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# Ready on Day One

## *Planning for M&A Integration Success*

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# Welcome and Introduction

## PRESENTERS

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# Agenda

1. Overview of the Importance of Integration Planning
2. Running an Effective Integration Process, including Considerations for each Stage of a Transaction
3. Regulatory Issues
4. Managing Integration Post-Closing – Day 1 to 100

# Key Takeaways

- Successful M&A teams recognize that integration planning starts at the earliest stages of the deal.
- Buyer should approach integration with clear and specific objectives and a defined process.
- Integration process moves in tandem with the course of the deal.
- Develop a playbook – plan, implement, evaluate, repeat.

# The Integration Challenge

## Reasons that M&A integrations fail to meet expectations

| **Failure** to articulate coherent **vision and strategy** | **Failure** to completely quantify and capture deal **value** | **Failure** of **Control** of the Integration process | **Failure** to understand the impact of significant **change** |
|---|---|---|---|
| ▸ Investment thesis and deal value drivers/value proposition not understood<br>▸ Failure to make key decisions about the newly created operating model<br>▸ Failure to prioritize (and mitigate) key integration risks<br>▸ Integration strategy and approach not aligned to the goals of the deal | ▸ Areas of opportunity identified not exhaustive<br>▸ Sources of value not clearly defined<br>▸ Poor prioritization/ understanding of “Quick Wins”<br>▸ Insufficient involvement of line owners<br>▸ Lack of post close confirmatory diligence/ target updating<br>▸ Lack of ongoing value tracking | ▸ Underestimating capability and capacity<br>▸ Lack of program leadership and target involvement<br>▸ Lack of standardized tools and approaches<br>▸ Inefficient decision making due to poor structure and governance<br>▸ Overly complex bureaucracy focused on integration for its own sake, rather than on operating the business and deal value | ▸ Loss of critical talent<br>▸ Customer defection<br>▸ No plan to understand cultural issues<br>▸ Underestimating/starting Communications planning too late |

**Which Creates…**

**Organizational uncertainty** | **Missed synergy targets** | **Loss of current value** | **Loss of talent Poor morale**

# The Integration Challenge

## Failing to develop and implement an integration strategy and process can result in:

- Failure to obtain the deal’s business objectives
- Delays in capturing synergies and deal value
- Loss of customers and key vendors
- Poor morale and loss of key talent

# Risks Can Be Managed

- It begins with careful and continual coordination between the business team and the legal team.
- Make integration a priority from the beginning.
- Treat integration as a process with milestones – the same as with the transaction.

# Running an Effective Integration Process

1. Understand the Key Business Objectives
2. Consider the Impact of Deal Structure
3. Build an Integration Team
4. Manage Key Integration Workstreams
5. Be mindful of Regulatory Considerations

# Understanding Business Objectives

## Spectrum of Integration Models between light-touch and full integration:

– **Light-Touch Integration** – Intention to leave the target’s business and operations intact; generally market-based synergies were not the key objective in acquiring the target.

– **Full Integration** – Full integration between the buyer’s business / business unit and the target’s business; generally operational synergies were a key driver for the deal.

# Decide on the Overall Integration Strategy

## What is the most important priority for this transaction?

- Culture
- Personal outreach to target team
- Customer preservation
- Employee comp/ benefits
- IT/ Tech service continuity

# Impact of Deal Structure

- Integration objectives will often drive deal structure
  - If speed is a priority = simultaneous sign and close
  - If a large number of employees need to be onboarded, it could mean a sign and delayed closing works best
  - Concerns about customer and supplier retention may be managed by a merger or stock purchase vs. an asset purchase
- But non-integration factors can limit the structure
  - Public target vs. private target
  - Strategic buyer vs. financial buyer
  - Regulatory considerations

# Building an Integration Team

- Determine appropriate person or persons to lead the integration effort – both before and after signing
  - BD Personnel
  - Head/VP of a Business Unit
  - Outside consultant or counsel
- Additional Team Structure
  - Create sub-teams to address each core functional area - e.g., IT, HR, contracts, finance, accounting, marketing, sales, tax, legal etc.
  - Appoint Team Leads
  - Decide how many people to include – is it better to be lean or thorough
- Role of Team Lead
  - Understand the business strategy for the deal and work closely with the BD team
  - Act as the point person for each relevant workstream
  - Know the correct contact person to escalate issues

