# WHY M&A DEALS BREAK DOWN
## A COMMERCIAL BANKING PERSPECTIVE

Citizens Commercial Banking®

*Mergers and acquisitions continue to be one of the primary tactics for achieving corporate growth in the current economic environment. Surprisingly, though, many of the transactions buyers and sellers initiate never actually close.*

*Our experience shows that M&A deals often break down due to 5 common pitfalls. Buyers and sellers who take steps to anticipate and address these can dramatically improve the potential for the deal's success.*

## 1. NO BOARD/SHAREHOLDER BUY-IN

An M&A deal might look fully baked when the parties sign the letter of intent (LOI). However, dealmakers need to understand that there is still a long way to go after the "handshake", including delivering the required authorizations. This generally means board approval and can include shareholder consent. Failure to do so will doom a deal before it gets off the ground.

To avoid this, senior management from both parties should ensure directors are on board with the transaction prior to executing the LOI, and be able to confidently predict the support of shareholders, if required for closing. Otherwise, the parties could incur significant costs and diversion of resources, only to find out they cannot close the M&A deal.

## 2. INCOMPLETE DISCLOSURE

Due diligence to ensure complete, verified financial disclosure is a critical factor in maintaining trust and avoiding unpleasant surprises for buyers and sellers alike.

Quality of Earnings audits confirm financial accuracy and can help validate forecasted performance. These are how parties can maintain clarity and transparency regarding key business drivers, including revenue, receivables, inventory, recurring sales and expenses, growth in revenue relative to growth in earnings, and other factors that could directly impact valuations. These audits also reveal any off-balance sheet or contingent liabilities that could impact the company. Any inconsistencies or red flags could dampen a buyer's enthusiasm to move forward.

Less than full disclosure – "what else were we not told" – could force dreaded renegotiation, a major cause of frustrating delays and toxic outcomes. Nothing is more aggravating for parties than an unexpected revelation that could – and probably should – have been discovered if proper due diligence had been done. Credibility and trust can be easily destroyed in the wasted time and effort it takes to redraft terms previously agreed upon.

## 3. LACK OF M&A EXPERIENCE

Every deal brings different challenges, but a lack of M&A experience and thorough understanding of market practices can lead to greater frustration and deal fatigue on both sides.

To avoid going it alone, parties should consider engaging key players to comprise their deal team, including:

- A strong banking partner with competent and licensed professionals
- A transaction law firm with substantial tax expertise
- A transaction accounting firm

In addition, involving key line managers early in discussions enables the business to set more accurate and realistic performance, staffing and financial benchmarks.

## 4. DEAL COMPLEXITY

While most M&A transactions are inherently complex – think acquirer equity, purchase-price adjustments, earnouts and contingent rights – there are strategies that experienced M&A transaction professionals can use to maneuver these complexities.

To ensure parties can and will live up to their agreements, it is important to:

- **Work with M&A advisors** to understand the required financial, legal, tax reporting, valuation and regulatory components needed to complete the transaction.
- **Develop a concise plan** and deadlines for reaching transaction goals.
- **Determine the implications** of completing the M&A transaction, particularly paying attention to tax implications, debt covenants and any applicable existing agreements.

### Anticipate Required Regulatory Filings

- Typically, any deal of more than $80.8 million must be reported to the Federal Trade Commission and the Department of Justice for review.
- These deals must be filed, pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which is designed to protect against anticompetitive M&As.
- Additional regulations come into play for specific industries or if the deal involves a foreign company.

## 5. LACK OF PROCESS AND A TIMETABLE

Process and timing breakdowns – perhaps the most unfortunate of all potential pitfalls – could in many cases be avoided with more careful planning upfront.

Failure to establish and follow a defined process likely means key steps may be missed or underemphasized during negotiations. In fact, parties should avoid even the appearance of disorganization and lack of preparation that could turn off interested parties before they even sit down at the table.

Timely performance is key to avoiding frustration and deal fatigue – perennial deal busters. Leaders have to keep their teams focused on moving forward with a timeline that includes concrete dates for each task. They should move quickly to resolve the inevitable unexpected issues and delays but avoid becoming bogged down in negotiations that will have little impact on the outcome.

Selling or acquiring a business can be extraordinarily stressful, even under the best of circumstances. Regardless of the parties' depth of experience in the M&A market, they should keep in mind that each deal is unique, bringing its own set of potential pitfalls for the unwary.

Whether a prospective buyer or hopeful seller, most players would do well to seek a third-party perspective on valuation matters and other variables. This can inject the objectivity and dispassionate analysis needed to get a deal off on the right foot to begin with – or back on track should either party falter.

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