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Strategic Considerations of M&A Projects

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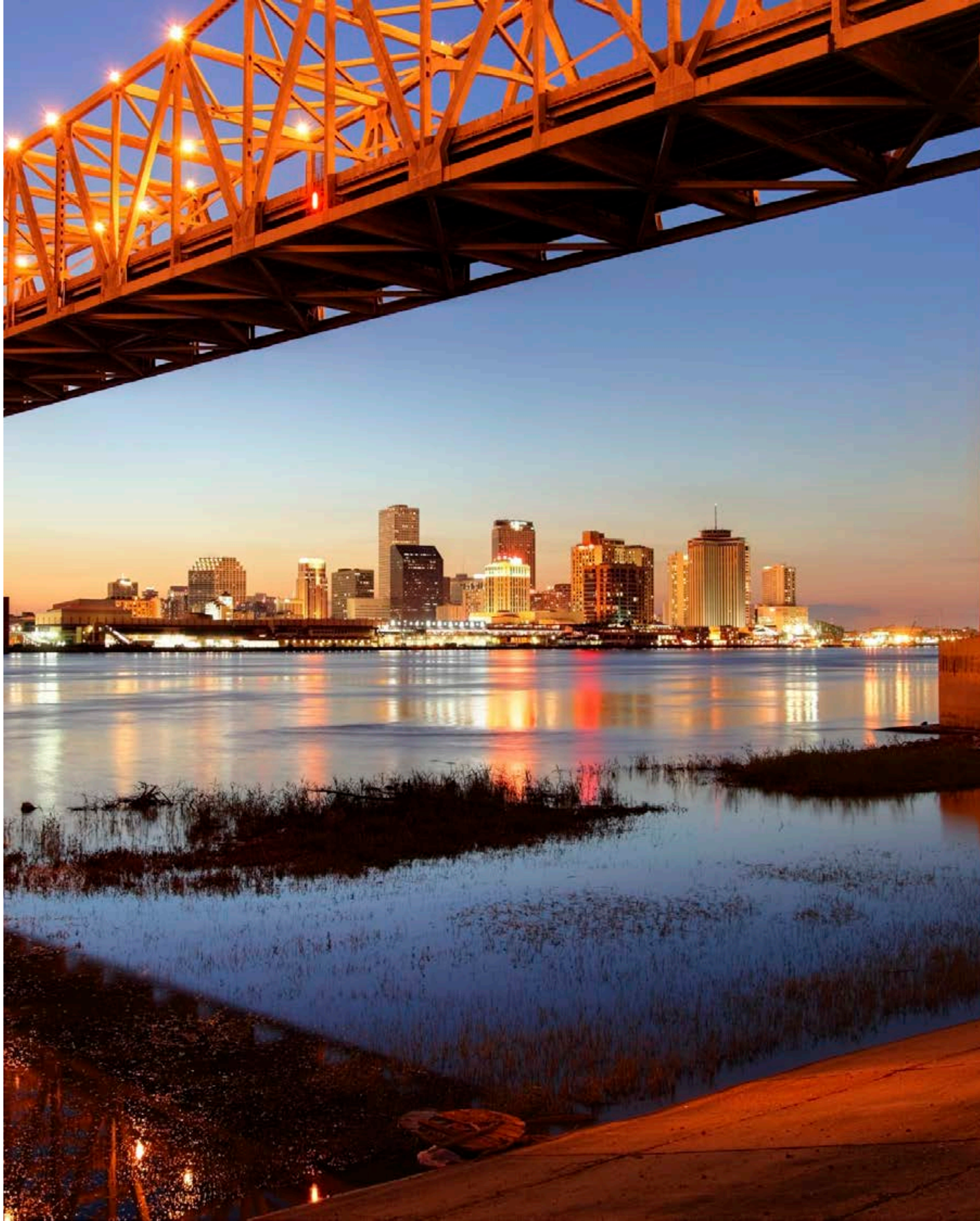
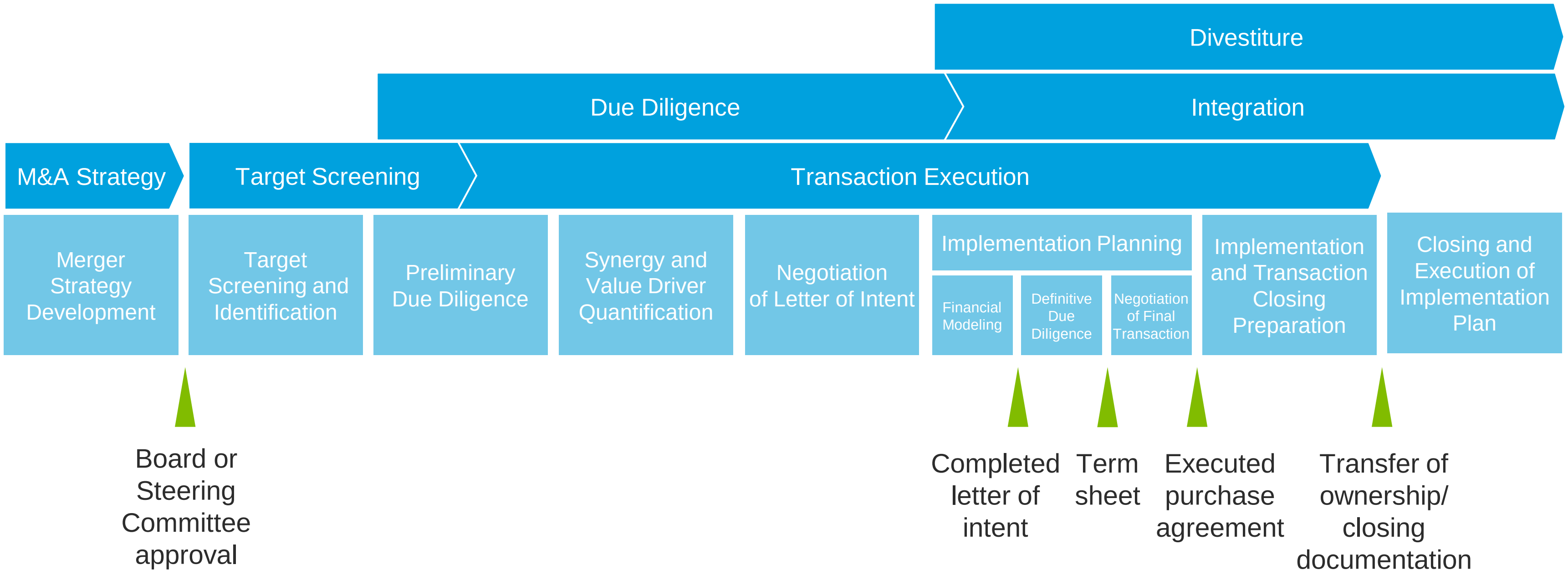


