ACG® Cleveland CORPORATE GROWTH AND M&A

SPECIAL ADVERTISING SECTION

Courting M&A Success

16 Cavaliers and LeBron James show how to craft a deal

Insurance Audit

9 Comprehensive review of policies can uncover risks and liabilities

Personal Side of the Deal

18 The importance of evaluating human capital during due diligence

Crain's Cleveland Business Custom Publishing

TABLE OF CONTENTS

PRESIDENT'S LETTER

City's revitalization shapes ACG Cleveland's growth, focus

BY MURAD A. BEG

As we ring in the New Year, I'd like to reflect upon ACG's successes from 2014 and outline our exciting plans for 2015 and beyond.

The Association for Corporate Growth (ACG), a global organization with 57 chapters and more than 14,500 members, provides a "community" for middle-market mergers and acquisitions and corporate growth professionals. The local chapter, ACG Cleveland, is nationally recognized for providing on-point, educational programming and networking events that help its members build value in their organizations.

BEG

In addition, our chapter is well regarded for its best-in-class programs and events, which provide unique opportunities to develop connections with diverse and influential business leaders throughout the region. Among these programs and events are the:

❒ Annual Deal Makers Awards, which draws nearly 1,000 financial and corporate professionals from across the country;
❒ Monthly educational breakfast series featuring corporate and community leaders;
❒ Spring and fall panel workshops, which facilitate the discussion of topical issues; and
❒ Specialized programs offered by our Women in Transactions, Young ACG and ACG Akron groups.

Furthermore, this annual special section in *Crain's Cleveland Business* offers ACG Cleveland members a unique opportunity to showcase their area of specialization while providing valuable content focused on M&A issues.

ACG Cleveland is committed to meeting the needs of its members. Recognizing the importance of continuous growth and improvement, chapter leadership conducted a survey and market study in 2014 that aimed to better understand the needs of our current and future members. Survey results revealed that ACG Cleveland is most sought after for its top-notch programming and events geared toward peer-to-peer networking. As a result, ACG Cleveland will further enhance programming and events that appeal to a broad range of constituents, such as corporate C-level executives, small business owners, investment bankers, attorneys, accountants, private equity professionals and capital providers.

As we look ahead to 2015, we reflect on all of the great things happening in our region – Cleveland's opportunity to host the 2016 Republican National Convention, the establishment of the Global Center for Health Innovation, record residential downtown occupancy rates, and LeBron's return to the Cleveland Cavaliers.

This revitalized enthusiasm and optimism has impacted the development of our programming agenda, and we are assembling a calendar of events to promote a theme of "growth mindset."

Embedded in this overall theme are subthemes focused on business innovation, economic development and stewardship, to name a few.

In November 2014, we kicked off this effort with a panel workshop featuring regional leaders in innovation, which was attended by nearly 200 people. We intend to capitalize on this momentum and offer differentiated thematic programming. To see the calendar of events, please visit www.acgcleveland.org.

In closing, I want to thank our current members for their continued support and encourage prospective members to join the ACG Cleveland community, where the development and advancement of NEO businesses are facilitated by a network of like-minded individuals committed to the growth and vibrancy of our region.

Best of luck in 2015 and beyond.

Murad A. Beg is president of ACG Cleveland and a partner with Linsalata Capital Partners. For more information on ACG Cleveland membership or upcoming events and programs, visit www.acgcleveland.org or contact Beg at 440-684-1400.

TRENDS

Middle-market M&A momentum continues

BY MARC A. FLEAGLE

The U.S. M&A market has made an incredible run in 2014, with values and volume not seen since 2007. According to Thomson Reuters, U.S. deal value through September 2014 was $1.25 trillion and has increased nearly 65% over the same period in 2013. Absent the fourth quarter, 2014 deal value was already 21% ahead of year-end 2013. With nearly 7,000 deals announced through September, deal volume had surpassed the first nine months of 2013 by 5.5%.

FLEAGLE

Much of the visible growth can be attributed to large corporate deals; nevertheless, the middle market (<$500 million in revenues) has also achieved a similar growth trajectory in 2014. According to Thomson Reuters, the middle market experienced a 29.5% increase in deal value through the first nine months of 2014 as compared to the first nine months of 2013. Deal volume in the middle market also increased at 5.3%, and transactions multiples rose to 7.5X, nearly a 6% increase over 2013.

There continues to be a strong climate for middle market M&A from both sellers (as multiples rise) and from buyers (as groups aggressively seek quality acquisitions). According to a recent survey of M&A professionals by KPMG, 40% believe they will acquire more than one company in 2015 and 10% plan on acquiring 10-plus companies.

The positive trends that resonated from 2014 will remain in 2015 as low cost of capital is readily available. Because of the low cost of capital and low interest rates, which should remain steady before they egress later in 2015, many corporate buyers, as well as private equity groups, have lowered their expectations on ROIC or IRR, forcing multiples and values upward with increased equity in transactions.

Acquisitive companies also continue to look for inorganic growth as cash sits on corporate balance sheets. According to S&P Capital IQ, 415 non-financial S&P 500 companies had over $1.3 trillion of cash on their balance sheets at the end of 2014. This, of course, does not include the tremendous amount of cash on other corporate balance sheets, or the significant amount of purchasing power available for private equity groups. According to Pitchbook, private equity purchasing power remains strong from post-recession fundraising, especially in 2013, and pre-recession overhang, as dry powder remains at approximately $500 billion with purchasing power over $1 trillion. The combined availability of capital for U.S. acquisitions continues to climb, and will be put to use in the near term within the middle market, as was evident in 2014.

Marc A. Fleagle is Vice President of MelCap Partners LLC. Contact him at marc@melcap.co.

A Balancing Act: technology and client service

BY LINDA M. OLEJKO

There is tremendous potential for new technologies to enable companies to better serve clients. At the highest level, technology can be levered to anticipate client needs and infuse customized advice and views into personal data. For some, an online interface may become the preferred point of contact. Applications provide convenient ways for clients to access their accounts alongside information and advice regarding their investments, finances, record-keeping and administrative concerns.

OLEJKO

The trend in financial services toward technology and away from human contact, however, should be met with tremendous care. There are limitations of technology in an environment where personalized service and advice are integral to the success of the client and provider alike.

While machines increasingly perform tasks previously believed to require human oversight, the highly complex yet subtle difficulties of managing a family's present and multi-generational needs require discretion. The relationship team who communicates with a client in person, over the phone or by email is capable of infusing valuable forethought and insight that cannot be simulated by software.

There are rafts of investment and financial choices. A relationship manager can synthesize these choices into meaningful solutions. Service providers should be expected to not only supply the requested data, but also share knowledge and perspectives a client may not realize he or she needs. A relationship professional should proactively anticipate concerns and potential opportunities.

While many decisions can be mathematically reduced to a finite set of choices, there are times when empathy and understanding are more important to the success of an outcome than logic alone.

Perhaps, one day, a series of algorithms will synthesize data, anticipate needs and provide the right degree of empathy. Until then, financial service providers must continue to hire and develop the highest caliber professionals in tandem with our commitment to advance our technology. With all initiatives, the goal should be to ensure the delivery of unparalleled client service.

Linda M. Olejko, CFP® is a Managing Director of Glenmede. Please contact her at 216-514-7876 or Linda.Olejko@glenmede.com.

Disclaimer

The articles in this section were prepared by the respective contributors for general information purposes only and are not intended as legal, tax, accounting or financial advice. Under no circumstances should any information contained in any of these articles be used or considered as an offer or a solicitation of an offer to participate in any particular transaction or strategy. Any reliance upon any such information is solely and exclusively at your own risk. Please consult your own counsel, accountant or other advisor regarding your specific situation. Any views expressed in the articles are those of the respective contributor and are subject to change without notice due to market conditions and other factors.

Crain's Cleveland Business Custom Publishing staff

Advertising Sales Manager: Nicole Mastrangelo (nmastrangelo@crain.com)

Copy Editor: Cheryl Higley

Page Designer: Kathy Ames Carr (clbfreelancer@crain.com)

Cover Design: Kristen Wilson

For more information about custom publishing opportunities, please contact Nicole Mastrangelo.

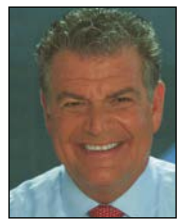
TRENDS

HOW SELF-MADE BILLIONAIRES CREATE MASSIVE VALUE

PwC's new book offers important insights for M&A

BY JOHN SVIOKLA AND MITCH COHEN


SVIOKLA

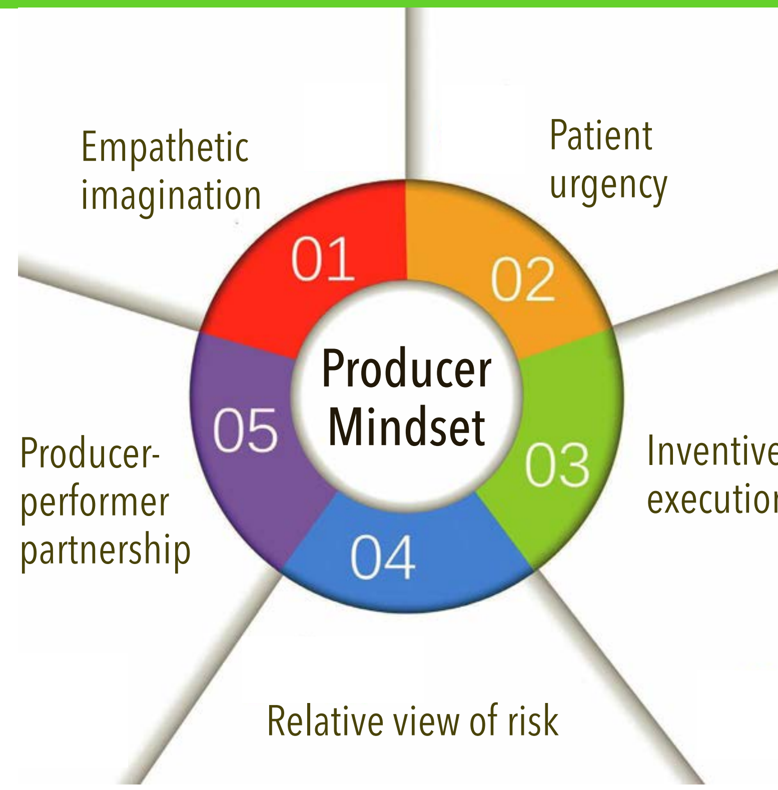

COHEN


KELLY


MATTESON

Since 1987, self-made billionaire wealth grew more than three times faster than the world economy. Yet in that same period, business leaders have struggled to find and pursue opportunities that bring break-through value. While researching for our book, "The Self-Made Billionaire Effect," we found that more than 80% of these entrepreneurs earned their wealth by disrupting highly competitive industries such as apparel, beverages and hospitality. Companies can apply the approach of self-made billionaires to create massive value, and M&A can be a key strategic weapon in that effort.

