotiation, even at a transaction’s outset, that need to be addressed. The terms of the deal must be set. If it is not a straight stock purchase, which assets will be transferred to the buyer? Which liabilities will the seller retain? Stock purchases are relatively simple transactions that generally benefit the seller more than the buyer. Asset sales, on the other hand, can result in knotty negotiations but are typically of more benefit to the buyer. By negotiating terms beyond the valuation price, buyers and sellers can discover each other’s top priorities, which will likely result in smoother negotiations by enabling the two sides to make concessions to build and sustain the deal’s forward momentum. Veteran negotiators recommend making strategic concessions. They also recommend that the party making the concessions should inform the counterparty of the concessions’ strategic importance, and then request an equal concession from the counterparty. Each deal structure carries its own tax consequences, which are also the subject of negotiation. For example, in an asset sale, the
Each deal structure carries its own tax consequences, which are also the subject of negotiation.

buyer can write up the tax bases of the target’s assets, thereby reporting greater deductions for depreciation and amortization. Due to various tax penalties, however, seller shareholders may focus on the downside aspects of an asset sale. Conversely, target shareholders may prefer a stock sale because their gain on the transaction is taxed only once, at the shareholder level.

According to attorney Randy Bullard, Corporate Department Chair at law firm Greenberg Traurig, in a sell-side mandate the most important issues, beyond price certainty, are minimized holdbacks—funds that are withheld by the buyer from the seller until certain conditions, specified in the letter of intent (LOI), are met—minimal contingencies and the avoidance of earn-outs. Earn-outs are arrangements in which sellers receive future payments usually pegged to their former company’s future earnings.

From his vantage point as head of KPMG Corporate Finance LLC in Chicago, Phil Isom outlines several sell-side objectives and concerns:

1.) Achieving maximum value, consideration mix and terms—is the buyer willing to pay and are the negotiating terms reasonable?

2.) Speed of execution—is the deal a priority for management?

3.) Certainty of completion—does the buyer have the financial resources to complete the deal?

4.) Partnering with a larger buyer – a large buyer could provide more resources to the target, enabling the company to achieve long-term objectives.

5.) If the seller is taking stock in the post-close entity, the seller would be interested in maintaining value in the combined entity.

Private equity firms looking to divest a portfolio company often aim the process specifically at corporate strategic buyers. These buyer will typically pay a premium price, because they assign value to synergies and the acquisition of new clients and new business. Financial buyers, on the other hand, typically assign the highest priority to return on investment (ROI) calculations. Investment banking organizations often have family-owned middle-market and lower middle-market companies as sell-side clients. The owners of these
businesses have strong ties to existing management (often generational management). These owners often prefer a financial buyer to a strategic buyer, because they place a higher value on an investor that is committed to existing management.

In his position as Private Equity Group Practice Leader at Plante Moran, a Michigan-based consultancy that provides buy-side financial and tax due diligence, Dennis Graham has often seen tension among sellers over the amount of cash they receive at the close and what they give up later in terms of upside. For private equity firms, the tension emanates from their desire for control and for upside capture, but private equity firms often want the sellers’ management teams to have a stake in the achievement of that upside. Recently, however, Graham has noticed an easing of the natural tension between cash now and upside later. Graham says, “As the private equity and M&A model has evolved, many of our private equity funds are able to provide sellers with examples of instances where the second bite of the apple—the upside—can actually be greater than an earlier cash-out.”

Buyers are concerned with whether or not it is important to attract strategic investors, new funding sources or non-core investments. Randy Bullard adds that most of his law firm’s seller clients prefer all-cash transactions, a limit on the contingencies that claw back on the purchase price and a limit on contingencies that extend payment of the purchase price to a later date post-closing via releases of escrow and multiple closings. The seller’s ideal outcome: a clean one-time closing with the seller exiting the deal process with full purchase price in hand.

**B. The Lawyer’s Role: The Calm Approach**

“It should never be about the lawyer.” - Randy Bullard, Corporate Department Chair, Greenberg Traurig

From an attorney negotiator’s perspective, there is no one-size-fits-all quantitative approach to deal negotiation. After all, every deal and every client is different. The art of negotiation often springs from a calm demeanor, a non-academic listening approach that is never off-putting to a negotiation counterpart. Says Randy Bullard: “From experience, I’ve found that a reasonable, balanced approach is most helpful; I dig my heels into the sand only when it’s necessary.” Taking the resistant tack less often gives a negotiator more credibility when resistance is called for. Otherwise, a negotiator’s stance depends more on the dynamics between buyer and seller, and how much a
buyer wants to buy and a seller wants to sell, not whether a lawyer wins or loses a point. “It should never be about the lawyer,” Bullard cautions.

Like most other M&A transaction participants, Bullard’s role in a deal is prescribed. Often the lead partner in M&A transactions, he helps assemble the structure of the deal and in formulating the strategy for approaching the target. As the transaction moves forward toward the LOI he is involved in all aspects of the negotiation, including preparation of contracts, deal strategy, and leading counterparty negotiations. Eventually, as the transaction comes together, his drafting responsibilities wane. When it comes time to process deal documentation, he usually assigns the task to a more junior partner from his firm or to a senior associate’s assistant. “I don’t just attend the organization meeting and disappear,” he declares. “I’m involved in all stages of the deal execution process.”

Veteran dealmakers think beyond price; focusing on other items such as deal structure often leads to winning bids if dealt with early in the process where buyers may be more willing to negotiate to ensure they advance to the second round. Yet awareness of the valuation range and performance drivers is as important as negotiating skill. Experienced negotiators increase bargaining power by familiarizing themselves with the interests and motivations of their opposite numbers in order to better understand the counterparty’s organization and its decision-making drivers.

C. The Banker’s Role: Gatekeeper of the Process

“If there is only one potential buyer there is a likelihood that the leverage will shift in favor of the buyer.” - Lorie Beers, Senior Managing Director, Variant Capital Advisors

Lorie Beers shares Bullard’s affinity for a calm negotiating approach with counterparties and clients. As an investment banker, her involvement in the deal process is all-encompassing from start to finish. For sellers, she acts as financial advisor, helping the company to develop its go-to-market strategy, the overall sell-side objective, pricing and gaming out the potential outcomes of the deal execution process. Depending on the company’s objective, she formulates
the deal structure prior to going to market.