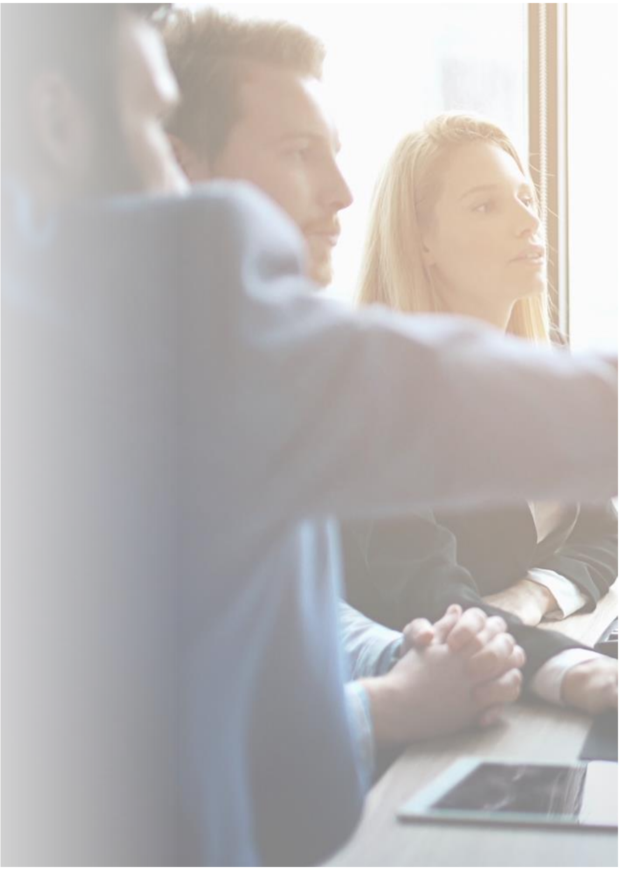
# Decide on Regular Meeting Cadence

- How often does the full integration team and each of the sub-teams need to meet in order to stay on course for Day 1
- How many people need to be on each call?
- Consider standardized reporting methods to track meetings, diligence issues, progress on integration steps
- Sub-Team reports can be aggregated into an integration status report that is disseminated to all members of the full team
- Core Integration Team can review and adjust integration direction and strategy as necessary

In-house counsel will play a critical role in numerous aspects of the integration project management team.

# Integration Workstreams Operate in Tandem with Deal Flow

- Integration strategy plays a role at every stage in an M&A transaction
- Implement a timeline and project management/integration plan organized by workstream and prioritizing closing date action items
- Determine key decision-makers
- Continuous communications and coordination is key to success



# Key Phases of M&A Transaction

**Term Sheet**

- Develop business case
- Obtain initial internal approval
- Negotiate and sign NDA, exclusivity and term sheet

**Due Diligence & Negotiation**

- Conduct full due diligence (legal, financial, technical, etc.)
- Negotiate and sign definitive agreements
- Obtain final internal approval

**Post-Closing**

- Onboard employees
- Implement Integration Plan
- Manage post-closing payments and deadlines

# Integration Planning During Term Sheet Phase

- Limited information available
- Initial business case is developed
  - Includes several assumptions about integration, which will need to be validated in diligence phase
- Term sheet often includes terms that bear on integration
  - Exclusivity period
  - Employee conditions /retention pool
  - Need for transition services
  - Deal structure

## BIG PICTURE

- Understand the impact the term sheet may have on integration strategy and plans

# Integration Planning During Due Diligence Phase

- Establish internal communication plan
- Embrace Target employees who are critical to integration success
- Begin developing detailed integration plan based on information learned during diligence

## BIG PICTURE

- Always have integration in the back of your mind when conducting due diligence
- Key due diligence areas:
  - HR and Benefits
  - Finance
  - IP, Privacy and IT
  - Contracts / Corporate / Governance
  - Litigation