In particular, self-made billionaires have five habits of mind that make them "Producers." First, they exhibit "empathetic imagination," a deep understanding of the future needs of the customer and the vision to develop a new product or service that will address those needs. Second, they display "patient urgency": they develop their offerings waiting for the market to ripen, then seizing the opportunity. Third, they exemplify "inventive execution," bringing their ideas to market in new, creative ways. Fourth, unlike most people, they have a relative view of risk, assessing risk on the basis of what they stand to gain rather than what they might lose. Finally, to bring their vision to life, they each work closely with a "Performer" partner with complementary skills who is good at optimizing already established functions or processes. These five habits of mind enable Producers to envision something new, bring together the resources to create it, and sell it to customers who did not know they needed it.



Most companies encourage and promote their high-potential Performers to the exclusion of Producers. However, those skills are not adequate for companies that wish to disrupt their industries. To create massive new value, organizations need to attract, nurture, and retain more people with the Producer mindset. But it doesn't mean that the CEO has to be a Producer. For some companies, it makes sense for that position to be filled by a Performer who will work closely with a Producer in another top position.

These findings should spark some new thinking about M&A. Both private equity and corporate development executives need to be able to profile key talent of a target organization to identify the real Producers. They need to be thinking about talent during the integration. All too often, companies put newly acquired Producers in Performer positions, driving those Producers to leave once they receive the promised payout. So it's important to determine the roles that need to be created in order for Producer talent to stay and thrive in the newly merged organization. It's also important to think about which Performers should be paired with those Producers. Acquiring the right team should be one of the top criteria of any M&A.

There's little doubt that the ability to profile key talent at a target organization with a view to the traits of self-made billionaires offers companies a powerful new weapon for their M&A arsenal — one with the potential to revolutionize the way M&A are done.

Dr. John Sviokla is head of global thought leadership at PwC (PricewaterhouseCoopers LLP), and Mitch Cohen is vice chairman. Contact them at billionaireeffect@us.pwc.com.

Contact local PwC partners Brian Kelly at 216-875-3121 or brian.kelly@us.pwc.com or Thorne Matteson at 216-875-3441 or thorne.matteson@us.pwc.com. Learn more at www.pwc.com/billionaire.

TRENDS

Navigating the intricacies of LLCs and SE tax

BY PAUL SPEYER

Limited liability company (LLC) members have long faced confusion regarding whether their distributive shares of income are subject to self-employment (SE) tax. Prior to the use of LLCs, partners were either general partners subject to SE tax on their distributive share or limited partners whose share was specifically exempted from SE tax.


SPEYER

On Sept. 5, 2014, the IRS issued Chief Counsel Advice (CCA) that clarified the issue.

The subject matter in the CCA is a management company (a LLC taxed as a partnership) that manages a large family of funds. The management company generally has full authority and responsibility to manage and control the funds. Its members and employees provide this service in exchange for quarterly fees. All LLC members receive W-2s for wages paid for the performance of said services.

For the years at issue, the management company treated each member's distributive share of earnings as if they were limited partners, arguing that since the wages represented reasonable compensation for each member's services, such members should be considered limited partners for any profits allocated to them.

IRC Section 1401 imposes tax on the self-employment income (net earnings) of individuals. Self-employment net earnings is the gross income minus certain deductions plus their distributive share of income or loss (whether or not actually distributed) described in IRC section 702(a)(8) from a trade or business carried on by a partnership of which he is a member.

The CCA analysis discusses two cases, *Renkemeyer, Campbell*, and *Weaver LLP. V. Commissioner*, 136 T.C. 137 (2011) and *Riether v. United States*, 919 F. Supp.2nd 1140 (D. N.M. 2012).

Renkemeyer involved a LLP that operated a law firm organized in Kansas. The court distinguished between a limited partner and a general partner, noting that a limited partner lacks the power to manage the entity; is immune from liability for the partnership's debts; and can lose limited liability protection if he is engaged in the partnership's business operations. The court concluded that the interest of the limited partner reflected more closely an interest of a passive investor and would not be subject to the SE tax on his distributive share of partnership income.

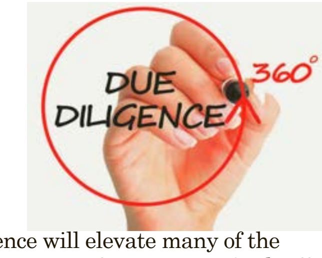
In *Riether*, the District Court examined whether a husband and wife were subject to SE tax on their distributive shares from an LLC taxed as a partnership. The couple argued that since the LLC issued W-2s and K-1s, they were considered employees and income from the LLC was unearned income not subject to SE tax. The court was not persuaded and cited IRS rules that state members are not employees of the partnership for SE tax purposes. Rather, they are self-employed individuals and should not receive W-2s.

The CCA concludes that members of an LLC who provide services are not limited partners within the meaning of IRC Section 1402(a)(13) and are subject to SE tax on their distributive share of LLC income.

Paul Speyer, JD, LLM, is a Principal at Maloney + Novotny. Contact him at pspeyer@maloneynovotny.com.

BEST PRACTICES

Sharpening the HR focus on due diligence



BY NAN ZIELENIEC

When it comes to acquisition due diligence in the small to midcap sector, a sharp focus on human resource (HR) matters is critical. Any deal can be replete with HR challenges, which become evident from the initial management presentation through closing and into integration. Transactions and operations teams, attorneys and brokers regularly deal with HR matters, but do the matters always get the attention they deserve and are they always approached in the most practical way possible from an HR perspective?

HR matters span the due diligence checklist. Items such as talent assessment, corporate culture, talent acquisition/retention, layoffs/severance, compensation, benefits, executive agreements and non-competes, financial processes (including payroll), risk matters (including pending employment litigation and workers compensation), and union agreements are all examined in due diligence.


ZIELENIEC

There are also diligence items that may not be readily identified as HR but should be examined from an HR perspective. These items include continued ownership/board involvement of former owners, negotiated earn-outs, integration challenges of an add-on, compliance matters unique to stock or asset deals and separation issues unique to a corporate divestiture. In a corporate carve-out, you have specific and critical HR challenges that should be addressed early in the drafting of the purchase agreement. For instance, you may be acquiring a staff that is initially ill equipped to handle many of the functions formerly handled by the parent company. Couple this with the fact that often there isn't the technology within the new portfolio company to independently operate the general ledger, pay the employees or even send an email. It pays to devote early attention to whether or not you need a transition service agreement or an employee leasing arrangement.

All of the above matters have a meaningful financial impact on the deal and present unique challenges in managing the company from the beginning of the new ownership and often through the first quarter and beyond, depending upon how quickly the portfolio company can detach itself from the prior owner.

Sharpening the HR focus on due diligence will elevate many of the above matters from a mere check-off to strategic matters requiring careful planning and forethought. Early identification of these strategic items during diligence will accelerate the attention these matters receive during the integration effort, hopefully laying groundwork for a smooth welcome to the new portfolio company.

Nan Zieleniec has partnered with Resilience Capital Partners as its Senior Vice President of HR and also operates Zieleniec Consulting, LLC, an HR consulting practice based in Cleveland. Contact her at nzieleniec@resiliencecapital.com.

Understanding working capital impact on M&A deals

BY MARK B. BOBER

The way working capital is structured in any M&A deal can be an important consideration in the economics of the agreement. A typical deal is priced on a debt-free/cash-free basis, so that the seller retains cash and also pays off debt with the proceeds of the deal. This Net Working Capital (NWC) threshold or target is intended to protect the buyer and seller from manipulating working capital to the benefit or detriment of one party.

Typically, establishing an NWC target is not outlined in the Letter of Intent stage of the deal. Rather, it is generally addressed during the due diligence stage, once the buyer has had a better opportunity to analyze the appropriate level of working capital to be pegged in the target. The spirit of the NWC target is for the buyer to receive a business at a purchase price that leaves adequate working capital to operate the business.


BOBER

Generally speaking, buyers and sellers often begin by analyzing historical working capital during a 12- to 18-month period in order to establish a trend. However, if the trend in revenues reflects growth, the expectation would be that the required level of working capital would increase. And if there are seasonal trends in revenue, then the timing of the closing could impact the NWC target.

Another area to consider is the impact of debt-like liabilities on the NWC target. For example, if there is deferred revenue or customer deposits, this will need to be addressed, particularly given the typical deal is cash free (i.e. seller keeps cash). Therefore, the buyer has the obligation to deliver on the promised product or service but the seller retained the cash. This is one example of a consideration that needs to be analyzed with respect to NWC, and the extent to which if treated as debt-like, identifying whether it is at the full amount of the deferred revenue/deposit liability or only the cost to fulfill the obligation. Other obligations buyers and sellers must consider would include accrued bonuses, warranty claims and accrued/deferred commissions, to name a few.

Mark B. Bober, CPA/ABV, CVA, CFF, is Partner and Practice Leader, Transaction Advisory Services for Bober Markey Fedorovich. Contact him at mbober@bmfcpa.com or 330-255-2425.

BEST PRACTICES

Don't overlook the importance of insurance review in M&A

BY TOM KELSEY

Due diligence during middle-market acquisitions seldom involves a quantitative analysis of the target company's risks and exposures. Even a cursory review of insurance coverage is often an afterthought for well-seasoned dealmakers.

