FIFTH EDITION | CHAPTER 2

BEST PRACTICES OF THE BEST DEALMAKERS

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~ David A. Fergusson

THE CEO AND GLOBAL M&A STRATEGY

QUEST FOR GROWTH IN AN INTERCONNECTED WORLD

Introduction By David A. Fergusson | Editor

BEST PRACTICES OF THE BEST DEALMAKERS

Drawing on the experience and expertise of the "best in class" M&A professionals, The M&A Advisor, the world's premier financial leadership organization, together with Merrill Corporation, the leading provider of technology-enabled platforms for secure content sharing, regulated communications and disclosure services, publish the quintessential dealmakers guide series – *The Best Practices of the Best Dealmakers*. Profiling the proven strategies and unique experiences of the leading M&A practitioners, this series is distributed in regular installments for industry professionals in both print and interactive electronic media. Previously published features and chapters are also available in the online libraries of Merrill Corporation and The M&A Advisor.

INTRODUCTION

The 5th edition of the Best Practices series, *"Dealing with The CEO"*, is focused on the increasingly important role that M&A is playing in corporate growth strategies for companies around the world during this era of globalization. With Chapter 2, *"The CEO and Global M&A Strategy: Quest for Growth in an Interconnected World,"* we explore the CEO's role in the art of dealmaking.

In the development of this installment, we have enjoyed the opportunity to engage with and learn from a team of international M&A experts. And not surprisingly, the importance of teamwork, for both the envisioning and the execution of the corporate development roadmap, was a common thread throughout the discussions with our contributors. Effective collaboration between the CEO, corporate development leadership and their external financial, legal and operational advisors has never been more critical they insisted.

Cross border veteran, Marcello Hallacke of Jones Day in Brazil who has been providing trusted guidance for both Latin American and western market interests in their pioneering transnational efforts stressed the importance of trusted "local market" experts on both sides of the deal. While practicing M&A law in India often only resembles the Brazilian variety in title, Rabindra Jhunjhunwala, Partner in the Corporate Law practice group in the Mumbai office of Khaitan & Co., tells us of the importance of doing all that you can to ensure that the team on the opposite side of the deal is of the highest competency, even if that means advising the other team's CEO to change counsel mid-deal. Navigating market dominance through M&A is not for the faint of heart and Birch Lake CEO Jack Butler reminds us of that with his story of the CEO who engineered himself out of job in the interest of doing the best deal for his stakeholders – one of history's biggest transactions to date. Some CEO's choose to be the spiritual guides for their company's transactions, while others, like Horizon Global's CEO, A. Mark Zeffiro, tells us why he likes to be on the front line of the battleground – "in the weeds" in his words, with the team for all acquisitions.

Global Head of Corporate Development, Satish A. Raman credits his deeply established and trusted M&A advisory relationships with Sutherland Global Holdings growth to over 40,000 professionals in more than 60 locations worldwide. DC Advisory's Simon Tilly, the Managing Director and Head of the European Financial Sponsors Group at DC Advisory in London, brings his considerable experience to bear in sharing how the establishment of a clear vision, mission, and values by his client CEO's, consistently leads to global M&A success. And with global cross border M&A on the rise towards another record growth year, Olivier May, a Principal at Deloitte in Chicago with over 25 years M&A experience advising Fortune 500 clients, imparts that it's ultimately the collaborative effort, based on the CEO's strategy, that closes a global deal.

We are thankful to our experts for their candid insight with this chapter. It is my conclusion, that the importance of teamwork cannot be overstated as company leadership and trusted advisors continue to guide record breaking global M&A success.

I hope that you will enjoy reading the chronicles of our contributors and I look forward to hearing from you about your team's experiences in global M&A.

