

M&A: Lessons Learned from a Godfather Offer

Is your board ready if the company receives a so-called godfather offer—an offer so strong it cannot be ignored—to purchase the company? Could social conflicts within the company be the undoing of an M&A deal that would benefit shareholders? Panelists at a recent NACD Carolinas Chapter program shared insights on board readiness, lessons learned, and the current state of the M&A market.

The Godfather Offer at Piedmont Natural Gas

According to Tom Skains, former chair and CEO of Piedmont Natural Gas Company, and director of Duke Energy Corporation, directors should remember two critical points about the possibility for M&A activity at their companies:

1. Always be prepared for the unexpected.
2. Everything is for sale at the right price.

In the case of Piedmont, Skains was aware of industry consolidation and how Piedmont performance compared to peers. However, given the company's stock price in 2015, he believed Piedmont would be among the last in the industry to be an acquisition target. Nonetheless, after two major companies in the field merged in what became the catalyst for Piedmont, the company was courted by two potential suitors, with offers as much as 50 percent over the company's trading value. Within two months, Duke Energy purchased Piedmont for \$4.9 billion.

How was the deal wrapped so quickly? Skains shared the formula for success.

- **Appoint a deal lead and keep flawless records.** Skains was the chief negotiator, and only a small group knew about the potential deal. Each day, Skains kept a log of his conversations and reviewed the log at the end of each day with his general counsel.
- **Be transparent with the board.** The board was fully informed. In fact, Skains updated the lead independent director frequently. Regular executive sessions of the board were held.
- **Deploy good deal hygiene.** The official record was the board minutes, and no note taking was permitted. No errant emails or texts were allowed.

Also, the deal also was able to move more quickly because conflicts were removed from the equation. In fact, to avoid potentially awkward social challenges between the acquiring company and the target, the potential roles of Piedmont leadership were removed as considerations until the deal was done.

Managing Social Issues in a Merger of Equals

Walter Wilkinson, founder and general partner of Kitty Hawk Capital, and lead independent director for QORVO, emphasized that many deals never get done because of social issues—that is, the future of a merging company's management team or its directors. He shared his experience as a board chair during a nine-month merger process involving two semiconductor companies. Social issues arose related to both CEOs, and then to which CFO would become the CFO for the consolidated company's new CEO. Also, four board members from each company board ultimately had seats on the consolidated board, but information had to be limited so those exiting would not have personal concerns during the negotiations. Eventually, the merger was successful; however, these issues took time to resolve.

For more guidance on M&A, Wilkinson recommended NACD's recent article, "[Navigating M&A Deals in an Uncertain Environment: Five Questions for Directors.](#)"

M&A – Going Strong

Tim Wielechowski, managing director in the Mergers & Acquisitions Group at Wells Fargo Securities, shared a bright picture of the M&A market:

- Despite the fact that M&A activity was slightly down in 2016 from a record year in 2015, **the M&A market continues to be healthy and robust**. In 2017, volume year to date has surpassed last year's volume for the same time period. Valuations remain high.
- **Private equity participation has been increasing**, competing with strategic buyers.
- It is common for deals to be over-equitized in order to get them done, and **40 percent equity contribution is typical**.
- **CEO optimism is strong** due to the anticipated pro-business environment.

Chris Gyves, a partner and chair of the public company advisory practice at Womble Carlyle Sandridge & Rice LLP, expertly moderated the panel. NACD Carolinas would like to thank him and the panelists for sharing their experiences with attendees.

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