KELSEY

But that afterthought carries a price. By precisely quantifying the present value of future liabilities before closing, a good deal team can identify expenses that are routinely overlooked by the most ardent auditors. In some cases, they include deal breakers; and in most cases, pinpointing the precise value of future liabilities serves as additional leverage toward a more favorable purchase price.

A good deal team can identify expenses that are routinely overlooked by even the most ardent auditors.

For insurance brokers that offer an insurance review, most limit their scope to property and casualty or employee benefits. An effective analysis must examine the complete picture, quantify the total cost through actuarial loss projections of future liabilities and then convert that total into a present-day value.

The process begins with an extensive audit into policy issues such as coverages, provisions, terms and conditions, limits of liability, self-insured retentions, policy periods, retroactive dates, and exclusions.

Items that frequently go unnoticed include unidentified product liabilities, distributor liabilities and vendor agreements, supplier contracts, and indemnifications — not to mention potential litigation, environmental remediation and regulatory compliance.

Middle market deals almost always include liability issues that require attention and need to be resolved or negotiated before closing. A more in-depth process gives buyers a greater sense for the target company's complete risk profile and helps the purchaser understand those future costs.

It's an essential approach for any deal attorney, investment banker, middle market audit firm, private equity group or privately held middle market business. With a highly detailed report, these values play a very specific role at the negotiating table to resolve individual concerns, transfer risk and negotiate a final sale price.

On the sell side, a good insurance consultant can close exposure gaps, firm up contracts and package a company's liabilities in the same way that enables a firm to potentially realize a higher asking price. But again, the process needs to be thorough and quantifiable to the point that the values are indisputable at the negotiating table.

Understanding the risks of acquiring a company may seem basic, but unless the due diligence team takes a complete picture and places a precise value on those risks, the process may be of little value until it's too late.

Tom Kelsey is Client Executive with Hylant. Contact him at Tom.kelsey@hylant.com or 216-674-2511.

BEST PRACTICES

Identifying state and local tax exposures during an acquisition

BY BOB WOOLLEY AND JULIE CORRIGAN

Tax due diligence often focuses on the identification of tax exposures at the federal level. This is often appropriate due to the high federal tax rate imposed on underreported income and the fact that major transactions are reported on the federal return. However, the identification of tax exposures at the state and local levels can often be even more important since successor liability rules are often broader at the state and local levels. In addition, potential tax exposures for items such as sales and use tax can also be very high since they are often calculated based on a percentage of the proceeds as opposed to the income earned on the transaction.

WOOLLEY

Tax due diligence should be conducted for state and local taxes such as income, franchise, gross receipts, sales, use, property, payroll, and others. Some areas where tax due diligence is particularly important include:

ENTITY TYPE

Tax due diligence should be conducted to determine whether the entity is filing pursuant to its correct tax classification. For example, some entities are required to separately elect to be taxed as S corporations in a state. Some states impose entity level taxes on a pass-through entity even though the taxation of the entity passes through to its owners for federal tax purposes. The exposure for these entity level state taxes should be clearly identified since there is often successor liability for these taxes even in an asset transaction.

NEXUS

One primary issue relates to whether the business or business owners have filed tax returns in every jurisdiction where they are required. The nexus issue is critical for tax due diligence since statutes of limitations often do not begin to expire until tax returns are filed. As a result, the tax exposure is often not limited to the target company's most recent tax years. This question of nexus can be determined differently depending on the underlying tax involved. For example, the threshold to create nexus for sales and use tax purposes is often less than the threshold for creating a filing requirement for income taxes.

APPORTIONMENT METHODOLOGY

Another issue often relates to whether a target company is apportioning its income appropriately between the states. Different states impose different apportionment rules depending on the nature of the underlying business. This can result in a company being taxed on more than or less than 100% of its total income.

SALES TAX

Another common area of concern that has the tendency to become a large exposure item is the non-collection of sales tax or the lack of proper documentation for exempt sales. Taxpayers should generally obtain exemption certificates from their customers to be relieved of the obligation to collect sales tax. When sales tax nexus exists, states require companies to collect and remit sales tax from their customers on the products (and sometimes services) they sell, unless an exemption exists. If a company fails to collect the sales tax from its customers, most states consider the tax to then be a liability of the seller.

TAX LIABILITIES

When the assets of a business are sold, certain taxes may apply to the transaction itself and may become due within a short period of time following or even at the time of the transaction. A major component to transaction-based taxes is the sales tax on the transfer of assets. Generally, all sales of tangible personal property are subject to sales tax unless an exemption applies, such as the casual sale or resale exemptions. These exemptions should be investigated since they vary widely by state and usually have limitations for items such as titled assets. If a transfer tax applies, it is imperative to understand the different components within an asset transaction. Obtaining a valuation that itemizes the different assets included in the deal is often necessary in order to bifurcate the assets that may be subject to sales tax versus the assets that can clearly be excluded from a sales tax calculation. The buyer may be responsible for these transfer tax liabilities depending on the form of the transaction, contractual provisions, and the state involved.

Performing tax due diligence for state and local taxes can assist the buyer in identifying the various exposures that may exist. Once an item of exposure is identified, it can be very challenging to quantify it, depending on the capability of the seller's systems and processes. For example, the seller might not be able to extract the appropriate apportionment data if its systems have not been designed to capture this information at the point of sale. However, the buyer may be able to protect itself in negotiating the deal if the nature of the exposure is identified.

Bob Woolley is a Partner in the State & Local Tax Group for Plante Moran. Contact him at bob.woolley@plantemoran.com or 614-222-9160. Julie Corrigan is a Senior Manager in the State & local Tax Group. Contact her at Julie.corrigan@plantemoran.com or 216-274-6509.

BEST PRACTICES

M&A at the crossroads

BY SEAN DORSEY

DORSEY

Much has been discussed about the recent surge in the M&A market. The drivers are easy: low interest rates, private equity, and slow organic growth. And as a result, many M&A professionals are swamped. But the activity has been uneven, and many other professionals find themselves underutilized and looking for solutions. Here are a few ideas.

Get specialized. Finding an M&A professional is as easy as performing a Google search. Clients want to know who handled the last deal in their industry, the key drivers of the deal, and your knowledge of the key parties in the deal. The most efficient way to provide the right answers to these questions is to focus on an industry or a specialized service in M&A, like restructuring or ESOPs. Your specialization combined with your deal history just might be the perfect fit when the client calls. And clients and referral sources will find you.

Be a professional. Not everyone can be an industry expert, and not every client believes industry knowledge is the only, and certainly not the dispositive, criteria for selecting an M&A professional. Most clients understand that a lawyer, accountant, or investment banker provides a critical skill set to every transaction setting. Increasingly, however, being a "broker," "scrivener," or "bean counter" is not enough either. Clients want someone who can solve their problems, drive the right outcome, and represent their best interests. This level of service requires a deep understanding of the elements of a deal and your role. Ultimately, a client wants to close the deal, but not at any cost.

Pay your dues. Reputations in M&A are built over time. Closed deals lead to more deals. As they say, "tombstones beget tombstones." The problem is that M&A is a cyclical business and even the best M&A professional struggles in the down times. And in the good times, you have to take full advantage of the opportunities presented, which means working long hours and handling tight deadlines. So, over time, only the people that love the deal business stay in the deal business. And those are the ones who are the most successful in good times and bad.

Sean Dorsey is the founder and CEO of League Park Advisors. Contact him at sdorsey@leaguepark.com or 216-455-9990.

BEST PRACTICES

Is EBITDA the same as cash flow?

BY JOHN NICKLAS

EBITDA is often used and confused as an approximation of operating cash flow. Business professionals and business owners should understand the differences between EBITDA and cash flow from operations within a business.

Earnings Before Interest, Taxes, Depreciation, Amortization (EBITDA) is calculated by adding interest expense, income tax expense, depreciation and amortization expense back to net income.

Operating Cash Flow (OCF) is a measure of the amount of cash generated by a company's business operations. Operating cash flow is important because it indicates whether a company is able to generate sufficient cash flow to maintain or grow its operations or whether the company may require external financing. OCF is calculated by adjusting net income for depreciation and amortization expense, changes to accounts receivable, changes in inventory and other working capital items.

A few comments about EBITDA before we continue:

The term EBITDA is used throughout the business community from valuation multiples to covenants in credit agreements. It is the standard metric in the business world when we want to discuss the performance of a business.

The strength of EBITDA as a financial measurement is that it allows you to compare the profitability of different companies by canceling the effects of their capital or financing structure and tax entity structure.

But keep in mind the EBITDA does not equal cash flow. Cash is still king (Sorry, LeBron)! A business cannot survive without cash. In my opinion, the most obvious shortfalls of EBITDA as a measure of cash flow is that EBITDA does not (1) consider the increase (or decreases) in working capital accounts that may fluctuate when a business grows or shrinks and (2) it does not subtract capital expenditures that are needed to support production, especially in a manufacturing environment.

NICKLAS

Both EBITDA and OCF have their shortfalls as the perfect financial metric. EBITDA is, and will probably always be, the dominating business metric for evaluating the performance of a business. But keep in mind the EBITDA is not cash flow and that many other factors should be considered.

John Nicklas, CPA, is a Vice President in the Assurance Service Group at Meaden & Moore. He has more than 20 years of experience serving the accounting and business advisory needs of middle-market companies. Contact him at jnicklas@meadenmoore.com or 216-928-5373.

BEST PRACTICES

Shareholder ~~activism~~ engagement

BY CHRISTOPHER HEWITT

Like almost every panel that has tackled shareholder activism, the panelists at a recent seminar I attended scoped out the market trends, discussed analyzing a company's defensive profile, suggested forming a defense team of lawyers, investor relations experts, and management, and otherwise discussed the classic defensive maneuvers that companies have used for years. Any discussion of engaging with the shareholder centered on negotiating with them to avoid losing more seats than would happen in a contested election.

There is no question that there are some unscrupulous activist private equity and hedge fund investors out there. It's probably even fair to say that the vast majority of activist funds operating in the first decade of this millennium were deservedly considered bad actors. Even those who were not patently bad actors were self-described, event-based funds with a clear agenda to have something happen, and not just listen to management and agree that management was doing everything correctly. Thus, it is not surprising that most companies, when initially confronted with a shareholder accumulating a large position, are suspicious of the shareholder and its motivations.