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The CEO and Global M&A Strategy: Quest for Growth In An Interconnected World

Part I: A CEO's View of Today's Global M&A Marketplace

"Capital is a very precious thing so I want to make absolutely sure that I'm on the ground floor. . . . My staff understands that I am going to be intimate in this area and when the deal is bigger than double digit millions, I will absolutely be in the weeds." – Mark Zeffiro, President and CEO, Horizon Global

After two consecutive years of torrid activity, including a record $4.28 trillion in 2015, the pace of global M&A slowed in the first half of 2016 as the result of an uncertain economic environment, worries about China's growth, the BREXIT referendum in the United Kingdom, and the elections in the United States. Although the value of all global M&A fell 26.8 percent to $1.32 trillion compared to the first half of 2015, the value of cross-border transactions declined much less, down 15.9 percent to $550.8 billion. As chronicled in the fourth edition of *Best Practices of the Best Dealmakers*, the shift from domestic to international deal making continues. And at the forefront of this shift are business leaders like A. Mark Zeffiro.

Zeffiro is President and CEO of Horizon Global (NYSE: HZN), a $650 million company that designs, manufactures and distributes a wide variety of high-quality, custom-engineered towing, trailering, cargo management and other related accessory products on a global basis, serving the automotive aftermarket, retail and original equipment channels. In 2015, Zeffiro became CEO when Horizon Global was spun off from TriMas Corporation (NYSE: TRS), a manufacturer and distributor of packaging, aerospace, energy and engineered components. During his 25-year business career, Zeffiro gained broad global and leadership experience across several diverse industries, including stints at General Electric and Black & Decker. At TriMas, he served as Executive Vice President and Chief Financial Officer and played an intimate role in the company's corporate development through cross-border M&A. It's no coincidence that the spin-off he now leads has "global" in its name.

Horizon Global's business strategy, Zeffiro says, is to expand its distribution channels into areas of Europe and South America where it sees growth potential. The company's customers range from large auto and equipment manufacturers – Ford, GM, John Deere – to retailers and "etailers" like WalMart and Amazon.com. Zeffiro says cross-border M&A plays a major role in addressing the company's ability to scale up its operations globally. "We are subscale in certain areas on the planet and the strategic processes that I have instituted here specifically address those areas in the world where we don't have the organic means to become number one or number two in the market," Zeffiro says. "So strategic M&A – where you can satisfy customers on a global basis – is central to our business goals."

Zeffiro believes that he is very hands-on in the M&A strategy process. "Capital is a very precious thing, so I want to make absolutely sure that I'm on the ground floor with an integrated plan. My staff understands that I am going to be intimate in this area and when the deal is bigger than double digit millions, I will absolutely be in the weeds." He relies heavily on a small team for executing the M&A strategy in coordination with outside advisors as needed. "What I've tried to do is not add a ton of resources from a corporate structure perspective. We have people who can play 'quarterback'. And we have different folks who can do valuations and can support us in diligence from a financial perspective," Zeffiro says adding: "we're a $650 million business leader in the US and Asia. We don't always need many advisors on acquisitions. But when we are expanding into new markets there's the practical-tactical plan around how you identify targets and do outreach. We're always willing to listen and evaluate what bankers or marketing partners are bringing to the market."

Why is Horizon Global looking at M&A in Europe and South America in a time of economic uncertainty? Zeffiro, like famed investor Warren Buffet, says he is looking for value: "Right now people are nervous about Europe and South America. But if we find value in a distressed economy, those opportunities quickly move to the top in our priority list because we have the staying power to compete in those markets. We are simply looking for the greatest potential for shareholder value. That doesn't mean we wouldn't look at things in the US, just that we are being opportunistic." Zeffiro adds that setting artificial goals, such as a target number of acquisitions per year, "drives bad decisions." In the year since Horizon Global went public, he completed two small acquisitions in South Africa where it already had legacy business from TriMas."They were bite-size enough to give us an appropriate foundation to build on a $100 million business in South Africa," he says. "That's our goal—to have a business there and have enough structure locally."