Agenda

- ❑ M&A Lifecycle
- ❑ Government Contract Compliance Diligence
- ❑ Purchase Price Adjustments
  - ❑ Overview of Purchase Price Adjustments
  - ❑ Closing Balance Sheet Adjustments
  - ❑ Commonly Disputed Balance Sheet Accounts
  - ❑ Considerations for Avoiding Post-Closing M&A Disputes
- ❑ FCPA
  - ❑ What is FCPA?
  - ❑ Industry and M&A Considerations
  - ❑ Mitigating Corruption Risks
- ❑ Open Discussion

M&A Lifecycle

Management should adopt a multi-disciplinary approach to maintain focus on the most critical elements of a deal on a real-time basis.



M&A Transactions: Government Contracts Compliance

Government Contracts Compliance
Increase in M&A Activity

Increase in M&A activity across the government contracts industry

Engineering & construction firms are performing government contracts in the United States and abroad related to pipeline construction, facilities design and construction, etc.

- Significant risks for engineering & construction firms without prior government contracts background in acquiring government contractors
- General compliance risks related to insufficient due diligence and potential post-acquisition costs

Government Contracts Compliance
Current Regulatory Environment and Market

Risks Relating to Federal Acquisition Regulation (“FAR”) cost principles, Cost Accounting Standards (“CAS”) compliance, and contractor business systems

- Understanding FAR unallowable cost principles
- Full CAS Coverage, Modified CAS coverage, and CAS exemptions
- Risks of unaudited or noncompliant business systems
- Truth in Negotiations Act certified cost or pricing data

Although the Defense Contract Audit Agency (“DCAA”) has made incurred cost audits a priority, contractors are continuing to experience a significant backlog of unaudited indirect rate proposals

Pre-Integration

Understanding the Target Compliance Environment

Key Questions:

- What is the tone at the top?
- Does target management understand government contracts compliance?
- Does target management place a priority on government contracts compliance?
- Who are the key players responsible for compliance?
- Do they have appropriate background and experience?
- Does the entity as a whole have significant experience in government contracts or do they focus primarily on commercial contracts?

Pre-Integration
Target Compliance Risks

Understanding the target's contract mix over time

- ➢ Firm-fixed price, cost reimbursement, time and materials, etc.
- ➢ Schedule-based contracts and potential violations of the Price Reductions Clause

Relevant documents to understand compliance risks and the target's historical compliance record

- ➢ Code of conduct, employee handbook, etc.
- ➢ Evidence of Request for Equitable Adjustment ("REA"), claims, etc.
- ➢ Policies and procedures, specifically those relating to timekeeping, business systems, and unallowable costs
- ➢ Government auditor reports and determinations from the contracting officer (including those related to incurred cost submissions, CAS non-compliance issues, and business systems and withholdings)
- ➢ Accounting records supporting a questioned costs reserve for open audit years

Post-Integration
Assessing Compliance Risks

The US government can suspend or debar government contractors

- Can result from contractor fraud, violations of the False Claims Act, or other violations of law

Successor company may be responsible for disallowed costs related to open audit years or noncompliant processes identified during government audits

Consideration of indemnity for target noncompliance identified during due diligence, including those that could result in:

- Disallowed costs for open audit years
- Suspension or debarment
- Criminal or civil liability
- Termination of existing government contracts

Post-Integration
Other Potential Pitfalls

Integrating target company compliance processes

- Importance of correcting any compliance deficiencies identified during the due diligence process

Realignment of business units

- Structuring the business to segregate business units with government contracts
- Updating CAS Disclosure Statements to reflect the new business structure

Integration of financial applications (e.g., timekeeping, accounting, estimating systems)

- Considering the impact of target compliant systems vs. parent systems

Post-Integration
Other Potential Pitfalls (con't)

US Government contracts often require a contractor to notify the government of a change in ownership

The Anti-Assignment Act prohibits the contractor from assigning a prime contract

Novation
- FAR 42.12 governs when a novation is required (not required when change of ownership is from a stock purchase)
- Contractor requests that the contracting officer permit the transfer of its prime contracts

Recertification requirements for Small Business Administration exemptions
- If the target is a small business and its government contracts contain a small business representation, the successor company must re-certify its small business status to the contracting officer

Overview of Purchase Price Adjustments

Overview of Purchase Price Adjustments

This presentation covers an introduction to purchase price adjustment provisions and common issues that arise in post-closing purchase price adjustment disputes.