HEWITT

But times have changed. Today, many activists are investing vast sums of time and money to understand the companies they invest in, are finding independent directors to serve alongside nominees that work for the funds — not just proposing the same slate for every company — and are suggesting creative strategic options to companies — not just the standard platform of distribute cash, buy back stock, divest assets or sell the company.

It is now time for companies and their advisers to set aside their preconceived notions of the motivations driving activist private equity and hedge funds and to engage in meaningful dialogue with their investors. In this regard, the Morgan's Foods and Fidelity National Financial situations present instructive vignettes about constructive company/shareholder dialogue. Of course, engagement between every company and activist investor is not guaranteed to produce similar results. In many cases, it may be that the strategic direction envisioned by the board is simply different from, or even diametrically opposed to, the views of the shareholder. In the first instance, however, both companies and activist investors need to engage with an open mind and a willingness to sincerely listen to the other before engaging in destructive, open warfare.

Christopher Hewitt is a Partner with Tucker Ellis LLP. Contact him at 216-696-2691 or Christopher.hewitt@tuckerellis.com.

M&A TRANSACTIONS

Contingent purchase price considerations: a few truths

BY JOHN J. MCGUIRE AND PAUL F. HAFFNER


MCGUIRE


HAFFNER

There have been thousands of pages written about "earn-outs" and other contingent payments of purchase price over the past year. Our goal is to outline a few simple truths, slanted slightly in favor of the seller.

Truth #1: Earn-outs help get deals done. The popularity of earn-outs will ebb and flow, but the concept will remain a critical consideration in transactions in which the parties' confidence in the target's projections diverge (particularly when the "hockey stick" for sale is of relatively recent vintage). A recent study of private transactions identified earn-outs in 25% of all deals in 2012, compared with 38% in 2010, a decline apparently due to increased market confidence in projecting target's revenues. The same study noted a reduced duration of earn-outs and enhanced leverage of buyers in their essential terms and conditions. Regardless of the trends, the concept will endure and a seller should be prepared for the discussion.

Truth #2: Earn-outs can be copouts. Hindsight helps identify deals in which earn-outs were used to defer tough discussions about projected revenue and other seller expectations. Too often buyers and sellers agree to some basic feel-good contingent payment terms for a two- to four-year period post closing. Then comes the hard part. Once the language is tested in the following months and years, many sellers (and sometimes buyers) feel they have been slighted or abused in the deal. Insufficient negotiation, a willingness to trust the other side, and a belief that they can somehow control inherently uncontrollable things such as general economic forces and market conditions leave many sellers disgruntled and confused. This can, of course, lead to litigation or the use of dispute resolution provisions. According to one study, litigation ensues in more than 50% of cases in which an earn-out target is missed.

Truth #3: Judges rarely impose their own interpretation of fairness. Courts are generally loathe to impose an obligation of good faith and fair dealing when the parties discussed and debated, but chose not to address, a factor driving the contingent payment. Both parties, particularly sellers, will benefit from tediously establishing clearly written procedures for all contingent payments and addressing any variables reasonably likely to come into play.

Truth #4: Ground rules are good. Earn-outs bring new variables into the purchase price picture, most notably the impact of time on business operations. Make sure the formulas for contingent payments are clearly measurable and defined. Understand how generally applicable costs and expenses of the buyer such as SG&A are (or are not) to be allocated to the target business. Consider including sample calculations — this is not a sign of drafting weakness. Establish a process for review/debate of the calculations and dispute resolution before litigation. Ensure separate books and records are maintained for the target business, and secure a right to audit them. If possible, establish a formal business plan for the duration of the earn-out. Agree up front on how the business will be conducted to reduce the almost-certain angst each party will feel as time moves forward and the second-guessing begins.

Truth #5: Human beings will act in their own self-interest. With apologies to all of the saints out there, it does us good to remember we are battling human nature in this game. We like to play nice, but once it is post-closing and serious dollars are on the line, people will invariably be tempted to act in ways that suit their self-interest, especially if the language (as later interpreted by a new set of lawyers) gives them a defensible position from which to fire. The challenge is to remove the temptation of our fellow man to do evil by negotiating and drafting with counsel clear, measurable contingent payment formulas and ground rules in the definitive agreement.

Truth #6: Assume the earn-out will come to nothing. A seller is well advised to close a transaction that only makes sense (financially and/or otherwise) if the earn-out does not pay out a dollar. The ability of a self-interested buyer to manipulate results, the cost of auditing results and pursuing remedies, and general market risk create headwinds against which a seller must fight to achieve full realization of an earn-out. While an earn-out can break a tie between competing bidders, a seller should be mindful that his or her own irrational exuberance regarding the prospects may inappropriately elevate a second-tier bid over an all-cash offer.

We suggest these truths to help guide transaction parties, and sellers in particular, as they navigate the minefields that can develop with earn-outs, particularly long after the closing. Earn-outs can creatively get deals done that otherwise would have cratered, but an ounce of prevention (or, more likely, several ounces) is most assuredly worth a pound of cure.

John J. McGuire is a partner in the Corporate practice group at Calfee, Halter & Griswold LLP. Contact him at 216-622-8892 or jmcguire@calfee.com. Paul F. Haffner is a Senior Counsel in Calfee's Cincinnati office. Contact him at 513-693-4884 or phaffner@calfee.com.

M&A TRANSACTIONS

Early planning yields best results when selling a business

BY JAKE DERENTHAL

Planning is critical when considering the sale of a business if you want to maximize price and minimize risk and stress.

Assemble Team of Advisers

Business owners should engage outside advisers well in advance of any sale. Your team may include accountants, attorneys, investment bankers and estate planners. It's helpful to start with people who know your business, but each should have experience facilitating transactions in your industry. Advisers who regularly counsel clients in M&A deals efficiently prepare and analyze documentation and provide owners insight into market terms.

Conduct internal analysis

After assembling your team, it's time to evaluate the true value of your business. This process involves the review of financial performance, competitive strengths/weaknesses, and market conditions. With unbiased

DERENTHAL

numbers in hand, management should consider its reasons for selling and whether data shows such sale will achieve desired results.

Organize due diligence

Most sellers are unprepared for the volume of files to be reviewed in a disposition. Start creating a data room early where documents are stored prior to outside disclosure. Materials to review include corporate, financial, tax, IP, material contracts, employee, benefit, and litigation records. With enough lead time, diligence can be collected without risking interruption caused when employees get wind of rumored transactions.

Tell your company's story

Your next move is crafting a "pitch book" that may be a formal presentation or simple summary with attached financial statements. In addition to highlighting positives, your book presents an opportunity to diffuse concerns that might raise buyer eyebrows. Before disclosing information to bidders, be sure they sign confidentiality agreements. While the non-disclosure agreement provides protection, savvy owners will disclose information in stages to protect trade secrets.

Select a buyer

Identifying the right buyer requires evaluation beyond purchase price. Sellers should investigate buyer background and performance, business synergies, sources and timing of consideration, tax implications, deal structure, and exposure to liabilities and indemnification.

Negotiate letter of intent

Once you settle on a buyer, key terms are documented in a letter of intent. Your letter of intent generally contains non-binding descriptions of structure and price with binding obligations regarding exclusivity and serves as the parties' roadmap for negotiating definitive transaction agreements.

Following these common sense steps will allow you to effectively navigate purchase agreement negotiation, transaction diligence and closing the deal to reap rewards from years of growing your business.

Jake Derenthal is a Partner in the business practice group of Cleveland-based Walter | Haverfield LLP, where he counsels clients on merger, acquisition, and financing transactions. Contact him at 216-928-2933 or jderenthal@walterhav.com.

It's all in the details – how 'small' matters can greatly affect your transaction

BY MICHAEL D. MAKOFSKY AND JACK M. KEGELMEYER

When a business is sold, the owners typically realize a significant increase in wealth. However, many details must be addressed to achieve this result. Some issues are not always considered essential to operation, so the owner may neglect them. Yet, these seemingly small details can interfere with this important event in the business owner's career. The following are a few examples to consider:

LIENS

It is crucial to not only identify liens on the company's assets, but to establish a clear process for their release, including who will sign. For example, if a company has shareholder debt secured by real estate, but the mortgages are in the name of a deceased former owner and have never been properly assigned, then no one would be able to sign a release of the mortgages, which would delay the closing.

THIRD PARTY CONSENTS /CHANGE IN CONTROL PROVISIONS

Many contracts require counterparty consent prior to assignment or contain provisions allowing them to terminate if there is a change in control of the other party. Business owners don't want to disclose the existence of a transaction too soon in case it does not close and it alters the relationship with a vendor or customer. However, the counterparty could demand concessions if asked too late. Therefore, the process of obtaining consent for the change in control needs to be managed carefully.

MAKOFSKY

KEGELMEYER

INTELLECTUAL PROPERTY RIGHTS

Does the company own its intellectual property? Large enterprises routinely require employees to sign invention, confidentiality and non-compete agreements that assign ownership of intellectual property created by the employee to the company and ensure that employees cannot "set up shop" down the street. It is important to know whether or not the business has these agreements in place before a prospective buyer has identified the issue because a lack of existing agreements creates intellectual property risks for a prospective purchaser. This can result in delays and additional costs, but most notably, the employee or buyer could have considerable leverage over the negotiations.

In order to avoid these types of situations that can disrupt a large transaction, an attorney can help you perform a pre-sale due diligence to identify issues like these in enough time to rectify the situation and facilitate a smooth closing.

Michael D. Makofsky is Principal with McCarthy, Lebit, Crystal & Liffman Co., L.P.A. Contact him at mdm@mccarthylebit.com or 216-696-1422. Jack M. Kegelmeyer is Of Counsel with McCarthy, Lebit, Crystal & Liffman Co., L.P.A. Contact him at 216-696-1422 or jmk@mccarthylebit.com.