Once the client is actively in the market, an investment banker serves as spokesperson and lightning rod for the company in conjunction with the deal process and the negotiation while advising the target with respect to potential buyers. By that point, the bankers are either developing or refining elements of the potential deal structure, including earn-outs and potential future considerations. Beyond negotiations, Beers’ firm assists the seller in evaluating and scoring potential bidders, narrowing down the choices in preparation for management meetings. At the final bid stage, an investment banker aids the company in evaluating the quantitative and qualitative aspects of any bid. Explains Beers, “We are the gatekeepers of the process in terms of interfacing with potential buyers to ensure the process is robust.”

The deal process a seller’s investment banker runs is critical to the transaction’s success. In many deals the seller’s banker will post a model stock purchase agreement (SPA) and an asset purchase agreement (APA) in the virtual data room. Developed by the seller, these model agreements are the bulls-eye that potential bidders will aim at. Both documents are wish lists of all the terms the seller wants included in the transaction. Whether the wish list is meaningful depends on whether the bidding process is competitive. Explains Lorie Beers, “If there is only one potential buyer there is a likelihood that the leverage will shift in favor of the buyer.” If there are several competitive buyers, however, the seller is more likely to obtain all the deal terms sought.

When the client is a buyer, the investment banker’s role is largely dependent on conducting a full-on buy-side campaign for the client, if a specific target is being pursued or if the advance on the target is unsolicited. In an unsolicited advance, bankers make the initial approach to the target. If the target is not in the market, bankers approach the target to share a vision of what the combined companies would look like. Bankers then work to best position their client to be the acquirer should the transaction take shape.

D. Negotiating Synergy: Let the Buyer Beware

“We are going to cut up X by 10% and grow revenue by an incremental 2%.” Such high-level calculations are prone to risk. I would urge buyers to dig deeper than that.” Marc Suidan, Deals Partner, PwC

Let the buyer beware. So warns Marc Suidan, Deals Partner at PwC in San Francisco. A purchase price, he points out, is predicated on realizing synergies
that justify it. Once a company is sold, both the responsibility and the risk for realizing those synergies.

Suidan says that he has seen several synergy quantifications. Most, he insists, consist of the buyer stating, “We are going to cut up X by 10% and grow revenue by an incremental 2%.” Such high-level calculations, he claims, are prone to risk. “I would urge buyers to dig deeper than that.”

He advises buyers to break down those synergies into bite-sized bits, discrete smaller value drivers or initiatives that can be owned by a specific leader in the acquiring company. For instance, an executive could be assigned the responsibility for reducing general and administrative (G&A) costs by a specified amount, achievable by absorbing the target into the buyer’s existing environment. “Suddenly, someone is accountable for achieving those reductions,” says Suidan. Adopting these measures, he says, will increase the probability of success due to heightened transparency and accountability. The designated executive was selected, in this case, because of a deep understanding of the general and administrative field. After enlisting the appropriate assistance from a company like PwC, the executive would be advised as to how much of the target should be absorbed, how existing infrastructure could be leveraged, like a fixed cost, to serve the absorbed target, and how the variable costs would have to be accommodated. The result, Suidan says, is a quantifiable approach that is more specific, more reliable and more actionable post-close.

**E. Preparing the Negotiators**

*The purpose of this information is to provide clients a sense of how high or low they can go in terms of possible negotiation concessions and where they need to hold the line.*

Negotiators need ammunition in the form of incisive and reliable information in order to fulfill their responsibilities. Duncan Smithson, U.S. West/Central Leader of Mercer’s Global Private Equity M&A Group, supplies human resources-related information and strategic advice to client deal negotiators. Smithson advises corporate and private equity buyers and sellers when they prepare to carry out a transaction. He also mobilizes his firm’s resources
depending on the specifics of the deal. He assists clients in building their valuation model and in planning for future target integration.

“We’re seldom at the table when deal principals are staring into the whites of each other’s eyes as they negotiate the granular details of the deal,” Smithson notes. Instead, his role is to arm those principals with the appropriate information so that they enter negotiations knowing what their most desirable outcome is, what their fallback position might be and therefore how they could achieve a compromise with their counterparty.

From a HR perspective, the state of U.S. healthcare reform is a consistent hot-button issue. Many of the detailed regulations and much of the legislation relating to the Affordable Care Act (Obamacare) are in flux. This creates uncertainty and volatility in terms of determining, for instance, the impact of the fringe benefit rate—the cost of an employee’s benefits divided by the wages paid to an employee for the hours working on the job—on the employee base given ongoing healthcare reform. It is important, Smithson says, to be able to inform a client about what the point estimate—the approximate value of a specified parameter, such as the mean, of a population from random samples of the population—should be for client costs. It is also important to be able to explain to a client “that there is a range of volatility around that estimated value and that the client needs to understand where the costs lie.” This information, provided to clients in the midst of high-level deal negotiations feeds into clients’ ability to understand how much volatility—or how much give and take—they have at their disposal. Combined with other HR touch points, and other touch points across other work streams, the purpose of this information is to provide clients a sense of how high or low they can go in terms of possible negotiation concessions and where they need to hold the line.

F. EBITDA: Where Science and Art Converge

“I often tell clients, ‘Here's your accounting policy, here's how you've been accounting for EBITDA historically, but here is the actual GAAP policy.’”
- Dennis Graham, Private Equity Group Practice Leader, Plante Moran

The science and art aspects of deal negotiation sometimes converge on the issue of EBITDA adjustment during quality-of-earnings analyses, says Dennis Graham.

EBITDA (earnings before interest, taxes, depreciation and amortization) is an approximate measure of a company’s operating cash flow based on data
gleaned from the company’s income statement. Since the distorting accounting
and financing effects of company earnings do not factor into EBITDA, it
is regarded as a sound method of comparing companies within and across
industries. Adjustments to EBITDA can include excess owner compensation,
non-recurring business expenses and expenses personal to current ownership.
Adjusted EBITDA is important to a company’s owners, bankers and potential
buyers because it represents the normalized free cash flow available to a
company to service proposed debt.