How does a mid-market company like Horizon Global frame its overall M&A strategy? Zeffiro says he has a set of "thesis questions" that must be satisfactorily answered before proceeding on any deal. First, the deal has to add value or extend the company's footprint either domestically or globally. Each potential acquisition must be either related to growth, to higher profit margins, or to opportunities to increase productivity through technology. The thesis questions include:

1. Does it give us regional leadership for a product or marketspace?
2. Does it give us product leadership in our existing marketspace?
3. Does it enable us with respect to ecommerce, either business-to-business or business-to-consumer?
4. Does it give us overhead or structural cost synergies? How much?
5. How does it affect your existing and future product costs? Is it a margin accretive action or not?
6. Does this target have an opportunity to increase sales prices?
7. For technology, is it new technology? If so, that has a different degree of risk.
8. Does the target have better technology than we have?
9. Or does the target give us a better way to approach the channel distribution— aftermarket sales, OEM, etc. . . . ties to the growth-related effort around ecommerce?

"Ecommerce is very important for us going forward," Zeffiro says. "The OEMs prefer distribution through ecommerce, and the retailers have proven that you can ship almost anything in the world practically overnight. Ultimately, the OEMs and the retailers are going to squeeze out the poor guys (wholesalers) in the middle. Ecommerce is a key strategy, and I want us to be on the winning end of it."

Part II: The Team Approach to Developing a Corporate Development Roadmap

"We have presence in seven vertical markets—some areas are very deep. In some places we are active but are not leaders. And there are some spaces that we want to get into— we call them 'white spaces.' We target white spaces." – Satish A. Raman, Global Head of Corporate Development at Sutherland Global Holdings

As Marshall Sonenshine aptly put it in Chapter 1 of this edition of *Best Practices of the Best Dealmakers*, "Deal people serve leaders, negotiate with other leaders, lead teams, and follow orders, often all in a single day's work. . . . Dealmakers lead deals that often transform whole companies and even industries, but they advise and mediate among CEOs who lead much larger enterprises and are used to calling most of the shots. That is complex stuff, indeed."

Satish A. Raman is the Global Head of Corporate Development at Sutherland Global Holdings, a thirty-year-old business process outsourcing (BPO) firm headquartered in Rochester, NY, with 40,000 professionals in more than sixty locations globally. In that role, Raman has quarterbacked several global acquisitions for Sutherland as well as participated in strategic client transactions, partnerships, and alliances. "We have modeled our M&A strategy for global growth and success," he says. "We've grown from $100 million to $1.3 billion (revenues) in the past ten years. It's a well-thought out, strategic approach. We have the right symbiosis to complement organic growth with inorganic."

Raman is part of a three-person M&A strategy team at Sutherland Global that includes the CEO, Dilip R. Vellodi. "Our CEO is hands-on every step of the way in corporate development and M&A," he says. Growth is the "absolute measure of success" for Sutherland, and Raman says the means to achieving it will vary. "We have presence in seven vertical markets—some areas are very deep. In some places we are active but are not leaders. And there are some spaces that we want to get into—we call them 'white spaces.' We target white spaces." He says, as the world becomes increasingly connected, "we need to have a strategy that looks at every nook and cranny" for resources as well as clients. As examples, he cites the fast-growing technology industry in Israel, distribution services in the Philippines and China, and access to people fluent in multiple languages found in Eastern Europe. "Our clients are predominantly North American," he says, "but with our acquisitions we have diversified globally. Today we have a small but growing share of clients out of Europe, Asia, Australia, and South America."

Raman says he is a "one-stop window" for working with external advisors, lawyers, bankers, and accountants: "We have very specific tasks that we want them to do. I supervise all of those activities." He adds that having local advisors in cross-border acquisitions is especially important, particularly in the legal arenas. There are a number of boutiques (advisory, legal, and banking) that specialize in specific industries such as health care and insurance, he says. In general, he suggests that having an established relationship with a full-service law firm and accounting firm—"We've had the same accounting firm for the last 13 years"—is preferable to working with multiple firms because "the learning curve is shorter," although having counsel in foreign jurisdictions on an as-needed basis is often necessary because of complex legal, regulatory, and/or tax issues involved in specific deals.

Does Sutherland's corporate strategy for cross-border deals differ from its domestic acquisition strategy? "Really, the strategies are no different," he says. "We always have a global outlook." From a tactical standpoint, he says domestic deals generally cost less and take less time because of the established legal and regulatory processes while global deals cost more and take longer because of the differing cultural, legal, and regulatory issues. "But the basic strategic framework is the same and the differing economics of a cross-border deal needs to be baked into the term sheets,"

What Does Global Mean Now?