M&A TRANSACTIONS

Winning wisdom garnered from the Cavs for corporate buyers

BY JAYNE E. JUVAN AND ILIRJAN PIPA

The hottest deal in Ohio last year occurred when Dan Gilbert signed LeBron James, the most sought after free agent in the NBA, to the Cleveland Cavaliers. Similar to the NBA, in today's marketplace, the competition is intense for the best corporate deals. The availability of cash, low interest rates and overall positive economic conditions have contributed to the return of numerous bidders. What, then, can corporate buyers learn from the deal Gilbert and James struck that will help them close on an enviable transaction that everyone will be talking about for years to come?

CONSIDER CONTRARIAN APPROACHES

Gilbert and James were both

JUVAN

PIPA

buyers — Gilbert added James to his roster, and James bought into the team and Cleveland. James took a contrarian approach, knowing that the path to a championship could be more difficult with the Cavs. But winning in Cleveland, a city with a 40-year drought, could cause James to be recognized as an all-time great who helped turn a city around. Similar to James, when looking at targets, buyers should review the whole range of options — the obvious opportunities others are chasing, but also those less popular with hidden potential. Taking the path less traveled can lead to the greatest victory in the end.

DON'T LET THE PAST DERAIL THE FUTURE

After James announced his "Decision," Gilbert expressed bitter disappointment in an open letter. The two could have allowed their egos and emotions to get in the way of a new deal, but they put the past behind them. Corporate negotiations can also become heated, but parties should avoid letting insignificant disputes get in the way of a major breakthrough.

MAXIMIZE ECONOMIC VALUE

James struck a two-year deal because a future television contract could increase the maximum value of players' contracts. Similarly, buyers should consider pricing structures that mitigate risk and maximize benefit. For example, when parties do not agree on economics, buyers can negotiate earn-outs (contingent post-closing payments). With an earn-out, sellers could capture additional purchase price post-closing, but buyers only pay if the target achieves agreed-upon financial goals.

CRAFT A MEMORABLE DEAL ANNOUNCEMENT

James used his "I'm Coming Home" announcement not only to inform the public of his decision, but as an opportunity to tell a compelling story to win hearts and minds. Corporate buyers should likewise use announcements to communicate their vision for the target and gain buy-in from the marketplace.

BEFORE THE INK DRIES, FOCUS ON THE TEAM'S DYNAMICS

Getting to closing is difficult, but ensuring post-closing performance

CHRIS GRAYTHEN/GETTY IMAGES

is aligned with expectations can be even harder. Cleveland hyped the first game with James, but the Cavs lost and experienced a four-game losing streak not long thereafter. Similarly, integrating corporate cultures can be difficult. Buyers should expect a few bumps in the road and begin planning to deal with them right away.

Jayne E. Juvan is a partner with Roetzel. Contact her at 216-615-4837 or jjuvan@ralaw.com. Ilirjan Pipa is an associate with Roetzel. Contact him at 216-820-4251 or ipipa@ralaw.com.

Creating value through tax diligence

BY RUSS DANIEL AND NICK FANOUS

When you talk to a tax professional about a potential deal, we typically have a standard set of opening questions:

Are you buying assets or stock of the target company?

Is the target a C corporation, an S corporation, or an LLC taxed as a partnership?

What is the target's footprint, i.e. where does the target have operations?

These questions are critical for tax because they drive our planning for the transaction, both risk assessment and planning for the future.

DANIEL

FANOUS

Due diligence

In a stock purchase, all of the target's historic tax liabilities are part of the deal — you can't leave them behind. On the other hand, in an asset purchase, certain tax liabilities may be "carved out" and left with the seller. An exception in this area is sales tax, which often attaches to the business regardless of the form of the transaction.

If the target is a passthrough entity, such as an S corporation or an LLC, the income tax liabilities may be isolated to the sellers, but all of the non-income tax liabilities of the entity come with the target, so full due diligence is necessary.

> **The complexity grows exponentially when you leave the U.S. shores. Many countries have tax regimes that are inconsistent with the U.S. tax code.**

Two important items to note if the target is a C corporation or an LLC taxed as a C corporation:

First, an asset purchase may not be negotiable, since it would trigger two layers of tax for the sellers. The buyer may have to purchase stock in order to make the deal economics work.

Second, the target's historic income tax liabilities are coming along in the deal, so a thorough due diligence plan is critical to identify historical risks and exposures. Even if the target has historically lost money, there are a number of unexpected ways in which the company might end up owing taxes.

Understanding the target's footprint helps to focus state and international tax diligence. Every jurisdiction is different, and while one state may exempt sales of certain products or services from sales tax, another may not. The complexity grows exponentially when you leave the U.S. shores. Many countries have tax regimes that are inconsistent with the U.S. Tax Code — and some countries view U.S. companies as fertile ground for audits.

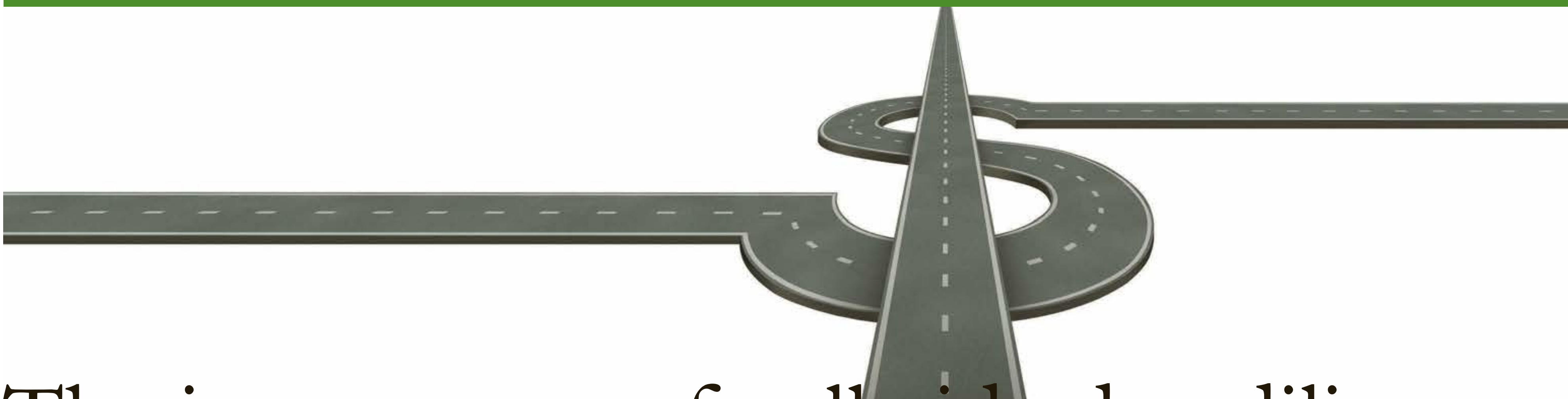
Planning opportunities

There are also planning opportunities to consider. If the target is a passthrough entity, you should try to secure a tax basis stepup, which will allow the buyer to shield future income with depreciation and amortization deductions. This is often a tricky negotiation, but in the right circumstances, it can create significant value for the buyer at minimal cost to the seller. For a larger deal there may be other structuring alternatives, including tax-free transactions and leveraged buy outs where the debt is placed in a favorable jurisdiction.

Managing the tax exposures on a deal is complex, but with the right advisors and good information, you may create unexpected incremental value.

Russ Daniel is Managing Director – M&A Tax Services for Grant Thornton LLP. Contact him at 704-632-6809 or russ.daniel@us.gt.com. Nick Fanous is a Manager in the firm's M&A Tax Services in Cleveland. Contact him at 216-858-3545 or nick.fanous@us.gt.com.

M&A TRANSACTIONS



The importance of sell-side due diligence

BY ANDY JENKINS

With a strong seller's market, the role of sell-side due diligence has never been more critical. Sell-side due diligence is becoming more prevalent and more widely accepted by the marketplace as a standard process to streamline deals. This process helps the seller to avoid surprises, maintain control of the process and minimize disruptions — preserving value and increasing the probability of a successful transaction.

JENKINS

The value of sell-side due diligence is optimized when working in conjunction with investment bankers. There are distinct roles in the transaction process, and when they are properly defined and filled, the seller is much more likely to fully understand the investment thesis and maximize the investment value.

KEY BENEFITS

The value proposition and broader acceptance of sell-side due diligence involves understanding sellers' motivations and adopting a buyer's perspective to maximize investment value:

❒ Improves accuracy of the historical and projected financial information included in the marketing materials

❒ Identifies adjustments that positively impact EBITDA (i.e., potential acquirers only notify the seller of negative EBITDA adjustments)

❒ Minimizes surprises and maximizes transaction value by adding credibility and objectivity to the process, including situations where a financial audit has not been completed

The value of sell-side due diligence is optimized when working in conjunction with investment bankers.

❒ Accelerates the buyer's due diligence and the timing of the transaction, thus, reducing the risk of retrading

❒ Assists with developing and positioning financial information for the carved-out portion of the business

❒ Maximizes after-tax proceeds by addressing risks and using an optimal deal structure

❒ Increases competition between buyers and reduces buyer negotiations post LOI

Companies often think they can perform the necessary due diligence requirements in-house prior to a potential sale. However, companies with limited internal accounting and tax resources may want to engage outside specialists for an initial assessment to grade how well they are prepared for the transaction process.

Having an independent sell-side due diligence report that is fair and balanced certainly brings more credibility to the transaction process. A comprehensive sell-side due diligence process helps a seller anticipate buyer concerns and satisfy expectations. It is a valuable tool to help ensure that the seller retains value, saves a significant amount of time in the transaction process and retains enough control of the process to ensure that a resulting transaction is advantageous for both parties, not just the buyer.

Nick Gruidl and Andy Jenkins are Partners with McGladrey LLP. Vipul Barbhaya is Director for McGladrey LLP. Contact Jenkins at 614-456-2801 or Andy.Jenkins@mcgladrey.com.

M&A TRANSACTIONS

Many growth paths open to businesses


JONES

Today's low rate environment has created countless options for middle-market businesses looking to grow. Whether they want to access cheap debt or take advantage of the frothy M&A market, it is an ideal time to focus on growing your business.

The low rates won't be around forever, so if you want to acquire a competitor, expand geographically, boost sales, improve production or otherwise invest in the growth of your company, you need to act quickly. Rates are expected to rise in 2015, and today's favorable financing environment will soon be history.