Companies in some industries account for EBITDA based on historical
precedent instead of adhering to the letter of Generally Accepted Accounting
Principles (GAAP), a discrepancy that often creates a variation. “As we
conduct our quality-of-earnings analysis we formulate adjustments to
historically presented unadjusted EBITDA,” Graham explains. Those
adjustments, which positively and negatively impact EBITDA, change the
perception of adjusted GAAP based EBITDA. Such adjustments, coming
after the signing of the LOI, can alter expectations on the part the buyer and
seller. “That’s the science aspect,” Graham says. The “art part,” he adds, occurs
when a deal is struck on a certain basis or price point and deal participants
become fixated on that number. Moving a buyer and seller off that number
is often a difficult process for deal negotiators. To untangle the dealmakers,
Graham says, tell them, “Here’s your accounting policy, here’s how you’ve
been accounting for EBITDA historically, but here is the actual GAAP policy.”
This revelation, he adds, changes the presentation of EBITDA, aligning it with
GAAP principles and aids deal participants in understanding the impact on
value of GAAP-adjusted EBITDA.

Part II: V Is for Valuation, the Prime Objective

A. Setting Value: What Do Negotiators Aim for?

“Finding common ground among the two parties’ perception of the target’s
value drivers makes for a much smoother transaction” - Cindy Ma, Managing
Director, Houlihan Lokey

Valuation is the first—and prime—phase of deal execution. Valuation is the
basis for all that follows and the basis for the deal’s bottom line and, ultimately
Buyers and sellers usually enter negotiations aware of the price that will kill the deal for them.

the ROI. Buyers and sellers usually enter negotiations aware of the price that will kill the deal for them. Under a normal circumstance, such as a non-fire sale scenario or a sale under regulatory pressure in a limited time frame, a seller has a minimum price in mind while a buyer has a maximum price it will pay for the deal to make financial sense. A transaction happens only when a seller’s minimum price is equal to, or lower than, the maximum price the buyer is willing to pay.

According to Cindy Ma, Managing Director of Houlihan Lokey, a New York-based investment bank, “The seller naturally is perceived as having more information about the asset, and this information asymmetry may create a gap between the seller’s and buyer’s target prices. A great deal of effort is required to bridge the difference, including the use of outside consultants to evaluate aspects of the target business.”

A common hitch in valuation negotiations is one of perception: seller and buyer may value the target differently. Both parties may differ in their opinions with respect to industry outlook, competitive landscape and potential risks and opportunities. The unique circumstances surrounding the seller and the buyer can create contrasting dynamics, such as whether a new target management team may have a more positive impact on the performance of the business, what resources the target has at its disposal and the potential synergies the buyer can likely achieve, given the quality of its management team, its existing assets, capital position and investor base. These differing perspectives may result in a contrasting outlook that is reflected in the financial projections of the target business and ultimately in the anticipated ROI of the company. Declares Ma, “Finding common ground among the two parties’ perceptions of the target’s value drivers makes for a much smoother transaction”.

B. Market Demand—and Sometimes Multiples of EBITDA—also Drive Negotiations

“It’s difficult for the human brain to understand the algebra of the net present value model.” Dennis Graham, Private Equity Group Practice Leader, Plante Moran
The Contrasting Roles of Valuation Firms: Targeting the Valuation Services You Need

To paraphrase Mick Jagger: When it comes to valuation services, M&A dealmakers can get what they need.

Depending on needs associated with their size, reach, sophistication and, deal complexity, valuation clients are generally served by two types of valuation firms: full service and traditional. Full-service valuation firms offer an array of M&A-related corporate finance, financial advisory and financial restructuring services on a global basis when required. Traditional valuation firms provide core valuation services such as financial opinions and accounting, tax needs, as well as valuations of portfolio and intangible assets. Full-service and traditional valuation firms serve the same deal-size clientele: Transactions range from approximately $10 million to $10 billion. In addition to the purposes of their respective client service arsenals, the two types of valuation firms also differ in the nature and time-frame involvement in an M&A transaction: full-service firms are generally involved from the outset of a deal past the LOI; traditional firms are summoned mainly after a price point has been reached and an LOI is near the signing stage.

According to Cindy Ma of Houlihan Lokey, her firm can provide a range of services around M&A transactions including M&A advisory, due diligence, valuation, transaction opinions and even dispute resolution. Unlike a pure valuation firm, Houlihan Lokey provides advisory services across the entire transaction, with valuation being only one of the services it offers.

In contrast, traditional valuation firms primarily provide only those services that are directly related to valuation. “We often function like a Good Housekeeping Seal of Approval,” comments Tom Kenny, Senior Vice President of traditional valuation firm Murray Devine. Although sometimes utilized as an additional third party in pre-transaction due diligence, Murray Devine mainly provides valuation services, such as solvency opinions when considerable leverage is involved, and fairness opinions, after a purchase price has been set by the buyer and seller. Post-close traditional valuation firm services usually include purchase price allocation and stock compensation valuations. Overall, he says, “Our valuation is used primarily for accounting purposes to establish the opening balance sheet and to develop a goodwill number.”

Both tiers of valuation firms are designed to play their respective strengths and to match those strengths with the needs of a diverse client base across a wide range of industries. Selecting from a range of full-service and traditional valuation firms, dealmakers, no matter the size of and complexity of their transaction, can usually find what they need on the valuation firm spectrum.
For some dealmakers, including KPMG’s Phil Isom, market demand, not valuation theory, is a key driver of valuation negotiations. “An advisor can create options for the seller by running a competitive market-driven process aimed at engaging multiple competing or diverse financing options, building an ideal negotiating position during the valuation phase, driving optimal price and structure for a seller.” Assessing alternatives such leverage recapitalization options, valuation of the business in future years based on current organic growth rates, and comparable transactions offer reliable benchmarks for fruitful and thoughtful negotiations around current and potential future valuations, Isom says.

For other dealmakers, potential synergy creation is a key valuation driver. Buyers attempt to quantify and assign probability of success in synergy creation in order to feed those projections into their valuation model, which determines buyers’ purchasing power. As Marc Suidan explains, “A buyer’s objective is to assign a realistic number to the synergies, making sure that all the financial benefit is not passed on to the target’s shareholders. Otherwise the buyer won’t be creating any shareholder value even when successfully achieving synergy objectives.”