- Purchase price adjustment provisions often play a far more important role in the economics of an M&A transaction than a mere fine-tuning of the purchase price
- Not all clients want to avoid post-closing disputes. Especially for companies looking to close a deal quickly, seeking a post-closing purchase price adjustment may be part of overall strategy
- There are generally two types of purchase price adjustments:
  - "<u>Closing Balance Sheet Adjustments</u>" – adjustments based on the difference between a target amount of a balance sheet metric (e.g. working capital, net assets, or other measures) and the amount of the measure at the closing date
  - "Earnout Adjustments" – adjustments based on a provision that requires a Buyer to pay additional consideration to a Seller subsequent to the closing date if an acquired business meets certain contractually defined benchmarks

The contents of this presentation do not constitute legal advice

Closing Balance Sheet Adjustments

Closing Balance Sheet Adjustments

Why a Closing Balance Sheet Adjustment Provision?

- True-up of ownership risks and rewards
- Period of time between signing and closing can be long
  - Regulatory approvals
  - Financing arrangements
  - Finalize specific contractual provisions
- Comfort of reasonable business operations for both Buyer and Seller
- A second bite at the apple
- Alternative to addressing issues pre-closing

Closing Balance Sheet Adjustments

Adjustment Metric Considerations

Commonly encountered closing balance sheet adjustment metrics include:

<u>Balance Sheet Adjustment Mechanisms:</u>

- Change in net assets – <u>total</u> assets less <u>total</u> liabilities
- Change in working capital – <u>current</u> assets less <u>current</u> liabilities
- A variation of the change in net assets or working capital
  - Omission of certain assets or liabilities (e.g. intangibles, income taxes)
  - Omission of reserve accounts

<u>Income Statement Adjustment Mechanisms:</u>

- Change in net debt

Consider the dollar value and relative impact of accounts that are subjective to and/or involve management estimates – consider the potential risks and benefits to including or excluding these accounts in the balance sheet adjustment metric.

Closing Balance Sheet Adjustments

Preparation of Closing Balance Sheet

Most agreements call for one party to prepare the closing balance sheet, and give the other party the right to object within a specified period of time.

- Preparer has responsibility for making estimates and judgment calls
- Objector typically bears burden of proof in dispute resolution
- Typically Buyer prepares the closing balance sheet, but Buyer may have different views about how the business should be operated going forward <u>and</u> may not fully understand Seller's past practice

Consider whether Buyer or Seller should prepare the closing balance sheet

Closing Balance Sheet Adjustments

Historical Practice Considerations

What does “consistent with historical practice” mean?

- Timeframe – the past year? the past 3 years? What if there was an anomaly during the recent past?
- Does this term only apply to accounting-related issues, or marketing, sales, production and other functions that could impact the financial statements?
- What about subjective items such as management estimates? Is Seller expected to use the same assumptions, estimates and judgment of Buyer?
  - Ex: GAAP requires reserves for uncollectible receivables, but management judgment is used to determine when receivables are considered uncollectible
- What if only a portion of the business, rather than the whole legal entity, is the target of the transaction and there is no historical practice?

Consider defining the historical practices to be used for the closing financial statements

Commonly Disputed Financial Statement Accounts

Commonly Disputed F/S Accounts

Factors Which Commonly Lead to Disputes

Post-Closing disputes typically arise for one of several reasons, including disagreements regarding:

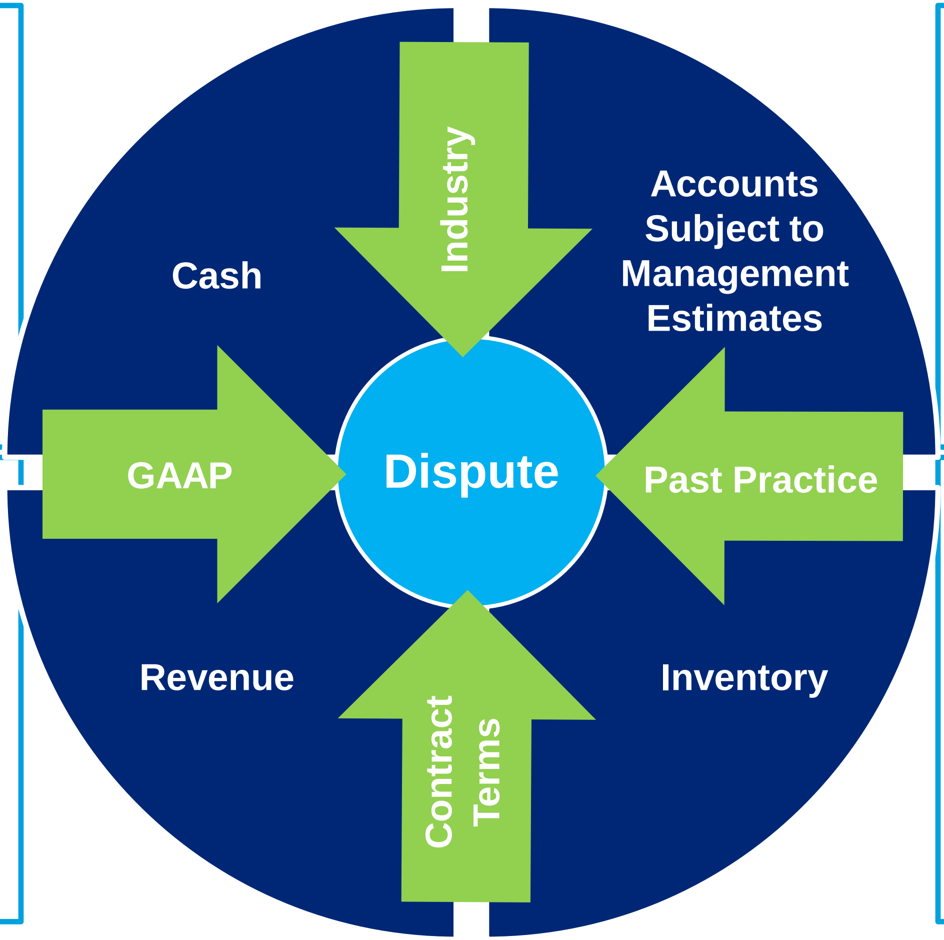
1. The appropriate application of Generally Accepted Accounting Principles; especially when there is more than one acceptable method or approach under GAAP.
2. The application and effect of any industry-specific practices, including relevant industry accounting guides.
3. The consistency (or lack thereof) between the Closing Statements and Seller's historical past practice
4. How the parties interpret various contract terms, especially when contract terms appear to contradict one another

