NDI Executive Exchange

Evaluating Acquisitions in the Boardroom

1. M&A activity should not be a standalone strategy, but rather a component of a company's overall growth strategy. Having an acquisition strategy in place prior to evaluating a specific acquisition opportunity will enable the Board to more quickly and accurately assess the suitability of an acquisition target when an acquisition opportunity arises.

2. Prior to evaluating a specific acquisition opportunity, the Board and management should discuss the company's acquisition strategy, including acceptable transaction and risk metrics, potential acquisition targets and opportunities, risks associated with certain types of acquisition targets and potential funding sources. The company's acquisition strategy may include the engagement of a buy-side financial adviser or parameters for determining if and when the company will engage a financial adviser.

3. The Board and management should work together to develop a plan of communication including the frequency with which, and in what format, information regarding acquisition opportunities should be communicated to the Board. The Board should also agree on, and clearly articulate to management, which types of issues and developments regarding acquisition opportunities it wants to be informed of outside of the regularly scheduled board meeting process.

4. As a preliminary matter, the Board should assess the following as part of its initial evaluation of a proposed acquisition: (1) the fit between the company's acquisition strategy and the anticipated return of the proposed transaction, (2) the assumptions being used by management in evaluating and/or valuing the proposed acquisition and whether such assumptions are realistic and risks related thereto, (3) the likelihood that the estimated value can be realized, and (4) what the metrics of success of integration and performance of the acquired business will be going forward.

5. The Board's evaluation of a proposed acquisition should include the identification and evaluation of material business and legal risks related to due diligence findings, deal structure and transaction terms. The Board should determine how these risks may be mitigated, including whether representations and warranties insurance should be used, whether another deal structure might be more beneficial to the company, and whether the terms can be negotiated to better serve the company. Finally, the Board must consider whether the acquisition is advisable given such risks.

6. The Board should maintain the appropriate level of skepticism: the Board should analyze, question and test the assumptions driving the proposed acquisition throughout the evaluation process.

7. As part of the acquisition evaluation process, it is important that the Board consider non-financial metrics. The Board and management should identify whether the acquisition target fits within the company's culture and the impact a mismatch in company culture might have on the anticipated success of a proposed transaction.

8. Even when the evaluation timeline is compressed, in order that the Board may comport with its fiduciary duties, the Board must ensure that minimum standards of due diligence review are met, including involving the appropriate outside advisors and focusing review on major issues that might impact the value of the acquired business going forward. In addition, any Board action to approve a significant proposed acquisition should be taken at least two meetings, one of which should be an in-person meeting.

9. The company's acquisition strategy should include a process for measuring / evaluating the success of each acquisition post-closing. The Board and management should conduct post-closing analysis to improve future acquisition performance and should evaluate the acquisition process itself to identify areas for improvement.

10. The Board should take a flexible and dynamic approach to the acquisition evaluation process and should ensure that resources are reallocated appropriately as circumstances or considerations with respect to the proposed acquisition change. For highly-acquisitive companies, the Board should consider adding an M&A discussion to its regular meeting agenda to develop and discuss, on a regular basis, the company's acquisition strategy and identify the types of acquisitions that would advance such strategy. The Board should also consider developing an M&A investor communications plan.