Sellers, on the other hand, already know the value of their company on a stand-alone basis and expect a premium. That premium is funded by the synergies the target will create for the buyer. According to Suidan, regardless of what typical premiums are, the seller negotiation strategy is, “We know you can create synergies. In order for you to buy this business we want to extract the maximum amount of that premium while you are extracting shareholder value.” In other words, although the buyer is accountable for achieving value from synergy creation, the seller wishes to maximize value creation while escaping future obligations and accountability.

For Dennis Graham, multiples of EBITDA, not net present value, is the most efficient method of determining ultimate value in valuation negotiations. Although many dealmakers employ a net present value model that includes future cash flows and a weight-adjusted discount rate, others instead use multiples of EBITDA. According to Graham, this preference for EBITDA is at
least partly the result of the net present value model’s complexity. “It’s difficult for the human brain to understand the algebra of the net present value model,” he insists. Understanding EBITDA is a less arduous intellectual challenge, he claims. “It’s easier to understand that EBITDA is X and I am paying 5X for a company.” Buyers and sellers always include a detailed net present value forecast and model in valuation discussions, he says, “but at the end of the day it seems that multiples of EBITDA drive more deals and value than any other method of determining ultimate value.”

EBITDA is also a pivotal ingredient in negotiations involving the HR component of valuation. While Duncan Smithson says “Our company, Mercer, is not directly involved in high-level business valuation, our outputs feed into quality of earnings analyses, debt-like analyses and even working capital.” In technical due diligence, Mercer assesses or validates the HR component of EBITDA, balance sheet debt or debt-like items and working capital to ensure that a client’s valuation model, whether the client is a buyer or seller, accurately reflects any material that will impact those items, and therefore impact valuation.

C. Bridging the Price Expectation Gap

“Unforeseen issues and circumstances may arise that can cause a future dispute over interpretation of an earn-out’s terms.” Cindy Ma, Managing Director, Houlihan Lokey

Based on each transaction’s uniqueness, deal terms can bridge the difference between buyer and seller price expectations. A common bridging instrument is the earn-out, in which an initial lower price is paid for the target, but the seller retains the opportunity to receive additional consideration over a discrete time period based on the business’s performance during that time span. Cautions Cindy Ma, “While fairly straightforward in its concept, the details of an earn-out must be thoroughly vetted up front, as unforeseen issues and circumstances may arise that can cause a future dispute over interpretation of an earn-out’s terms.”

Some buyers, especially financial buyers, may be concerned not only about the up-front transaction price but also about the ultimate internal rate of
return (IRR) and/or the ROI on the back-end sale of the business. In order to help boost the buyer’s equity IRR, the seller may be willing to provide seller financing in place of, or in addition to, typical bank bond financing. This financing technique reduces the initial out-of-pocket equity paid by the seller while boosting the potential leverage and IRR of the seller’s equity.

Continuing seller participation in the upside of the business is another price expectation bridge, with the seller receiving or maintaining equity in the business as part of the deal consideration. Among the issues to consider in this possible bridge solution are the terms of the equity securities received by the buyer or seller. The structure, rights and privileges of the equity securities received by each party may also contribute to the resolution of valuation differences. One party may receive securities with preferential returns—dividends that are paid to shareholders before common stock earnings are paid out—in addition to receiving one or all of the following: liquidation, conversion, voting, board representation, or other rights that may quantitatively or qualitatively address the gap in pricing expectations. Alternatively, a buyer can use the terms to mitigate some of the potential uncertainties of the transaction, such as escrow accounts, or to structure the payments based on different conditions on milestones to be met.

The maximization of proceeds may not always be a seller objective. For instance, when a non-profit enterprise is sold, the seller may have concerns about the buyer’s plans for that enterprise, whether the enterprise is able to continue its original mission, the impact on the organization’s employees and the community in which the enterprise may be involved. For a seller looking to maintain a minority stake, finding the right partner may outweigh receiving the highest price. Valuation firms are summoned as these deal terms emerge in order to properly evaluate and value the terms.

D. Valuation Sets the Stage

“Buyers do not want to be involved in a deal process that becomes truncated when a seller pulls out in the middle of negotiations.” Lorie Beers, Senior Managing Director, Variant Capital Advisors

Valuation is the predicate for the transaction, positioning buyers and sellers for the science and art that will be intrinsic to the remainder of the deal execution process. In most transactions, the valuation range for the target has been set at the earliest stages of the deal. Buyers look to pay at the low end of the range,
while sellers seek valuation at the high end of the range. How the process plays out is dependent on how efficiently and effectively investment bankers run the procedure. If the process is robust and competitive, values should track toward the high end of the multiple range. If the process is lackluster, with few bidders and little competitive dynamic, or if buyers perceive the target as distressed or desperate, values will correlate with the lower end of the price range.

In order for a deal to play out advantageously, sellers must project considerable motivation. Declares Lorie Beers, “Buyers do not want to be involved in a deal process that becomes truncated when a seller pulls out in the middle of negotiations.” Sellers need to tell a compelling story, especially if value is a function of a forward multiple. Buyers, Beers says, need to be engaged and to emphasize the quality of their business. Valuation, she exclaims, “sets the stage for how buyers and sellers conduct themselves throughout the deal process going forward.”

Part III. Negotiating Deal Structure and Terms

A. The Anatomy of Deal Structure

Like price, deal structure is negotiable.

A corporate finance axiom says that sellers set a deal’s price but buyers determine the structure and terms. While sellers usually prefer all-cash payments, such a structure component may generate the maximum overall value for the target and can inhibit the number of suitors.

Depending on the details of the transaction a seller can use deal structure for tax deferment purposes, to secure participation in the target company’s future success and to maximize the purchase price. Buyer motivations include cash flow management, aiding in the transition from an owner-dependent company, bridging the gulf between buyer and seller valuation expectations and financing the transaction.

Deal structuring identifies and addresses as many of the primary goals of sellers and buyers as possible and determines how risk will be shared. The structure of a transaction determines the acquisition vehicle, the buyer’s post-
closing organization, the form of payment to the seller and the legal form of the selling entity as well as tax and accounting considerations. In nearly every transaction, choices made in one area of the deal are likely to impact other aspects of the transaction. Like price, deal structure is negotiable.