# Integration Planning During Post-Closing Phase

- Time to implement the integration plans developed during the first two phases
  - Implement Day 1 integration plan at closing
  - Focus on short-term integration matters (employee experience and onboarding, data migration, transition services administration, etc.)
  - Continue planning and implementing mid- to long-term integration strategy

**BIG PICTURE**

- Integration leaders begin driving the integration strategy on Day 1 and beyond
- Focus on timelines and accountability to keep up the momentum post-close

# Key Workstream – Day 1 Task List

- Use diligence phase to develop critical Day 1 Task List
  - Solicit feedback from all functional teams to determine critical actions to be in place on Day 1
- Deal structure will impact Day 1 activities
  - Employee onboarding will differ in asset vs. stock structure
  - Carve-out transactions often require TSAs on Day 1
- Examples of Critical Day 1 Activities:
  - Customer communications
  - Employee onboarding/communications
  - Transition services agreement implementation
  - Regulatory notices (if applicable)
  - Governance changes (post-close officers/directors)

# Key Workstream – HR and Benefits

- Employee Compensation and Benefits Packages
  - Understand key differences between Target benefit plans/total compensation packages and your offerings
  - Develop employee compensation strategy for Target employees, including retention strategy
  - Determine treatment of outstanding equity awards
  - Manage employment agreements/ offer letters and messaging
- Address legal issues around downsizing/ layoffs (including under foreign laws)
- Change of control issues – single and double “triggers” on equity, severance rights
- Immigration issues; sponsorship for visa status

# Key Workstream – IT/IP Integration

- Perform an audit of Target's IP, including:
  - Confirm ownership of Target's IP
  - Identify measures to protect Target's IP (including required filings; assignments of invention)
  - Review key IP agreements
  - Assess Target's internal invention reporting process (how to capture new IP)
  - Conduct third party source code scans on key software products and develop remediation plans (if applicable)
- Determine plan to integrate servers and IT databases
- Address any data migration needs
- Identify and track third-party license renewals and expiration dates
- Develop strategy to handle any overlap or redundancy with IT systems/ third-party licenses

# Key Workstream – Back-Office Integration

- Finance:
  - Develop integration strategy for finance function at Target
  - Address any banking integration and transition needs
- Facilities:
  - Evaluate real property portfolio, including leased and owned real property
  - Track any upcoming renewals/expirations for leases
  - Plan for any required physical moves of people, offices, equipment, etc.
- Governance:
  - Conduct diligence on minute books, corporate policies and trainings
  - Identify any compliance gaps to be addressed during integration

# Key Workstream – Customer Integration

- Develop a customer communications plan
  - Determine any required customer consents or notices
- Develop a plan for moving Target’s customers onto your standard paper
- Handle situations where you and Target both have contracts with same customer
- Manage Target’s outstanding contract defaults, breaches, cures and claims
- Understand limitations that Target’s customer contracts place on Buyer (e.g., exclusivity, MFN pricing)

# Key Workstream – Litigation Continuity

- Assess merits/risks of existing litigation and claims
- Interview/manage outside counsel handling litigation, replace counsel
- Understand timing; filing deadlines
- Confirm available insurance coverages
- Evaluate and manage the litigation in light of indemnification provisions (e.g., can you settle case without Seller's consent?)

# Key Workstream – Internal and External Communications

- Internal communications strategy to cover communications with employees
  - May include a phased approach, focusing on key employees first
  - Internal communications do not stop at deal closing and are key to driving an effective integration post-close
- External communications strategy to cover communications with governmental authorities, regulators, suppliers, customers and joint venture partners
- Develop strategy for initial press release and subsequent public announcements
  - Definitive documentation often dictates terms of public announcements

# Continuous Communication

- Continuous communication between integration leads and deal execution leads prior to closing is key to successful integration
- Develop regular cadence for sharing information internally during diligence phase
  - Be flexible – surprises happen during diligence and post-close
  - Be prepared to adjust integration plans and design plans with flexibility in mind

