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TOP TAKEAWAYS

Evaluating Acquisitions In The Boardroom

1. The Board's involvement in the acquisition process should begin before any specific acquisition opportunity arises. The Board and management should 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 and management should also have a parallel divestiture strategy, pursuant to which the Board and management should continually evaluate business segments and whether they still fit with the company's overall growth strategy.

2. The Board should identify and select the internal and external leaders to assist with evaluating a potential acquisition. The transaction team should include leaders that will challenge management and the Board on important assumptions or findings. The team assisting the Board with evaluating a potential acquisition should also include leaders who will take ownership of the overall evaluation process and maintain an open line of communicate with internal and external team members.

3. The Board should recognize that due diligence is critical to the success of an acquisition. During the due diligence process, the Board should ensure that management and the company's outside advisors are focused on the material issues that will impact the acquired business going forward, appropriately evaluate those issues and negotiate the terms of the acquisition to account for those issues. The Board should scrutinize a proposed acquisition to determine material issues that will impact the overall transaction value.

4. The Board's evaluation of a proposed acquisition should include the identification and evaluation of material risks, including business risks, as well as legal risks related to the acquisition process, structure and terms. The Board should determine how these risks may be mitigated and if the acquisition is advisable in light of such risks. The use of representations and warranties insurance has recently become a more common method to mitigate risks relating to liabilities.

5. The Board should identify and evaluate if it has the proper resources and right skill set to effectively complete a cross-border acquisition. Cross-border transactions also present a unique set of cultural issues and the Board should identify those cultural issues early in the acquisition process.

6. The Board's evaluation of a proposed acquisition should focus heavily on management's proposed strategy for integrating the acquired business. The success or failure of an acquisition often hinges on the acquiring company's ability to integrate successfully the acquired business. The Board should review and evaluate the proposed integration strategy beginning early in the acquisition process and continuing after the completion of the acquisition.

7. The Board should consider whether the proposed acquisition is the best use of the company's resources (both human and monetary capital), what benefits and synergies may be recognized by the company as a result of the proposed acquisition and whether those benefits and synergies are obtainable.

8. The Board should ask the "tough questions" regarding a proposed acquisition, maintain an appropriate level of skepticism and understand the key terms of the acquisition agreement. After taking into account all relevant factors related to the proposed acquisition, the Board must ultimately consider whether the proposed acquisition is in the best interest of the company and its shareholders.

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9. Board action to approve a significant proposed acquisition should be taken at least two meetings, one of which should be an in-person meeting, and the meeting agenda and materials should be provided to the Board sufficiently in advance of the meeting. At the meeting, the Board should be apprised of its fiduciary duties and presented with all relevant information necessary for the Board to act on an informed basis. The Board's involvement throughout the acquisition process – beginning with the development of an acquisition strategy, through the selection of advisers, oversight of due diligence and the evaluation of the proposed acquisition, and ending with the approval of the acquisition – must be informed and conducted in a manner consistent with the Board's fiduciary duties of care and loyalty.

10. Following the completion of an acquisition, the Board and management should review which aspects of the acquisition process were successful and which aspects of the acquisition process could be improved. Using this information, the Board and management can refine and improve the company's acquisition strategy for future acquisitions based on lessons learned.

For more information

For more information on Evaluating Acquisitions In The Boardroom, please feel free to contact the moderator directly:

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