Via asset purchases or stock purchases, payment to the seller can occur in the following formats: cash (which is simple although it creates a tax liability), or non-cash forms of payment, including common or preferred equity, convertible or preferred stock, debt, real property, or any combination that meets the situation's needs. Methods aimed at closing the gap on price and risk mitigation can include: balance sheet adjustments; earn-outs or contingent payments (which may shift risk to the seller); rights, royalties and fees; or collar arrangements, which are sometimes employed when a buyer’s share price has a history of volatility. A collar establishes a range of prices within which the stock will be valued, or a range of share quantities offered to assure the buyer and seller of getting the deal they anticipate.

Asset purchases for all, or substantially all, of a company take place when a buyer is concerned about potential follow-on liability, such as potential environmental claims, current pending litigation or pension claims, for example. According to Lorie Beers, asset purchases can be advantageous to sellers, “because the seller can often extract price for the value; sellers, unlike buyers, are not dealing with a discount for the risk. Often the seller is in a better position to evaluate that risk.” At that juncture, she points out, “an SPA will flip to APA because each party evaluates the risk differently.” Buyers, she adds, “can increase the price feeling reasonably certain they’ve ring-fenced the potential liability away from the assets they are acquiring.” In such a scenario, she recommends additional legal expertise to ensure that the future liability is in fact ring-fenced and that the assets necessary to operate the target have been properly transferred and protected.

**B. Third-Party Consent Procedures: Enter Complexity—and Hold-Up Value**

“There’s no silver bullet that can make this process smoother,” Lorie Beers, Senior Managing Director, Variant Capital Advisors

Although stock purchases are regarded as relatively simple transactions, complexity, in the form of third-party consent procedures, is sometimes injected. The result is hold-up value.
“The third-party consent process is always difficult because the third party is exactly that, a third party that has no interest in the deal process as a whole, in the deal time frame and has no incentive to cooperate,” attorney Randy Bullard comments. The best approach: Once there is a certainty of process and procedure, and a pathway to closing, draw up a simple form of consent that provides adequate assurances to the third party that the contractual relationship will continue to recognize and enforce the contract.

Any transaction that involves a third party that is not a beneficiary of the actual transaction provides leverage to that third party. This often means that additional consideration might be extracted by the third party to accomplish the transaction. Beers uses the transfer of intellectual property (in this case, a patent) as an example. In this situation, the target wants to sell/transfer a patent but has not communicated with the inventor for many years. Once contacted, the inventor sees an opportunity to extract more value from the patent because his consent is required. Additional compensation is then negotiated. “There’s no silver bullet that can make this process smoother,” Beers says, “except for disclosure and transparency earlier in the process, long before the 11th hour.”

Deal structures are designed to accommodate specific situations. Rarely are they alike, which necessitates a convergence of science and art in their individual designs. Asset intensive industrial companies may generate a higher cash component, unless there are issues associated with customer concentration or dependence on a key individual. Service and tech companies may produce a lower cash component unless they possess proprietary technology or an attractively diverse customer base. The type and structure of a transaction usually dictates the target’s ultimate purchase price, the true bottom line of every deal.

C. Beyond Valuation: Deal Term Conditions Set the Real Price

Self-protection, in the form of the retention of key talent, becomes part of the valuation metric and deal structure—and a condition on which the success of a transaction can hinge.

While valuation is important, so are the terms of the deal because they determine how a seller is paid and how a business is paid for. Terms determine a target’s real price. Deal terms are always a function of negotiation. Buyers will often diverge on what elements of a transaction's structure are most
important. The result, notes Lorie Beers, “is that bids will sometimes come in apples-to-oranges.” It is then left up to the seller to prioritize and value which of those deal terms (up-front cash versus earn-outs, retained equity, retention of management or cultural fit) warrant the most emphasis. At that point, says Beers, “all of those elements are part of the seller’s decision metric.”

To smooth the decision-making process, her company, Variant Capital Advisors, has developed a proprietary tool that aids sellers in ranking and scoring the elements of the deal structure. The tool's objective: to help sellers determine which buyer wins the bid. The tool is important, she explains, because displaying the information on a spreadsheet fails to yield a pivotal quantitative number. “For buyers,” she notes, “we rank each metric that goes into the decision and then correlate a value to that in order to come up with an additive score.” Sellers do not always pick the buyer with the highest score, Beers says, “but it gives them a functional tool to evaluate whether what they think is best is actually the best.”

For buyers of companies in industries where talent comes at a premium and is a component in the valuation metric, self-protection, in the form of the retention of key talent, becomes part of the valuation metric and deal structure—and a condition on which the success of a transaction can hinge. To convince key individuals in a target to come across to the buyer, the buyer must define their future role in the acquired company. This usually requires an offer package that not only defines their role but also their titles, compensation and benefit plans.

According to Marc Suidan, whose buy- and sell-side clients include Silicon Valley tech companies as well as non-tech companies, that approach to ensuring key talent retention applies to both sets of clients, with the proviso that in a non-tech company it is often difficult to decipher who owns the vision of the target’s future. The list of such individuals in a tech company is usually longer, Suidan says, “because there are individuals who are deeply embedded and who drive the company’s product vision and R&D.” Yet both tech and non-tech companies possess such key talent, without which a company would not enjoy a high level of success.
Post-LOI exclusivity is another negotiable deal term favored by buyers. However, some sellers, often avoid exclusivity in order to create a bake-off that will ultimately ratchet up the price. Nevertheless, most LOIs contain an exclusivity provision reinforced by a healthy break-up fee aimed at inhibiting additional potential buyers from kicking the target’s tires. In order for a buyer to make poaching worthwhile, that buyer will have to create more value than the first suitor in terms of synergies in order to pay the break-up fee.

In many cases, a transition services agreement (TSA) becomes an essential element in the deal structure. A TSA calls for the seller to provide infrastructure support such as accounting, IT and human resources after the deal closes. TSAs are usually necessary when the buyer lacks the management or systems in place to absorb the acquisition, and the seller can offer those services for a fee.

IT and asset transferability provisions are now included in many transaction structures involving tech and non-tech companies when a target has very unique IT that is cross-licensed from another company or there is a resale arrangement. Says Suidan, “The buyer must be certain that IT will come across in the deal. Sometimes this can be facilitated by a legal change-of-control clause that can result in a renegotiation.” Quantitatively, he adds, the buyer must assign the right probability regarding the risk to be assumed if any of the IT fails to transfer in the transaction.

