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A Business Law Update

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# Every Deal Tells a Story: Communicating With Shareholders Regarding M&A Transactions

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When a company's management and board decide to move forward with a proposed merger or acquisition, they do so believing the deal will be in the long-term interests of the company and relevant stakeholders. They've crunched the numbers, looked at the synergies and redundancies, and concluded that the business case for the transaction is sound.

But while the board and management may be satisfied, the ultimate arbiters of whether the deal will proceed – the company's shareholders – still need to approve most such transactions.

Accordingly, a clear, coordinated and consistent communication strategy for shareholders is essential to the consummation of a transaction. Whether the shareholders are sophisticated fund managers at major financial institutions and hedge funds or individual non-professional investors, institutional and individual investors alike are rarely enthused by rapid change and the uncertainty that comes with it. Unless management can address shareholder concerns and make a compelling case for why the deal will benefit them specifically, getting any needed assent can be a tall order. Moreover, beyond risking the M&A transaction itself, poor shareholder communication can and does lead to costly and disruptive shareholder litigation.

## Craft a Compelling Narrative

The key to communicating effectively with shareholders is to develop and present a strong narrative explaining the merits of the deal and, often more importantly, the likely consequences of non-acceptance. While the devil is always in the details, those details need to be part of a larger, coherent story that provides the rationale for management's decision to move forward.

The rationale should consist of a few core messages that explain why the transaction is in the best interest of and will create value for shareholders. The story should follow the company's stated business strategies and value creation plans and should anticipate and address shareholder questions and skepticism. At minimum, make sure that your deal narrative answers:

- Why the deal is in the shareholders' best interests.
- Why the seller is selling to the acquiring company now, or why the acquiring company is pursuing the target.
- Whether the deal is strategic or financial.
- How the offer or purchase price is fair and reasonable, and the process that led to such purchase price.
- How the acquired company will be more valuable as part of the acquirer or vice versa.
- What the revenue and expense synergies are.
- What is the long-term strategy for the combined companies.
- What other alternatives to the transaction were considered and why those alternatives are riskier, less lucrative, or otherwise less desirable.

**A Holistic Approach**

Of course, shareholders aren't the only constituents whose consent and approval are critical to a transaction's success. The interests of employees, customers, strategic business partners and others can be implicated in a deal, and each group of stakeholders has its own concerns, priorities, and objectives. Even among shareholders, the interests and goals of institutional investors may differ from those of individual investors.

While a company's messaging may need to be tailored and focused on addressing these differing perspectives, the core message and transaction rationale should be consistent across all communications. A holistic company-wide approach led by a dedicated and experienced individual or team focused on the communications aspect of the transaction can be the key to implementing an effective strategy. Upper management and relationship managers should be ready with talking points to ensure a united narrative when discussing the transaction with customers, suppliers and other interested stakeholders.

**Be Transparent With Information**

Shareholders have a right to review all material information necessary for them to consider a merger or acquisition transaction. Opposed or skeptical shareholders can use a lack of adequate disclosure as a basis to threaten or delay the transaction. A temporary injunction, or even the threat of one or similar litigation, can throw off a carefully crafted transaction timeline and present other negative implications that could imperil a deal.

From a practical standpoint, shareholder communications should also include details on the mechanics and timing of shareholder acceptance. If such mechanical details are not included (or if they're not clear), shareholders often lose focus on the broader narrative and business case being presented to them. Accordingly, a company should clearly explain what is being asked for, how acceptance can be made, and any applicable deadlines.

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As one of Michigan's leading M&A firms, Bodman understands the critical role shareholder communication plays in the ultimate success of a deal. We work with business owners and officers to ensure their plans and approaches for an acquisition or strategic partnership put them in the best position to consummate a transaction and realize its benefits. Contact your Bodman attorney, or Frank Manley or Ryan Olson of **Bodman's Business Practice Group**, to learn more about how we can help. Bodman may not be able to respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.


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