Commonly Disputed F/S Accounts

The following eight financial statement accounts are commonly disputed by both parties post-closing

- GAAP definition of cash leaves room for interpretation
- Consider in-transit amounts
- Consider defining cash as “book cash” or “bank cash”
- Consider company’s past practice and industry-specific issues

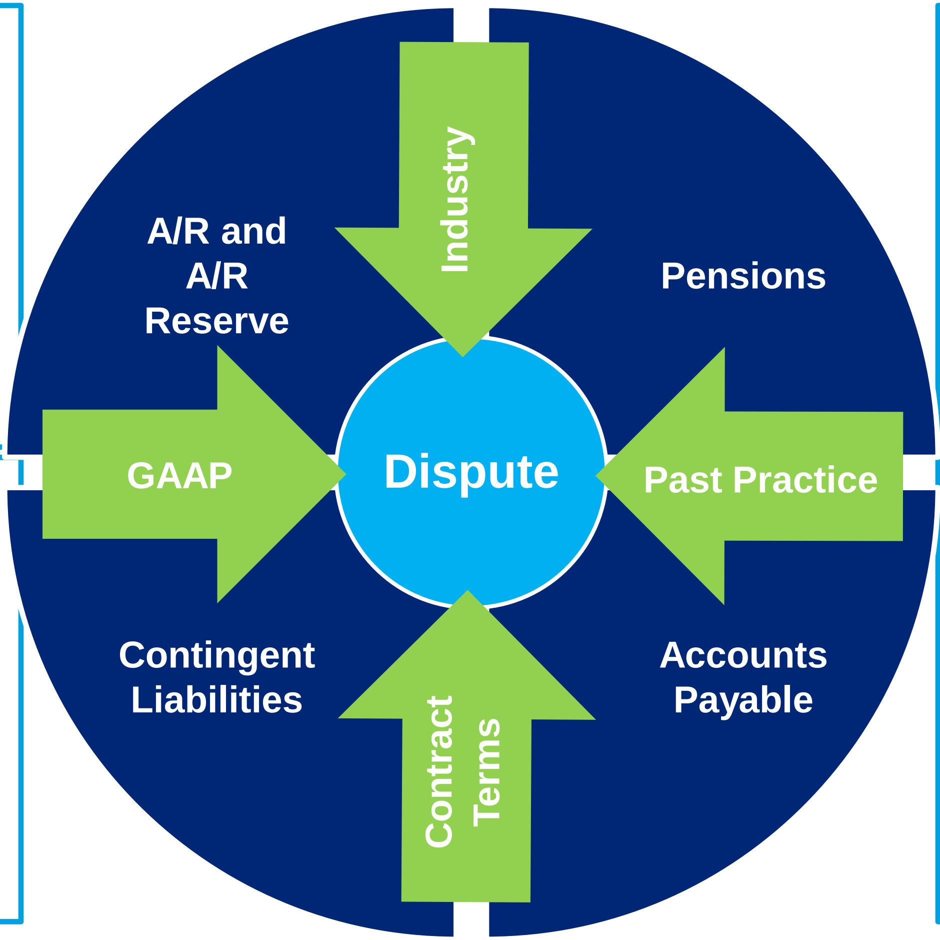
- GAAP v. past practice, consistency
- Consider whether the sale itself will make it difficult for the Buyer to follow Seller’s past practice?
- Consider including in the Agreement a description of Seller’s past practice
- Determine subsequent event period
- Impact of subsequent events



- Consider Seller’s normal operating cycle
- Consider a cut-off date for recognizing revenue for the purposes of the sale
- How will long-term and significant contracts/sales be accounted for?
- Consider how the corresponding A/R will be accounted for

- Do raw material costs fluctuate?
- Did Seller change it’s marketing strategy or sales process pre-close?
- Inventory reserves – how was excess, obsolete and damaged inventory calculated?
- How is work-in-process accounted for in the Sale?

Commonly Disputed F/S Accounts
(Continued)



- Seller can't control Buyer's post-closing efforts to collect outstanding A/R
- If Seller maintains cash in the sale they have incentive to collect outstanding A/R prior to close
- Consider the interplay between A/R write-offs and A/R reserves when drafting the Agreement

- Consider involving an actuary
- How will pension liabilities be valued, at the cost to the Buyer or Seller?
- Consider international pension laws and GAAP v. IFRS differences
- How are "contingent" or "vesting" pensions accounted for in the Agreement?
- How are IBNR liabilities calculated?