Common now in deal structures, earn-outs were rare before the financial crisis. Their growing use underlines a gap separating sellers and buyers regarding the achievability of the target’s forecast as well as a gap between the forecast and the target’s historical achievement. In such a scenario buyers are pessimists, sellers are optimists. During the past two years, Dennis Graham has seen those gaps widen. Earn-outs usually serve to resolve those gaps, he says. As a result, if the acquired business performs post-transaction, or if a hockey stick forecast—which shows several years of flat performance followed by a sharp improvement—comes true, producing significant growth in revenues, EBITDA and EBITDA margins, the seller is able to capture some of that value, and the buyer is willing to pay for that additional value if the forecast is achieved.

D. Covenant Negotiation: Bringing Over the Target Sales Force

“Covenants are drawn up as conditions for the closing of the deal. If these conditions are not met, the buyer retains the option to back out or to renegotiate the price.” - Marc Suidan, Deal Partner, PwC
Covenants—are agreements between buyer and seller—are among the thornier components of pre- and post-close deal structure. Often deal closings are contingent on achieving negotiated agreement on covenants.

Most covenants fit into standard categories. However, in stock purchases, when a company is acquired in its entirety, covenants can also apply to the mandatory cross-over of the target’s sales force and the preservation of the company’s sales pipeline. In many instances, acquisition of the target sales force is a key driver of the transaction. The buyer aims to use the target sales force to sell the buyer’s product into the target’s market. Often, according to Marc Suidan, a covenant is agreed upon stipulating that a specified percentage of the target sales force be brought over or the deal will not proceed to close.

For target management, if the company is management-owned, an extra covenant can be formulated stipulating the retention of the management team through the transition period with the proviso that if the company achieves specific metric or key performance indicators (KPI) there will be an uptick in the purchase price. Although this covenant can sometimes prove problematic at a later date, it also engenders shared risk between buyer and seller. Such a covenant can also preserve the target’s sales pipeline—the company’s product release milestones—and the sales pipeline’s historical margins. Declares Suidan, “These covenants are drawn up as conditions for the closing of the deal. If these conditions are not met, the buyer retains the option to back out or to renegotiate the price.”

**Part IV. Planning for Post-Close Integration: Overcoming a Potentially Fatal Distraction**

**A. Chasing Synergy Realization and Value Capture**

“Companies are making the right deal, but they are not executing the integration correctly.” - David Hull, Partner, Renovo Capital Partners

Enhanced shareholder value is the objective of all M&A transactions. Yet in the rush of activity and adrenaline before, during and after the deal process, the confluence of deal science and art creates its own momentum, distracting dealmakers from the final step to deal success: post-close integration.
Integration: Culture Gets a Bad Rap—but Deal Success Depends on Getting It Right

“The primary reason that cultural differences, if not uncovered and addressed, can affect the value of the deal is that cultural differences often spell decreased productivity, which leads to lower revenues and income, and hence the combined entity may be worth less than expected.”

The Journal of Corporate Accounting and Finance

“Culture gets a bad rap,” declares Duncan Smithson, U.S. West/Central Leader of Mercer’s Global Private Equity M&A Group. Smithson oversees the HR aspects of M&A deals in which Mercer advises either the buyer or seller. The trouble is, Smithson says, “it’s difficult to regard the corporate culture aspects of a deal in tangible financial terms.” As a result, culture is an issue that is often avoided amid the financial immediacies of the transaction moment. Nevertheless, issues of corporate culture that remain unaddressed can prove to play a pivotal role in a deal’s future success—or failure. Says Smithson, “There are ways to apply tangible metrics to assess cultural issues in ways that are quantitative, rigorous and can add value.”

He cites an example of a client, an engineering services and environmental consulting firm, that was preparing to go to market. The firm’s management was telling potential buyers that the firm had a superior staffing model in which low-salaried junior employees could move up rapidly and make partner in a few years. “We analyzed the business, assessing rates of promotion, rates of retention and turnover,” recalls Smithson. It quickly became clear that management’s vision of how the firm’s advancement and retention system functioned did not stand up to quantitative scrutiny. In reality, Smithson explains, the firm’s rate of turnover was very high among junior consultants. “The young employees got trained up—and left to earn more money from competitors. Much of the firm’s business growth was predicated on recruiting partner-level employees who brought their client portfolios with them.” A cultural linchpin of the firm, he says, was based on a fallacy that would have torpedoed post-merger integration had that erroneous staffing model gone unchallenged.

Unfortunately, other similar corporate culture-based assumptions in other deals go unchallenged past the close, until integration is underway and the truth becomes painfully apparent. Such unchallenged assumptions have left at least one recent high-profile cross-border M&A deal hamstrung—the so-far ill-fated 2011 combination of British Airways with Spain’s Iberia to form IAG.

On paper, the merger looked to be a perfect fit, with 400 million euros in projected annual savings and a synergistic route map. In every obvious quantifiable way the two airlines appeared to be compatible merger partners. Nevertheless, says Lorie Beers, post-close integration has proven illusive for IAG. “Culturally, the British and Spanish could not have been farther apart in the way they conducted their respective businesses,” Beers says.
Those businesses were almost immediately imprisoned by events. Iberia’s unionized workforce went on strike. A third layer of administration—IAG—was added to those already maintained by BA and Iberia. Then the Spanish economy hit bottom. As a result, the projected annual savings forecast was not realized.

Could the IAG failure have been averted? Beers believes it could have been avoided had adequate pre-merger due diligence been performed. “Before the merger, if the parties had been circumspect about how the two cultures would integrate and how the combined businesses would operate, a better dynamic would have existed.” Unfortunately, however, the cultural issues remained unaddressed until too late. Some incremental post-merger savings and profitability have been achieved due to route enhancement but the overall purposes of the merger remain illusory.

Many dealmakers, says Duncan Smithson, make the mistake of presuming that HR—where cultural disparities, if they exist, will first become visible—lacks a financial element. “Our argument is that that presumption is wrong.” Ultimately, he concludes, HR issues feed into cost and liability.