Companies that cannot access debt through traditional channels or that want greater access to capital and operating resources might consider finding a private equity partner. Private equity offers flexibility because a company can sell any portion of itself to access growth capital. Whether seeking a minority partner, majority owner or a total sale, there is likely to be a PE partner right for your company.

The right private equity investor brings much more to the table beyond quick access to capital. Look for a partner that has the experience and expertise to add meaningful value to your business. Before agreeing to work with a firm, think about specific goals for your company and determine if this partner can help achieve them. For example, if you're looking to build a new production facility, acquire a competitor, or expand internationally, can the firm demonstrate effectiveness in these key areas?

Once you've found a few candidates, judiciously vet them. Talk to people who have worked with the firms. Study their track record in your company's industry and with similar growth strategies. Evaluate their scope and capabilities, and ensure you see a good fit from a personal perspective. If it all checks out, chances are good that your partnership will lead to growth for your middle-market company that might have been impossible to achieve without the private equity firm's involvement.

By carefully shopping around as you seek a partner, you'll help ensure the right fit and a successful next chapter for your business. We may never see a better time to grow middle market businesses, so explore your options and don't let the opportunity to cash in slip away.

Chris Jones is a Partner with The Riverside Co. Contact him at 216-344-1040 and cjones@riversidecompany.com.

Don't forget the human side of human capital

BY JOHN WIRTSHAFTER

Having worked on the human capital side of hundreds of M&A transactions over the past 30 years, I've learned it's essential to have a clear understanding of employment and employee benefit obligations and liabilities associated with the companies involved. This requires careful due diligence and negotiations, and thoughtful planning for the integration and transition steps necessary to ensure a successful transaction. Let's face it, you will not have a happy and productive workforce if your leaders are not engaged and your benefit plans are not smoothly functioning following the closing. But, there is more to ensuring a successful transaction than simply managing plans, reducing risk and ensuring legal compliance.


WIRTSHAFTER

A number of years ago, I worked on a transaction where two similarly sized multinational companies were being "merged." The employee and benefits issues involved were significant. No question, redundancies existed between the two organizations. The economies of scale created by merging operations represented a significant opportunity for cost savings and profit improvement.

With this in mind, high-priced consultants were engaged to identify the cost-saving opportunities. A horde of young consultants descended on the companies and reviewed every major function of the operations. After considerable study, a report was produced with a series of boxes showing where cost savings could be attained. The bigger the box, the more people that would be severed and the more savings attained. Surely, much thought went into who would be retained and who would be terminated. However, in some cases, the decisions were political compromises rather than strategic (e.g. "If you let us keep our legal staff, you can keep your payroll department"). The consultants failed to understand the debilitating impact the process would have on the culture and morale of those who remained.

Once completed, the consultants were just as quickly gone (presumably to be unleashed onto a new transaction). Left in their wake was a workforce unable or unwilling to move forward. Needless to say, the post-merger company continued to lose valuable employees and underperformed. It took years to repair the damage caused by the cost-cutting exercise.

In retrospect, several lessons can be learned from their failure.

❒ You can't always determine the value of your employees from a spreadsheet. Not enough attention was paid to understanding who the real leaders and influencers were that drove the success of the companies prior to the transaction.

❒ Use surgical strikes rather than carpet bombings. Employees know who is not "pulling their weight" and generally can move on when those employees are eliminated.

❒ Where possible, communicate directly and honestly; both with the employees being terminated and the ones being retained.

❒ Be fair.

❒ Focus on creating/retaining the kind of company culture needed for success.

❒ Implement effective incentive plans that focus key employees on moving forward.

I relate this story not to pick on consultants but to remind those involved in mergers and acquisitions to never forget the human side of human capital.

John Wirtshafter is an attorney in the Cleveland office of McDonald Hopkins LLC and a Member of the Executive Compensation and Governance Practice. Contact him at jwirtshafter@mcdonaldhopkins.com or 216-348-5833.

M&A TRANSACTIONS

Private company valuations are heading higher

BY ROBERT BRUML AND ANDREW GELFAND

Private company owners frequently question, "When is the right time to sell a business?" Today's low interest rates and ample liquidity have generally increased the value of private companies and this environment presents attractive sale opportunities for company owners. With the supply of capital flowing into the coffers of private equity firms and other financing sources exceeding the availability of opportunities, the supply/demand imbalance favors the business owner.

BRUML

GELFAND

Moreover, private equity has flowed well beyond the core industries in Northeast Ohio to include almost all areas of the economy, including health care, business services, media and technology. If you think your company is too small, it may complement an existing platform company owned by a private equity firm. If you are reluctant to sell the entire business, you may consider a "minority recapitalization" with private equity or an alternative lender that can provide liquidity without a change of control. Strategic buyers also have aggressively reentered the acquisition market to complement organic growth.

Today's economic environment is conducive to meeting your financial goals. With low interest rates and robust financing markets in place, company owners should examine strategies to enhance the value of their companies. Some of the value drivers and strategies to consider for both a sale or recapitalization include:

- ❒ Present financial results that are "restated" but supportable
- ❒ Undertake a "quality of earnings" analysis
- ❒ Emphasize new product or service offerings
- ❒ Build brand recognition and market reputation
- ❒ Build depth in the management team
- ❒ Complete key agreements with customers and suppliers
- ❒ Create a defensible market position with diversification
- ❒ Invest in proprietary technology or patent portfolio
- ❒ Make the case for market, product or financial synergies
- ❒ Develop financial projections that are credible

Eventually interest rates will rise and there will be a pullback. The present timing, however, offers a unique opportunity for private owners to achieve liquidity at favorable values. Having a proactive and experienced M&A advisory firm should be part of your "value added" planning if you are considering a sale or financing.

Robert Bruml is President of Bruml Capital Corp. Contact him at 216-771-6660 or bob@brumlcapital.com. Andrew Gelfand is Senior Vice President of Bruml Capital Corp. Contact him at 216-771-6660 or andy@brumlcapital.com.

M&A TRANSACTIONS

As deals rev up, be aware of risks

BY JIM HILL

As deal activity picks up significantly, auction processes become much more costly as it relates to enterprise value. Given the abundance of funds with both strategic and financial buyers, and the lack of expense of debt with unregulated lenders willing to loan as much as six times EBITDA for an acquisition, buyers and sellers face many risks:

BUYER RISKS

1 If engaged in an auction process, you must show significant expenditures on diligence, industry knowledge, etc. or you will never advance to the second round.

2 If you have a financing contingency, you need to produce significant commitment letters for the equity (if you are not a committed fund) and mezzanine and senior debt.

3 Perform background checks on all managers and owners.

4 During diligence, attack highest risks (regulatory and legislative) first.

5 Spend as much time as you can with management and get to know their reputation in the industry.

6 If you have a "proprietary deal," make sure someone is pushing to get the seller to sell. Without an ibanker pushing, it is risky.

SELLER RISKS

1 Do your own quality of earnings check (preferably an audited one) so your financials and EBITDA do not get picked apart.

M&A TRANSACTIONS

2 You must have a strong managerial infrastructure. One-man bands get very low valuations unless selling to a strategic buyer.

3 If you are not going with an ibanker (not a great move) then make sure you aren't pre-empted by a bidder that will drag you through the mud and chop your enterprise value.

4 Know key growth benchmarks in your industry — percentage of EBITDA to revenue — so you know how your company compares.

5 Have your ibanker check the bidders for "retraders," provide a draft of the purchase agreement and find out which bidders historically overleverage a business. If you remain a manager/owner post-close that will have a big impact on how you run the business.

6 If you roll over equity, remember you don't get to put it back into the company if you are no longer with the business.

7 Make sure the buyer knows your industry, is spending significant diligence money and that you are more or less guaranteed "certainty of close."

Deals take longer to close since prices are higher, thus making risks higher. And, now we are seeing lenders bring in their own diligence teams on regulated industries. It has become a very fast and arduous track.

Jim Hill is partner and executive chairman of Benesch and chair of the firm's Private Equity Group. Contact him at jhill@beneschlaw.com or 216-363-4444.

Given the abundance of funds with both strategic and financial buyers ... buyers and sellers face many risks.

SUCCESSION PLANNING

The Power of Charity in Succession Planning

BY LAURA MALONE


MALONE

In the discussions that owners of closely-held business have with their trusted advisors, two important and interrelated questions about business succession planning are primary: "What is the best strategy for my exiting the business?" and "How can I get the most financial and tax benefits from that exit?"

In more enlightened discussions, business owners and their advisors go beyond the personal self-interest of taxes and net proceeds and touch upon the owner's sense of significance: "How can I take a portion of these proceeds to make my world a little better? How can I ensure that my life's efforts have made a difference? How can I be certain that my success won't alter my children's values?"

A donor advised fund (DAF) is that point of intersection where the owner's personal and social interests intersect in simple, tax-smart and meaningful ways. Many owners find the DAF enables them the opportunity to ensure the same sense of enduring significance as a private foundation but without the labor and oversight that private foundations require. Furthermore, they can offer a level of privacy that is not available in the public tax filings of a private foundation.

Business owner benefits

Because DAFs are sponsored by public charities, gifts of closely held stock, real estate, or other assets qualify for the highest benefits available, including:

❒ Immediate and maximum income deduction

❒ No capital gains on gifts of long-term appreciated stock or other property

❒ No estate taxes

❒ Reduced alternative minimum tax or possible avoidance of net investment income tax

❒ Tax free growth

SUCCESSION PLANNING

Maintaining control

Savvy business owners understand the difference between ownership and control of a business. When the owner elects to gift non-voting shares or a minority interest in the business, the owner maintains majority control.

Impact on the deal

In most cases, gifting the shares to the DAF and the subsequent transition of those shares to the buyer can take place without slowing the transaction process. Because the gift must be made before any formal, legally binding agreement to sell or merge the company, most buyers hardly notice the DAF charity's involvement in the transaction.

Professional legal/tax advice is necessary to avoid IRS challenge of these favorable tax benefits. However, thanks to the simplicity and cost-effectiveness of DAFs, owners now have a meaningful way to ensure that they will be remembered over successive generations.