- How will un-recorded liabilities be handled? Through an indemnity claim?
- Consider whether these liabilities have been over-accrued or under-accrued
- Look for changes in strategy shortly prior to or following closing
- What is the availability of information?
- Consider the impact of subsequent events

- Completeness – does the Agreement consider expenses that have been incurred but not invoiced?
- What is the cut-off date?
- Consider requiring the Seller to provide evidence of expected debits to A/P

Considerations for Avoiding Post-Closing M&A Disputes

Considerations for Avoiding Post-Closing M&A Disputes

Basis of Accounting

- Clearly define the basis of accounting
  - US GAAP, International Financial Reporting Standards, tax basis, etc.
- Check for contradictions between purchase agreement definitions and accounting definitions
- Clearly define historical practices and associated timeframes.
  - Consider including certain of the company’s historical accounting policies in the Agreement, or otherwise define
- Consider whether period-end adjustments should be included or excluded for the purposes of the closing balance sheet
- Consider whether the impact of the transaction itself should be reflected in the post closing financial statements

Consistency is key. Accounting guidance, historical practice, and purchase agreement definitions should align

Considerations for Avoiding Post-Closing M&A Disputes

Discussion Question

GAAP is not black and white. In many cases, there are various acceptable methodologies under GAAP.

- What happens when the Buyer prepares the closing balance sheet using a different GAAP methodology than the Seller historically used?
- Can the Buyer argue that the Buyer’s GAAP approach produces a more reasonable result?

Considerations for Avoiding Post-Closing M&A Disputes

Timing

- Assess seasonality or business cycle concerns when setting the closing date
  - Closing at a slower time of year can help avoid timing complications
- Consider impact of time of day with respect to the closing date
  - Specify start of business, close of business, 11:59pm, etc.
  - Consider international impact – 11:59pm in New York may cause complications in China
- Specify whether the effects of the transaction itself will be included or excluded from the closing financial statements

Clearly define important time frames and timing considerations in the M&A agreement

Considerations for Avoiding Post-Closing M&A Disputes

Subsequent Events

GAAP defines subsequent events as material events or transactions that occur subsequent to the balance sheet date, but before the financial statements are issued, or available to be issued[1]

- Type I subsequent events – provide additional evidence with respect to conditions that existed as of the financial statement date, and affect the estimates in the financial statements
- Type II subsequent events – provide evidence with respect to conditions that did not exist at the financial statement date, but arose subsequently

GAAP requires recognition of Type I subsequent events in the financial statements.

To avoid a post-closing dispute, consider specifying the subsequent events period in the M&A agreement, and make sure that the requirements of the agreement are consistent with the parties' intentions.

1. ASC 855-10-20

Considerations for Avoiding Post-Closing M&A Disputes

Discussion Question

Identify if the following examples are Type I, Type II, or not a subsequent event? (Assume closing date is January 10, and closing balance sheet is delivered on March 1)

- Company's top customer declares bankruptcy on February 15
- A legal suit was filed against the company three years ago, and the verdict was announced on January 20
- A legal suit is filed against the company on January 31
- Last year, the company established an uncollectible reserve for a customer who hasn't paid its invoices for nearly two years. On April 15, the customer pays its outstanding invoices in full.

Subsequent events can be subject to interpretation unless clearly defined

Considerations for Avoiding Post-Closing M&A Disputes

Materiality

Materiality for accounting purposes is generally defined as an amount that would influence a user of a financial statement in making a judgment or decision.

- In purchase price adjustment disputes there are only two users of the closing date balance sheet – the Buyer and the Seller
- Since the amount in dispute may mean a dollar for dollar adjustment for one of the parties, materiality becomes much lower than in normal circumstances

Clearly define materiality in the M&A agreement

Considerations for Avoiding Post-Closing M&A Disputes

Aggregation

Financial statements generally consist of a large number of typically small amounts

- Consider whether objections may be made to the individually small amounts or only to balances at the financial statement line item level

Defining aggregation helps prevent "cherry picking" – objecting to amounts or transactions that benefit the party, while ignoring those that benefit the other side

Define the level of aggregation and specify that objections can be raised only if a line item is misstated in the aggregate

Considerations for Avoiding Post-Closing M&A Disputes

Access to Records

M&A agreements generally provide for the transfer of title to assets, including books and records, to the Buyer at the time of the Closing

- If there is a potential for any dispute (closing balance sheet adjustment or breach of representation claims), access to accounting and other books and records may be necessary to mount an adequate defense to the claim

Ensure that the M&A agreement allows for the Seller to keep copies of essential books and records, and/or that the Seller is permitted necessary access to the books and records acquired by the Buyer.

Considerations for Avoiding Post-Closing M&A Disputes

Overall Considerations When Defining Working Capital

- Seasonality of the company as it relates to the closing date
- Growth rate of the company
- Revenue model of the company
  - Bundling products, percentage of completion, etc.
- Availability of sufficient information for a specific division of the company for a carve-out sale
- Size (in dollars) of balance sheet accounts requiring significant judgment and estimates

Considerations for Avoiding Post-Closing M&A Disputes

Post-Closing Disputes May Still Arise

Even well-crafted, unambiguous purchase price adjustment provisions cannot prevent all post-closing disputes from arising due to factors such as:

- Subjective judgments and estimates inherent in the process of preparing the closing balance sheet
- Change in control of the acquired business
- Changes in the business and economic environment

Despite careful planning, purchase price adjustment provisions may still result in disputes. Consider the potential impact of unanticipated changes and estimates when drafting M&A agreement language.

What is the FCPA?

Overview of FCPA

- The Foreign Corrupt Practices Act “FCPA” is a US law enacted in 1977 after Watergate and revelations of foreign bribery involving U.S. companies. It was substantially amended in 1988 and 1998 (to expand law and bring FCPA into conformity with Organisation for Economic Co-operation and Development (“OECD”) Convention).