Although culture remains a problematic “soft” concept, more M&A dealmakers, often from hard experience, recognize its power to make or break deals. An effective integration plan incorporating the following factors can help defuse post-close cultural time bombs: a well-defined business strategy; a product roadmap; constant customer focus; a fully functioning organization that is prepared to execute from day one; clearly identified synergies, along with the appropriate metrics; clear communications regarding governance and stakeholder issues; divergent operating principles are addressed; and the aggressive pursuit of synergies from the moment the deal is closed.

Consequently, post-close results are often disappointing or sometimes downright disastrous. Ultimately, market forces will adjudge a transaction a success or failure by rewarding or punishing shareholders of the combined entity according to whether or not management realizes the deal’s stated objectives. The key to success is how effectively the target is integrated into the buyer’s environment. The telltale metrics: synergy realization, deal value capture and how effectively the resulting performance is communicated to the transaction’s stakeholders.

Surprising results generated by a 2008 PwC survey revealed the scope of the oft-fatal distraction that results when dealmakers shove integration and synergy issues to a back burner, only to see those issues sometimes interact.
to form a toxic stew that can poison a deal or cause it to lose some of its first-blush luster. According to the survey, 64% of executive respondents characterized their recent deals as a strategic success. But only 44% of those executives said their deals were a financial success and, 38% considered them an operational success. Subsequent PwC surveys and 2011 and 2014 produced similar results. For example, in the 2014 survey, 65% of respondents considered their recent deals a strategic success, while 49% said their deals were a financial success, but only 35% considered them an operational success.

The overarching theme: making deals is difficult; getting them right in terms of value capture is even tougher. There is a need for a tightly defined, disciplined and transparent approach designed to compress the time frame required to capture and increase value.

The disparity between strategic and operational success in the PwC surveys “signifies that companies are making the right deal, but they are not executing the integration correctly,” remarks David Hull, Partner at Renovo Capital Partners, a Dallas private equity firm specializing in distressed investing. “I advise our clients to get us involved before signing a purchase agreement; we can validate the strategic fit and the financial business case and ensure that there is a robust business plan.” In the interest of successful integration, Hull urges his clients to implement three post-signing steps:

1.) Avoid disrupting the business, because such disruption will often destroy more value than the buyer intends to create via synergies;
2.) Pursue synergies and ensure they are realized in a way that does not disrupt the core business;
3.) Maintain compliance, including SEC filings, taxes and relationships with workers councils or unions. Ultimately, he says, “it boils down to companies under-estimating the level of effort and attention required to properly integrate a company without disrupting the business and without considering how to realize synergies.”

Attorney Randy Bullard was surprised at first when informed of the survey results, then changed his mind. “Considering how deals are done, I shouldn’t be surprised,” he comments. “Deals are evaluated on revenue, profit and perceived expansion of market share.” The metrics associated with those evaluation benchmarks, he adds, “can be misperceived or over-stated.” Much of Bullard’s M&A work involves overseas transactions, which carry their own risks of misperception of aspirational synergies. “If U.S. companies are buying
access into a local market they see population, they see demographic figures, they see access to markets, Bullard says. “What they often do not see are the realities of selling products in that local market.”

B. What Really Drives Post-Deal Value? Integration Planning

Some banks and advisory firms that participate in M&A deals are not shy about urging their buy-side and sell-side clients to plan for integration throughout the deal process.

The pathway to successful synergy realization and value capture can include the following procedures:

Synergy analysis. The initial analysis, based on limited publicly available information and preliminary performance assumptions, is usually performed before a deal is announced as part of buyer financial modeling during target assessment. As the deal takes shape, additional information is gleaned from due diligence and added to the model. Assumptions are refined. Synergies indentified in the evolving model occupy three categories: revenue and market growth; cost reduction and efficiency leverage; and capital optimization.

Value driver analysis. This post-announcement analysis is performed when the buyer has direct access to pertinent target information and personnel. Value drivers are identified and prioritized to set the stage for execution. Focus is applied to value drivers that promise to deliver the most shareholder value—the 20% of actions that deliver 80% of the value—and can be accurately quantified and tracked.

Value driver execution and synergy tracking. Value driver execution allocates skilled resources to deliver tasks against established timelines. A program management framework can resolve issues and monitor and track progress—with senior management buy-in and active support.

KPMG’s synergy/value driver analysis and integration plan calls for:

- Exploring cost-saving opportunities
- Creating new revenue opportunities
Science underpins art.

- Examining current revenue streams so that revenue is protected from distraction
- Finding ways to improve operating and net profits
- Proactively eliminating new costs
- Growing revenue and searching for sustainable increases in trading multiples

Some banks and advisory firms that participate in M&A deals are not shy about urging their buy-side and sell-side clients to plan for integration throughout the deal process. Integration planning is part of the science of the deal that paves the way for innovative approaches to deal execution. Plante Moran’s Dennis Graham finds that the most successful transactions are those in which an integration plan is in place the first day after the LOI is signed. Graham says “The best private equity funds we work with institute 100-day integration plans, encompassing all the time from Day One of the deal until after the close. Those plans are discussed with the management teams and put in place concurrent with the due diligence process, even though the deal process is moving forward and the parties are not yet married.”

The result of this forward integration planning, according to Graham, is that the deal participants who go through the pain of drawing up a 100-day plan “hit the ground running in terms of expectations and next steps.” However, what he witnesses too often, is that buyers and sellers become so immersed in doing the deal that business suffers. The sales pipeline can freeze up, for example. Graham explains: “As a result, after the deal, the acquired company sees a 3-6-month dip in business. Avoiding becoming dangerously immersed in the transaction on the buy- and sell-side at the expense of integration planning is what really drives post-deal value.”

Conclusion

Science underpins art. Art is never a haphazard expression of imagination. Instead, many artistic endeavors, including painting and music, are rooted in the science of quantitative calculation, of math, measurement and disciplined planning, which all facilitate the innovation that results in the creation of
value. In successful deal execution, where enhancing shareholder value and value creation are the prime objectives, metrics rule. The quantitative foundation gives birth to the desired qualitative result, and a deal becomes a triumph for both buyer and seller when each obtains the value sought for the price paid and the payment received.
Contributor Biographies
Lorie Beers is Senior Managing Director at Variant Capital Advisors. She leads the firm's investment banking practice, and its activities, including M&A, capital raising, and balance sheet restructuring services. Ms. Beers has more than a dozen years of investment banking experience and over 20 years of corporate restructuring and insolvency transaction experience. She is familiar with a wide range of industries, has driven both in-court and out-of-court restructuring successes and is credited with developing the Complex Financial Restructuring Program for the American Bankruptcy Institute (ABI). She is a frequent speaker at industry conferences on matters of valuation, solvency, distressed and "story" M&A transactions, and private placement in challenging environments. Ms. Beers was named as a valuation authority by the Seventh Circuit Court of Appeals in In the Matter of River Road Hotel Partners LLC et al., citing her article in the American Bankruptcy Institute Journal entitled "Preparing the Distressed Company for Sale."