# Transition Service Agreements

- In certain acquisitions (particularly carve-outs), Buyer is not acquiring all of the functions needed to run Target's business (e.g., shared IT or accounting infrastructure that is not being conveyed)
- These transactions often include a Transition Services Agreement (TSA) to address these gaps for a transitional period
- Potential role of legal department in this process:
  - Involve all relevant transition and operational teams in the negotiation of the TSA
  - Ensure all relevant operational and corporate groups are familiar with its terms
  - Keep track of the TSA term
  - Understand the interplay between TSA and acquisition agreement (e.g. impact on indemnity clauses; earn-outs)
  - Determine any required third-party consents required to perform services under the TSA

# Gun Jumping Considerations

- "Gun Jumping" and Unlawful Pre-Merger Coordination under Antitrust Laws
  - **Companies generally are prohibited from combining or coordinating their business activities prior to closing**
- **Planning**: Parties may jointly plan the integration of their operations, but (a) not implement those plans until closing, and (b) may not allow purchaser to begin directing business operations of target company
- **Information Exchange**: Parties may need to limit the exchange of their most competitively sensitive information during the HSR review period and prior to closing the transaction
  - Where there is a legitimate business need to share competitively sensitive information, clean team agreements are often utilized

# Gun Jumping: Procedural Safeguards for Integration Planning

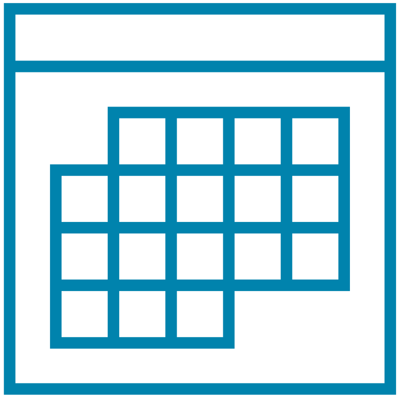
- Coordinate internal trainings on gun jumping for all deal team members
- If the parties contemplate any joint outreach to customers or affected stakeholders:
  - Limit the planning and joint communications to that which is absolutely necessary
  - Limit the number of individuals involved in the joint outreach and planning process
- Follow a documented integration planning process and avoid ad hoc meetings between parties
- Set up a record-keeping system that will enable the company to demonstrate that:
  - Confidential information exchanged by the parties for the purpose of integration planning was secured and not misused for any other purpose
  - Confidential information exchanged by the parties was disclosed only to the limited number of individuals participating in its preparation and review
  - Confidential information exchanged by the parties was destroyed at the end of the process if the transaction is not consummated

# Gun Jumping: Customer Communications Guideline

- Subject to the guidelines below, the parties can meet with customers or other stakeholders to discuss the proposed transaction and its benefits.
- Explain how the transaction, once consummated, will benefit customers and other stakeholders.
- Explain that any plans for the combined businesses are just plans and cannot be implemented until the transaction is closed.
- Explain that the parties remain independent and will continue to compete as usual until the transaction is closed.
- Explain that customers and other third parties should continue to deal with each company independently until the transaction is closed.
- Do not treat any joint outreach efforts as a "joint sales call." Treat it as a "get to know you" visit to explain the transaction.
- Do not discuss any pending competitive bid situations, contract terms or prices offered by either company.

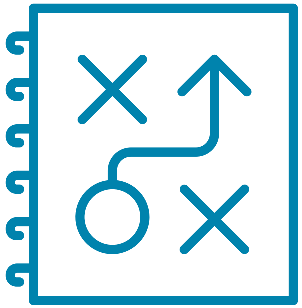
# Day 1 to Day 100

- The first 100 days after an M&A transaction has closed are critical to the long-term success of the transaction.
- As part of integration planning, set clear 100-day goals and metrics.
- Break down goals into smaller benchmarks by priority (e.g., first 30 days, first 60 days, first 100 days).
- Maintain continuous communication among cross-functional integration teams during this period.



# Integration Playbooks

- Playbooks are an important tool to guide integration efforts
- Key features of a well-developed playbook include:
  - Outlining a consistent approach to integration
  - Incorporating “lessons learned” from prior transactions
  - Setting forth roles and responsibilities of key stakeholders to the success of the integration
  - Setting forth step-by-step guidance broken down into each phase of the integration process
- Discussion with Panelists – Best practices / Lessons Learned



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# THANK YOU!