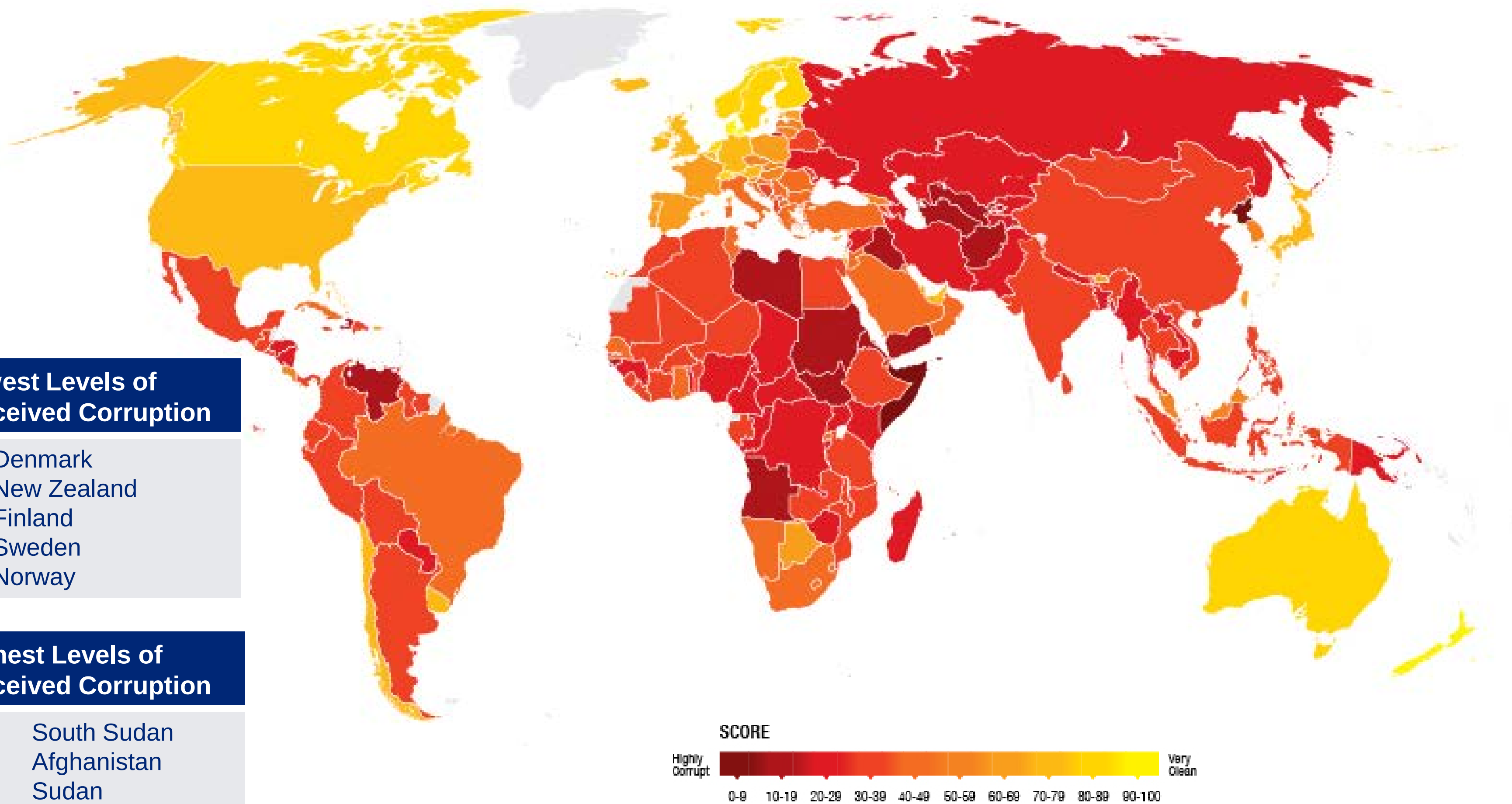
- It is dually enforced by both the United States Department of Justice (“DOJ”) and the Securities and Exchange Commission (“SEC”).

- The FCPA has two provisions:
  - The **Anti-Bribery Provision** states: “A company cannot corruptly make an offer, promise, or payment of ‘anything of value’ to a ‘foreign government official’ or politician for the ‘purpose of influencing his or her official actions’ for the advantage of the company” (17 U.S.C § 78dd-1 et seq.).
  - The **Books and Records Provision** requires companies who file reports with the SEC to maintain accurate books and records and also to maintain an adequate system of internal controls.

FCPA Penalties

- It is extremely important that companies and individuals abide by the FCPA, companies who don’t abide could be faced with significant criminal penalties:
  - **Anti-Bribery Provision**
    - Companies: Fines up to $2,000,000 per a violation (or twice the gain/loss)
    - Individuals: Fines up to $250,000 per a violation (or twice the gain/loss) and 5 years imprisonment
  - **Books and Records Provision**
    - Companies: Fines up to $25,000,000 per a violation (or twice the gain/loss)
    - Individuals: Fines up to $5,000,000 per a violation (or twice the gain/loss) and 20 years imprisonment
- In addition to criminal penalties, civil penalties may be imposed upon individuals and companies.
- Companies should also be aware that violations may result in suspension/debarment from contracting with federal government and debarment from development banks.