Laura J. Malone, CAP, CEPA, is director of gift planning at the American Endowment Foundation. Contact her at 877-599-8903 or email lauramalone@aefonline.org.

Is your family business ready for what comes next?

BY SCOTT MCRILL

As a family business owner, you are dedicated to planning for the success and growth of your business. But ironically, one of the most important steps you need to take is to prepare for a time when you no longer sit at the head of the table.

MCRILL

Succession planning should start with communication — and not just about the business. Members of a family business need to discuss life goals and what they want to achieve both professionally and personally. Whether your plan is to create a legacy by donating to a university or to pass leadership and ownership along to the next generation, knowing what you want to do with the rest of your life and how much it will cost gives you an idea of the direction your family business needs to take. And communicating that direction with everyone involved is vital.

Sometimes it helps to have someone coordinate the often difficult succession planning conversations that need to take place between family members. Having a trusted family business quarterback who can take the lead and be an honest, fair moderator can alleviate a lot of stress and tension. A trusted lawyer, banker, or accountant can not only provide impartial judgment but also suggestions for qualified experts or advisers who can help guide the business to where it needs to be for successful succession to occur.

More formal than just having a family business quarterback, an advisory board is sometimes a helpful way to guide succession planning discussion. The board can be made up of family members and trusted advisers — but be aware that situations where boards are completely internal seldom work well, as too often no one is comfortable speaking up. Bring in bankers, lawyers, or other people with expertise and experience in your industry. Although an advisory board doesn't have true decision-making authority, they are able to provide valuable input and suggestions for the direction your family business can and should take.

A trusted friend can also help serve as an adviser —– and can sometimes be just the person needed to remind you that your decisions and actions impact not only the business, but your family as well. Too often family business owners pour 100% of themselves into their business and ignore the family aspect; this can be a tragic mistake should a sudden crisis hit with no succession plan in place. It is important to consider your spouse and next of kin and the burden they would have to shoulder in the case of a debilitating injury or sudden death. The options your family may have with the business and with the wealth you've accumulated are limited if there is no plan in place.

When it comes to the actual succession plan, there is a laundry list of options to consider. An obvious choice is to keep the business private and in the family by passing ownership and leadership to the next generation. This involves evaluating the experience, skill sets and the desire to own and operate a business to identify who in your family might be ready to take over. Another option is to bring in employees from outside the family to fill key roles (CEO, CFO, etc.) to run the business. You could also consider selling the company to a third party. The most common option, however, is to seek out an investor. Partnering with a financial investor — whether private equity, individual, or family office — can ease the transition as you take your family business to the next level.

If the decision is ever made to sell your family business outright, it is important to surround yourself with a quality team of advisers who can help you understand what your business is realistically worth. It is also important to understand what you need to sell for to achieve your life goals, not what you want to sell for due to the common emotional attachment to the business, while keeping in mind the difference between the gross sales price and net cash takeaway. That way you won't miss out on an opportunity by holding out for a price that is unrealistic.

Some owners are surprised when they realize they don't need quite as much as they thought to achieve their goals, while others might realize they have more planning to do before they sell. The facts and circumstances all circle back to having a plan of what your life goals are and where you want the business to go. If you plan properly and surround yourself with good advisers, you will know what your business is worth all along.

Scott McRill, CPA, is a Partner in Transaction Advisory Services for BDO USA. Contact him at 216-325-1700 or smcrill@bdo.com.

SUCCESSION PLANNING

Critical pre-sale considerations: Are you the well-planned event or shotgun wedding type?

BY DAVID DUNSTAN

The sale of a business often ranks among the most significant decisions someone will ever make. Getting married, having children and other family matters usually sit at the top of the list, but the decision to sell one's business isn't far behind.

DUNSTAN

Rightfully so, these life-changing events often garner significant thought and preparation before commencement. However, we have found that business owners too often initiate a sale or merger transaction without any such planning or preparation, which usually and unfortunately results in a less than optimal outcome.

Adhering to the following recommendations will ensure you put your best foot forward when contemplating a sale or recapitalization of your business:

❒ Align shareholder and management interests because this process is far too demanding to have dissenting voices

❒ Develop a strong management team fully capable of running all aspects of the business

❒ Consider implementing an advisory board and establish the discipline of reporting quarterly results

❒ Develop a sophisticated financial reporting capability, including audited financials, timely monthly closing processes, three-year forecasts (revised annually) and regular tracking of budget to actual results

❒ Identify and track financial add-backs (non-recurring/unusual or one-time events) in a detailed manner and keep documentation readily available

❒ Regularly develop and monitor a business plan, competitive landscape and industry trends

❒ Consider best potential buyers, including an understanding of the issues and strategic fit if you decide to approach corporate strategic buyers

❒ Consider spinning-off unattractive or non-core assets

❒ Hire a reputable law firm with significant M&A and tax expertise

❒ Obtain proper contracts with employees, customers and vendors and register all intellectual property

❒ Resolve any material outstanding litigation

❒ Evaluate personal financial matters with a sophisticated wealth advisor to maximize proceeds post-transaction

❒ Engage an investment bank with significant M&A experience and deep industry knowledge relative to your business

Though no guarantee of success, incorporating these considerations into your planning process positions you to achieve the best possible outcome. For those of you who prefer the shotgun wedding at a roadside chapel in Vegas, disregard the advice above, roll the dice and good luck.

David Dunstan is a Managing Director for Western Reserve Partners LLC. Contact him at 216-589-9530 or ddunstan@wesrespartners.com.

GLOBAL TRANSACTIONS

Don't buy an FCPA problem in an overseas deal

BY JUSTIN ROBERTS AND SEAN PURCELL

American companies contemplating the acquisition of an overseas entity can reduce their subsequent risk of becoming the subject of a Foreign Corrupt Practices Act (FCPA) investigation by conducting the appropriate amount of due diligence before completing the transaction. The scope of due diligence will be based on factors such as the size of the enterprise, the risks associated with the acquisition target's industry and the countries with and in which it does business. Efforts should be tailored to the identified risks and it is critically important that the acquiring company does not just employ a "check the box" approach to its due diligence.

The old saying goes that the best defense is a good offense. If a company has the misfortune to be ensnared with an FCPA issue related to the pre-acquisition conduct of the target entity, it can point to the fact that it took all appropriate steps that could be reasonably expected. The Resource Guide to the U.S. Foreign Corrupt Practices Act, released by the Department of Justice and SEC in late 2012, notes that the government may decline a post-acquisition FCPA enforcement action if the acquiring company (assuming it wants to continue with the transaction) can demonstrate that it:

ROBERTS

PURCELL

❒ Conducted appropriately tailored due diligence

❒ Trained the relevant personnel at the newly acquired entity on FCPA issues

❒ Ensured that the acquiring company's compliance program and internal anti-corruption controls were applied to the newly acquired company, and

❒ Perhaps most importantly, identified and disclosed to the government any corrupt conduct identified during the pre-acquisition review

For this reason, among others, any due diligence plan must be put in writing and all the findings should be documented for future use.

The due diligence plan should include:

❒ A request for documents

❒ A review of accounting records

❒ Appropriately tailored questionnaires completed by relevant employees

❒ A review of the target company's anti-bribery training or compliance plans

❒ Interviews of the target's company's compliance staff and accounting department, and

❒ Interviews of sales staff regarding sales that are identified as having a higher risk for corruption

Risk factors to look for include historic corruption in the country or region where the target company conducts business, government contracts the target company may have and its use of third parties such as sales agents and intermediaries.

If there is not enough time to review every payment or sale, the due diligence should include a well-documented testing of sample transactions that have been identified as having higher levels of risk.

While no due diligence plan can guarantee that a post-acquisition FCPA issue may not arise, dedicating the resources to conduct tailored due diligence on the front end of the transaction can decrease the risks of buying a much more costly FCPA problem after the transaction has closed.

Justin Roberts is a Partner in the Vorys Cleveland office and a former assistant U.S. attorney. Contact him at jjroberts@vorys.com. Sean Purcell is a Partner in the Vorys Washington, D.C., office. Contact him at mspurcell@vorys.com.

GLOBAL TRANSACTIONS

GLOBAL M&A ACTIVITY RETURNING TO PRE-RECESSION LEVELS

BY ANDREW K. PETRYK

PETRYK

Globalization is a leading driver of M&A activity in what is rapidly becoming a borderless world. Buyers are aggressively pursuing international acquisitions to fast-track entry to new geographies, stay close to customers, and gain better domestic market access in those regions. Renewed interest is filtering down to the middle market, where niche companies that can bring technology and capability expansion to advance innovation are in high demand.

Cross-border transaction volumes have reached levels not seen since before the financial crisis. Global middle market deal activity (defined as enterprise values between $25 million and $500 million, Capital IQ) in 2014 increased 14% over prior year levels in both deal volume and value. Leading industries included Financial Services (40% of deal volume), Consumer Products (15%), Industrials (9%), and IT (8%). The most active countries by target companies acquired included the United States (30% of deal volume), China (16%), and the United Kingdom (9%). Valuation multiples are rising with the median EBITDA multiple ticking up to 9.9x, the highest level since 2008.

Foreign investors are setting sights on the United States, which remains attractive for acquisitions given its relative economic position, low energy costs, and reshoring movement, which are fueling a renaissance in the manufacturing sector:

❒ The Institute for Supply Management projects higher growth for both the U.S. manufacturing and non-manufacturing sectors in 2015.

❒ U.S. middle market companies have experienced a healthy rebound in the economic recovery and have proven their staying power, with revenue growth outperforming the broader market according to survey findings from the National Center for the Middle Market. Sixty-four percent of middle market companies (annual revenue between $10 million and $1 billion) expect revenue to increase in the next 12 months.

❒ Higher levels of uncertainty in other global markets will also drive investment capital to the United States.

We anticipate a healthy level of cross-border activity continuing into 2015. According to findings from a Baker & McKenzie survey released this June, more than a third of the 350 companies interviewed reported planning to pursue another cross-border deal in the next two years. Eighty-six percent of the respondents deemed their recent cross-border M&A transaction a success.