Randy Bullard is Department Chair at Greenberg Traurig. He has advised multinational clients in connection with cross-border mergers and acquisitions, joint ventures, securities and finance transactions throughout Central and South America, the Caribbean, Europe and the United States. Mr. Bullard has represented numerous European global corporations in connection with establishing and developing presence in the U.S., as well as managing their Latin American operations. He is also experienced representing public and private issuers and underwriters in equity and debt offerings and exchange listings. Mr. Bullard's capital markets work has focused on international cross-border mergers and acquisitions across a broad range of sectors, including financial services, telecommunications, media, entertainment, energy, agriculture, manufacturing, and luxury goods.

Dennis Graham is Plante Moran's private equity group industry practice leader. He also leads the firm's transaction services team and is a leader in the firm's management consulting practice. Mr. Graham helps entities create tangible business value by working with private equity funds, business owners, managers, and financial stakeholders on mergers and acquisitions, due diligence, business and strategic planning, supply chain optimization, performance measurement systems and business process reengineering. In his career, Mr. Graham has provided strategic, process, acquisition and technology consulting for a variety of business entities, from start-ups and private equity groups to Fortune 500 corporations. He has consulted in a number of industries including business services, software, plastics, distribution, metal forming, retail, automotive, construction and real estate, and has played a variety of key leadership roles, both as a consultant and as an interim executive management team member.

Philip J. Isom is Managing Director in the Chicago office of KPMG Corporate Finance LLC. He is a corporate finance senior executive with a distinct combination of investment banking, advisory, finance, investing, valuation, bankruptcy, turnaround and operational experience. Based on approximately 20 years of professional experience, he has extensive knowledge in dealing with companies, lenders, and sponsors, including buy-side and sell-side capital markets experience on hundreds of transactions. Prior to joining KPMG, Mr. Isom worked in corporate finance, and restructuring at another Big Four accounting firm and cofounded two boutique capital management firms as well as holding senior-level positions in investment banks. Mr. Isom has restructuring experience as both a lender to, and an operator of businesses. He built a recognized national finance business from zero assets to over US $1 billion.
David Hull is a Partner at Renovo Capital. He brings over 10 years of experience in principal investing and restructuring advisory. Prior to Renovo, David was with Goldman Sachs’ Special Situations Group, providing debt and equity capital to healthy and distressed middle market companies. He focused on originating new investment opportunities in the southwest and worked closely with existing portfolio companies in distressed/work out situations. Prior to joining Goldman Sachs, David was a partner at CRG Partners Group, LLC where he held a number of interim management positions and provided turnaround advisory services to middle market companies.

Thomas J. Kenny is a Senior Vice President at Murray Devine. He conducts and manages valuation engagements for financial reporting purposes. In addition, Mr. Kenny performs solvency and fairness opinion analyses and provides expert testimony on valuation issues in litigation matters. He has diverse industry experience, with clients in publishing, food processing, retail, medical/pharmaceutical products, industrial products, technology and financial services. He has been actively involved in the issuance of hundreds of solvency and fairness opinions for both private and publicly traded companies and has testified in U.S. District Court on solvency- and valuation-related topics. Mr. Kenny serves on the Appraisal Issues Task Force (AITF) a voluntary group of professional appraisers who wish to improve the practice of valuation. Tom is a Certified Public Accountant (CPA) and Certified Management Accountant (CMA).

Dr. Cindy Ma is a Managing Director and Head of Houlihan Lokey's Portfolio Valuation & Advisory Services practice, focusing on illiquid and complex securities valuation. She has over 20 years of extensive training, academic expertise and hands-on experience in commodities, derivatives, securities, foreign exchange, fixed incomes, structured transactions, hedging strategies and risk management issues. Dr. Ma is a member of the firm’s Technical Standards Committee and, is also a member of the Standards Board of the International Valuation Standards Council (IVSC). Since the start of the global credit crisis that began in July 2007, Dr. Ma has been focused on valuing illiquid securities including asset-backed securities, collateralized debt obligations, collateralized loan obligations, mortgage derivatives, auction rate securities, distressed debt instruments and private equity investments for financial reporting, transaction advisory, restructuring alternatives and litigation support purposes.

Duncan Smithson leads Mercer’s Private Equity Mergers & Acquisitions group for the West and Central U.S. He is a Mercer Partner and provides M&A consulting advice to a wide range of firms. Mr. Smithson has extensive experience of human capital, compensation and benefits issues, especially in the context of multinational mergers and acquisitions. He joined Mercer in London in 1998 and transferred to the Chicago office in 2006, where he led Mercer's International consulting group for the Midwest and Great Lakes until transferring to the M&A group in 2011. Prior to joining Mercer, he worked in South Africa and on assignment in Singapore. His clients have included a number of multinational corporations across diverse industry sectors, as well as a range of private equity firms. A qualified actuary, Mr. Smithson has written, or co-written, several articles on a range of M&A-related HR issues.
Marc Suidan is a Partner in PwC’s M&A Advisory practice. He has more than 18 years of experience helping Fortune 1000 clients with mergers and acquisitions. Mr. Suidan is Technology sector leader for M&A Advisory, focusing on software, internet, networking and semiconductor activities. He leads large scale M&A integration and business transformation projects with a focus on benefits management and synergy realization. Mr. Suidan led due diligence and integration of a wireless networking carve-out company, developing a go-to-market and product development roadmap to accelerate revenue, resulting in cross-selling capabilities within 45 days of deal close. In addition, he oversaw the business process and systems integration, which absorbed the entire supply chain and quote-to-cash environments onto a common IT platform. He also managed back office integration of a leading software company’s $10 billion acquisition, resulting in accelerated six-month merger.
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