Transparency International Corruption Perceptions Index



Lowest Levels of Perceived Corruption

1. Denmark
2. New Zealand
3. Finland
4. Sweden
5. Norway

Highest Levels of Perceived Corruption

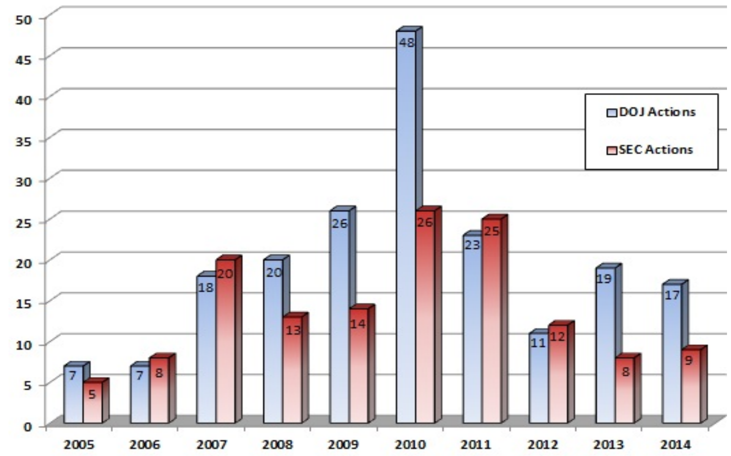
171. South Sudan
172. Afghanistan
173. Sudan
174 (t). North Korea
174 (t). Somalia

Source: Transparency International, 2014 Corruption Perceptions Index

Anti-Corruption Enforcement Trends

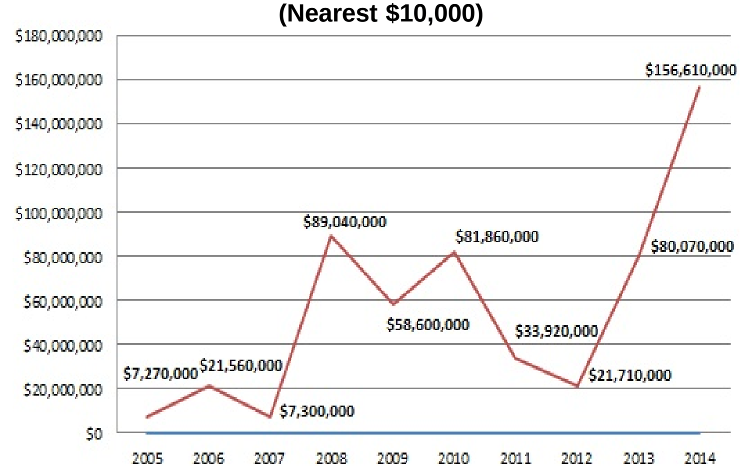
- The DOJ and SEC remained vigilant in their enforcement of the FCPA over the last calendar year:
  - While the number of enforcement actions are down, cases have involved significant fines/penalties (including the largest DOJ FCPA enforcement action of $772M)
  - Ongoing focus on conduct of third parties and individuals
  - Continued cross-border cooperation and anti-corruption enforcement with cases involving both US and global multinationals
- Additionally, the SEC continued to receive submissions from whistleblowers around the world in fiscal 2014 [(2)]
  - Largest award to date to a whistleblower ($30M)
  - 3,620 reports from throughout US and 60 foreign jurisdictions (highest number of foreign tips - UK, India, Canada and Australia)
  - 159 reports involved FCPA allegations (as compared to 149 and 115 in FY13 and FY12, respectively)
- Global regulators continue to focus on combatting corruption
  - Recent investigations/actions by authorities in the UK, Netherlands, Germany, Norway, China, Japan, Mexico and Brazil among others
  - Brazil Clean Companies Act (became effective in January 2014)

FCPA Enforcement Actions By Year [(1)]



Average Value of Corporate Sanctions [(1)]

(Nearest $10,000)



Sources: (1) Enforcement Actions By Year and Average Value of Corporate Sanctions (Gibson Dunn & Crutcher LLP); (2) 2014 Annual Report to Congress on the Dodd-Franke Whistleblower Program (SEC)

Industry and M&A Considerations

Industry and M&A Considerations

- The engineering and construction industries are highly susceptible to corruption risks because they are typically highly regulated with limited anti-corruption safeguards. Some industry specific FCPA risks include:
  - Interactions with government officials to obtain permits, licenses, and other approvals
  - Use of subcontractors, third party agents, and/or distributors
  - High-level of interaction with government officials and regulatory agents
  - Use of tender agent services (*e.g.,* consultants) when pursuing public tenders
  - Expenses (*e.g.,* entertainment, gifts, donations) for sales, promotion, and marketing activities

- In the past couple of years, many allegations of violating the FCPA have arisen from M&A activity.
  - Successor liability, which essentially means that an acquiring company can be held responsible for FCPA violations of a Target, has been a focus of the DOJ/SEC.

- When conducting M&A activity, there are many risks to the buyer and the seller including:
  - Legal Risks
  - Financial Risks
  - Reputational Risks

Mitigating Corruption Risks

Overview of M&A FCPA Due-Diligence Approach

Pre Transaction Closing

Task	Purpose
Strategy Assessment	Gain understanding of corruption risks
Risks Evaluation	Evaluate geographical, third party and business risks
Deal Evaluation	Perform compliance program gap assessments, transaction testing and interviews

Transaction Closing

Task	Purpose
Negotiation and Closing	Evaluate sufficiency of anti-bribery and anti-corruption representations and indemnification with regards to successor liability

Post Transaction Closing

Task	Purpose
Integration	Perform additional compliance gap assessment
Transformation	Develop effective, customized compliance programs and trainings

Mitigating Corruption Risks

- The SEC and DOJ recommend that to mitigate the aforementioned risks a buyer should:
  - Perform Thorough, Risk-Based Due-Diligence on Target
  - Include Protective Clauses in Transaction Documents
  - Perform Post-Closing Procedures

- In a number of cases, the DOJ/SEC have declined to charge companies with violating the FCPA when they performed proper due-diligence, voluntarily disclosed the conduct and remediated it.

> The “nature and quality” of pre-acquisition due diligence is “one of the most critical factors” that DOJ considers when making charging decisions in the M&A context.