Depending on specific company and industry dynamics, an international buyer may represent the best alternative to fully exploit the growth opportunities available to a middle market business. By enlisting a trusted advisor with the capabilities and resources to manage a global sale process, the end goal will be to maximize the value for your business.

Andrew K. Petryk is Managing Director and Principal of Brown Gibbons Lang & Co. LLC (BGL) and member of Global M&A Partners (GMA), where he co-heads the Industrials practice. Contact him at apetryk@bglco.com or 216-241-2800.

2015 ACG EVENTS CALENDAR

For more information and to register visit www.ACGcleveland.org.

DATE	EVENT	LOCATION
JAN. 22	19th Annual Deal Maker Awards	Cleveland Convention Center
FEB. 10	Philip Fracassa EVP & CFO Timken *joint event with FEI*	Union Club
FEB. 11	Young ACG Lunch & Learn	McDonald Hopkins
MARCH 12	Breakfast meeting (Speaker TBA)	TBA
APRIL 13	InterGrowth	Waldorf Bonnet Creek, Orlando
APRIL 23	Richey Piiparinen, The Rustbelt Roars Back, Cleveland State University	Union Club
MAY 5	Richard Boyatzis Case Western Reserve University Emotional Intelligence	The Ritz Carlton - Cleveland
MAY 13	Young ACG Lunch & Learn	Calfee, Halter & Griswold
JUNE 9	Social at Shoreby (joint event with TMA)	Shoreby Club
SEPT. 1-2	Great Lakes Capital Connection	Cincinnati
SEPT. 28	11th Annual Golf Outing	Firestone Country Club

ACG CLEVELAND | 2014-15 OFFICERS AND BOARD OF DIRECTORS

Officers

PRESIDENT
Murad A. Beg
Linsalata Capital Partners

PRESIDENT ELECT
David D. Dunstan
Western Reserve Partners

EXECUTIVE VICE PRESIDENT, BRAND
Brad Kostka
Roop & Co. Strategic Integrated Communication

EXECUTIVE VICE PRESIDENT, PROGRAMMING & INNOVATION
John Saada Jr.
Jones Day

EXECUTIVE VICE PRESIDENT, RESOURCES
Joseph F. Maslowski
Roetzel & Andress LPA

TREASURER
Joseph C. Adams
Plante Moran

SECRETARY
M. Joan McCarthy
MJM Services

IMMEDIATE PAST PRESIDENT
Karen L. Tuleta
Morgenthaler Private Equity

Board of Directors

Kevin W. Bader M & A Professional
Rudolf Bentlage JP Morgan Chase
Denise Carkhuff Jones Day
Elizabeth Evans Republic Steel
Guy C. Fabe Parker-Hannifin Corp.
James M. Hill Benesch, Friedlander, Coplan & Aronoff LLP (Trustee Emeritus)
Brian Kelly PricewaterhouseCoopers
Raymond Lampner BCG & Co.
Brian Leonard BKD CPAs & Advisors
Randolph D. Markey Global X
James P. Marra Blue Point Capital Partners
Sean P. McCauley RBS Citizens
Albert Melchiorre MelCap Partners LLC
Trent Meteer TriState Capital Bank
Wendy S. Neal Brown Gibbons Lang & Co.
Peter Shelton Benesch, Friedlander, Coplan & Aronoff LLP
Bertrand Smyers New Heights Research
Dale Vernon Bernstein Global Wealth Management
Theodore Wagner Bober Markey Fedorovich
Rebecca White Western Reserve Partners
Douglas K. Winget FirstMerit Bank
Thomas Zucker EdgePoint Capital Advisors

ABOUT ACG

ACG is a global organization focused on driving middle-market growth. Its 14,500 members include professionals from private equity firms, corporations and lenders that invest in middle-market companies, as well as from law, accounting, investment banking and other firms that provide advisory services. Founded in 1954, ACG is a global organization with 57 chapters. Learn more at www.acg.org. ACG Cleveland serves professionals in Northeast Ohio and has nearly 500 members. For more information, please visit **www.ACGcleveland.org**

ACG® Cleveland

CRAIN'S CLEVELAND BUSINESS

Award Program Nomination Deadlines

Visit **CrainsCleveland.com/Nominations** or contact **Kim Hill at kehill@crain.com**

Who to Watch in Nonprofits
Issue Date: February 16, 2015

Crain's Cleveland Business continues its series of "Who to Watch" sections in 2015.

DEADLINE: JANUARY 12, 2015 (12PM)

CIO of the Year Awards
Event Date: April 14, 2015

Crain's honors the standout chief information officers who lead the technology strategies and vision of Northeast Ohio's businesses, institutions and non profits.

DEADLINE: FEBRUARY 2, 2015

Health Care Heroes
Event Date: Week of May 11, 2015

Renowned the world over for ground-breaking medical research and treatment, Northeast Ohio's distinguished health care and wellness professionals are honored by their peers and business community.

DEADLINE: FEBRUARY 27, 2015

Women of Note
Event Date: Week of July 20, 2015

Crain's honors the dedication and achievements of Northeast Ohio's top female business leaders who enrich our region with their professional talents and unique perspectives.

DEADLINE: MARCH 30, 2015

Archer Awards
Event Date: Week of August 10, 2015

A tribute to Northeast Ohio's leading human resources professionals who consistently "hit the mark" by building companies with the best people, talent, development and culture.

DEADLINE: MAY 1, 2015

Who to Watch in Technology
Issue Date: June 22, 2015

Crain's Cleveland Business continues its series of "Who to Watch" sections in 2015.

DEADLINE: MAY 18, 2015 (12PM)

Forty Under 40
Event Date: November 23, 2015

A tribute to the next generation of young rising stars who have taken a leading role in our business community.

DEADLINE: JUNE 1, 2015

Crain's 52 Fastest-Growing Companies
Event Date: Week of November 2, 2015

Find out which companies are on the fast track when *Crain's* ranks the 52 fastest-growing privately-held companies in Northeast Ohio.

DEADLINE: JUNE 22, 2015

CFO of the Year Awards
Event Date: Week of October 19, 2015

A salute to the region's top fiscal officers whose strategic leadership helps Shape their organization's financial success. NE Ohio's only program dedicated to honoring the contributions and accomplishments of CFOs.

DEADLINE: JULY 10, 2015

General & In House Counsel Awards
Event Date: Early December 2015

Awards are presented to the best legal minds in Northeast Ohio's public, private, nonprofit and government organizations.

DEADLINE: AUGUST 21, 2015

Who to Watch in Manufacturing
Issue Date: September 28, 2015

Crain's Cleveland Business continues its series of "Who to Watch" sections in 2015.

DEADLINE: AUGUST 24, 2015 (12PM)

Who to Watch in Marketing / Creativity
Issue Date: November 30, 2015

Crain's Cleveland Business continues its series of "Who to Watch" sections in 2015.

DEADLINE: OCTOBER 26, 2015 (12PM)

DEALMAKER AWARDS

Top deal makers to be honored at ACG Cleveland's 19th annual Deal Maker Awards

ACG Cleveland, Northeast Ohio's preeminent organization for merger and acquisition and corporate growth professionals, will recognize the winners of its 19th Annual ACG Cleveland Deal Maker Awards at **5:30 p.m. Thursday, January 22, at the Cleveland Convention Center.**

The Deal Maker Awards honor Northeast Ohio's top corporate deal makers for demonstrated success in using acquisitions, divestitures, financings and other transactions to fuel sustainable growth.

The 2015 Deal Maker Awards winners are:

SIGNET JEWELERS LIMITED

On May 29, 2014, Signet (NYSE: SIG), the largest specialty retail jeweler in the United States and United Kingdom, acquired Zale Corp., a leading specialty retailer of fine jewelry in North America, for $21 per share in cash and a total consideration of $1.46 billion. The combined entity has more than 3,600 locations operating under brands that include Kay Jewelers, Jared The Galleria of Jewelry, Zales, Peoples and Piercing Pagoda. Management expects to achieve between $150 million and $175 million in operating profit over three years as a result of the transaction. The combined entity had trailing 12-month pro-forma revenue of $6.2 billion and EBITDA of $745 million.

HYLAND, CREATOR OF ONBASE

Hyland is the creator of OnBase, an enterprise content management solution that combines document imaging, workflow and business process management functionality. Since 2008, Hyland has acquired nine companies, with four of those acquisitions occurring during the last three years, including SIRE Technologies, a leading provider of document management, agenda and minutes automation software; Enterprise Consulting Partners, providing electronic document management and line of business integration; Calyx, a small Australian international customer base acquisition; and AnyDoc Software, a market leader in data capture and classification applications. The company reported 2013 revenue of $275 million and has 1,800 employees. It is listed on the Inc. 5000 as one of the fastest-growing private companies in the United States.

FAIRMOUNT SANTROL

Fairmount Santrol is one of the world's largest providers of sand-based proppant solutions. In August 2010, American Securities acquired a majority interest in the company and provided liquidity for structural efficiencies, technical innovation and acquisitions. In 2013, Fairmont made nearly $500 million in acquisitions, including Sibelco's resin coatings operations; Self-Suspending Proppant LLC; Great Plains Sand LLC; and FTS International, Inc.'s sand mining operations, resin coating plants and distribution terminals. In October 2014, Fairmont completed an initial public offering that raised $400 million of proceeds and began trading on the New York Stock Exchange under the symbol FMSA.

BLUE POINT CAPITAL PARTNERS

Blue Point Capital Partners is a private equity firm managing more than $800 million in committed capital. The firm invests in manufacturing, distribution and service businesses generating $20 million to $200 million in revenue. Since June 2013, Blue Point completed acquisitions of four new platforms and two add-ons, including The Hilsinger Company, Ortholite, Trademark Global, Inc., Shnier-Gesco LP, S&S and Onamac. Over the past few months, the firm divested Cook & Boardman, JTM Foods and Callison, which resulted in an average return in those deals of 4.7x invested capital. Plus, in November 2014, the Blue Point Capital III fund was closed at the hard cap of $425 million with significant excess demand due to the fund's recent performance.

The 2015 ACG Cleveland Deal Maker Awards platinum sponsors are Benesch, First Merit, Grant Thornton, KeyBanc Capital Markets, Merrill Corporation and Oswald Cos.