- Former DOJ FCPA Unit Chief (Sept. 11, 2008)

Source: Criminal Division of the U.S. Department of Justice and Enforcement Division of the U.S. Securities and Exchange Commission, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (Nov. 14, 2012)

Due-Diligence Procedures

- Pre-closing and post-closing risk-based due-diligence should be performed by the buyer.
- Some representative due-diligence procedures to be performed on the Target's business include:

Business Area	Representative Due-Diligence Procedures
Policies and Procedures	Determine whether FCPA policies and procedures exist, Evaluate sufficiency of policies and procedures, Evaluate effectiveness of training program.
Interactions with Foreign Gov't Officials	Review sales to foreign government customers and level of regulatory interactions (*e.g.,* customs clearance, licensing, tax audits, etc.).
Travel, Gift, and Entertainment	Determine sufficiency of supporting documentation required by Target, Review approval process for different types of expenses (*e.g.,* cash advances, per diems, direct payments to vendors, etc.)
Political and Charitable Contributions	Review extent of political and charitable activity, review purpose, connections with business objectives, connections with local politicians, etc.
Internal Financial Controls	Evaluate adequacy of controls and examine petty cash practices.
Compliance History	Review prior violations and reputation/background of key business leaders.
Third Parties	Identify and assess risk with different intermediaries and design due diligence review of intermediaries based on risk assessment (*e.g.,* review payments).

Potential Pre-Closing Due-Diligence Limitations

The following issues may affect the amount or timing of due-diligence that can be completed by the buyer pre-closing:

- Insufficient time to conduct a thorough due diligence review
- Local legal restrictions that limit what information can be shared in advance of closing
- If the buyer and the Target are in the same industry, access to information may be restricted because of antitrust laws
- In certain regulated industries, companies may not be able to share sensitive information
- Confidentiality obligations

Protective Clauses in Transaction Documents

- Transaction documents, though necessary for a deal, are another tool that buyers can use to help mitigate FCPA risks.

- Provisions or representations that can be written into transaction documents include but are not limited to:
  - Representation that the Target has not and will not engage in corrupt conduct
  - Closing provision that states that the buyer shall have completed FCPA to the buyer's satisfaction
  - Provision that provides for indemnities from the seller for FCPA investigations and any applicable penalties
  - Provisions that allow for joint investigations and potentially disclosure of potential FCPA violations to the government

Source: Wilmer Hale*, "FCPA Consideration in M&A Transactions," May 14, 2014.*

Post-Closing Procedures

- The recommended procedures do not cease when the deal closes, instead there are additional procedures that should be completed post-closing.

- Some representative post-closing procedures include:
  - Apply the buyer's code of conduct, compliance policies, and FCPA and other anti-corruption procedures as quickly as practicable to new acquisitions
  - Train all levels of employees, and business partners and agents when appropriate, of acquired companies on FCPA, other anti-corruption laws, the company's code of conduct and compliance policies/procedures
  - Conduct an FCPA-specific audit of all newly acquired or merged businesses as quickly as practicable
  - Disclose any corrupt payments to the proper authorities

Source: Criminal Division of the U.S. Department of Justice and Enforcement Division of the U.S. Securities and Exchange Commission, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (Nov. 14, 2012)

Questions?

Conference Resources

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Appendix A: Elements of Effective Compliance Programs

Elements of Effective Compliance Programs

- A company's failure to prevent every single FCPA violation does not necessarily mean that a particular company's compliance program was not generally effective. Compliance programs should be tailored, dynamic, and rigorously implemented (avoid "one-size-fits-all" approach)
- The DOJ and SEC consider three FCPA compliance program factors:
  - Whether the program is well designed
  - Whether the program is being applied and enforced
  - Whether the program works
- They also consider:
  - Role of board of directors and senior management in building a "culture of compliance"
  - Importance of commitment to compliance at all levels of the business

Source: Criminal Division of the U.S. Department of Justice and Enforcement Division of the U.S. Securities and Exchange Commission, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (Nov. 14, 2012)

Elements of Effective Compliance Programs (cont.)

- The DOJ and SEC have warned against:
  - "one-size-fits-all" compliance programs (focus on low-risk markets and transactions, rather than high-risk areas and relationships)
  - compliance programs that "exist on paper" and are not regularly reviewed to identify opportunities for enhancement
- In recent guidance, the DOJ and SEC continue to emphasize that:
  - the "assessment of risk is fundamental to developing a strong compliance program"
  - controlled subsidiaries, affiliates, and joint ventures should be considered as part of FCPA compliance efforts
  - third party due diligence is essential, must be risk-based, and must include purposeful and intelligently designed monitoring
  - they will give "meaningful credit" to a company that implements a good-faith, risk-based compliance program (does the compliance program work and is there evidence to prove it?)

Compliance Program Elements
1. Commitment from Senior Management and a Clearly Articulated Policy Against Corruption
2. Code of Conduct and Compliance Policies and Procedures
3. Oversight, Autonomy, and Resources
4. Risk Assessment
5. Training and Continuing Advice
6. Incentives and Disciplinary Measures
7. Third Party Due Diligence and Payments
8. Confidential Reporting and Internal Investigation
9. Continuous Improvement: Periodic Testing and Review
10. M&A: Pre-Acquisition Due Diligence and Post-Acquisition Integration

Sources: U.S. Department of Justice and Securities and Exchange Commission, *"A Resource Guide to the U.S. Foreign Corrupt Practices Act,"* (Nov *14, 2012).* Deloitte Financial Advisory Services L*LP, "New FCPA Resource Guide: Ten things for legal and compliance officers to consider," 2013.*