By Marshall Sonenshine

The reader of this chapter's stories of global executives will know that the business world today is essentially global. Horizon Global, a US components manufacturer, and Sutherland Global, a business process outsourcer, are each globe trotting to do deals in Europe, Latin America, Asia and Africa. This is global M&A today, in the CEOs office, up close and personal – and global. But what is unique about today's concept of global business and of the somewhat shopworn term, "globalization?"

In the first half of 2016, global M&A declined almost 20% to $1.7 trillion versus $2.1 trillion for the first half of 2015. Many factors contributed to this trend, including continued anemic economic growth, Brexit, continued slowdown and rising indebtedness in China, increased geopolitical and security concerns, tax reform of inversion deals, and new economic turbulence in developing markets, particularly in Latin America. Given these trends, global M&A for 2016 could be closer to $3 trillion than the $4 trillion reached in 2015. But as the current volume of *Best Practices of the Best Dealmakers* illustrates, no CEO today of any company, large cap or mid market or otherwise, thinks the world is not going to continue to be a global marketplace requiring global business skills.

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Raman says. A complex cross-border transaction, he cites as an example, was a $200 million deal in the health-care industry three years ago. “It was challenging. The target was spread across India, Europe, and the US. There were the usual set of tax and legal issues. They also had some leverage on their books that needed to be cleared up. It was a competitive process where we were going head-to-head with two large corporates and some private equity firms. In addition, health care is a highly regulated industry, so there were a lot of legal and accounting issues.” In the end, Sutherland crossed the finish line first and has improved the revenue from the acquired company by 50 percent.

Part III: CEOs, Global Strategy and Mind-sets: an M&A Veteran’s Advice

“The most effective CEOs have that innate ability to wake up every morning, survey the world and make dispassionate decisions and do it over and over again, always with a willingness to undertake course corrections. And they don’t become slaves to deadlines, consultants and analysis-paralysis that stops innovation.” – Jack Butler, CEO of Birch Lake Holdings

How important is having a global M&A strategy today? The M&A professionals interviewed for this chapter of Best Practices of the Best Dealmakers (fifth edition) unanimously declared that in order to create value for their stakeholders, almost all companies must look for deals beyond their own borders. Jack Butler has seen this change dramatically during a long career as a distressed M&A lawyer and advisor, and now as the CEO of Birch Lake Holdings LP, a boutique merchant bank based in Chicago that invests in companies that are in transition or distress, primarily on the equity side but also in the debt structure. “We’re an opportunistic firm,” he says. And when it comes to global M&A strategy he adds, “You must understand where opportunities and potential investors exist transcends borders. If you are only interested in one area of the world, you may well be limiting opportunities to add value for your stakeholders.”

Butler says his role is to approach any opportunity as either a hands-on investor or as a “trusted consigliere” to the CEO of an acquirer or target company. “We’re either working with the board of directors on oversight best practices or working with the CEO and senior management team to help them construct strategies that will unlock value in their businesses. We will oftentimes bring intellectual and financial capital together to help accomplish that." Butler says Birch Lake is open to investment opportunities in any industry or companies of any size: "Even in middle market transactions we tend to team with other investors because my general view is that having more than one check book in place gives people the opportunity to invest their intellectual capital alongside their financial capital, and that generally makes for a better deal."

Butler says in his experience the most effective CEOs he has dealt with in many years as a counsellor and now as an investor "are those who can envision beyond the every-day business challenges and long-term culture they operate in to be thoughtful about the wide range of alternatives that may maximize investment value." A prime example he cites is John Cahill, who helped engineer the blockbuster Kraft Foods-Heinz merger (announced in March 2015) during his first 100 days as Kraft's CEO. "John, who had served as board chairman at Kraft following its spin-off from Mondelez International Group before being named CEO, was a principal architect of the Kraft-Heinz merger," Butler says. "He was hugely transformative – and he also engineered himself out of the CEO role to become Vice Chairman of The Kraft Heinz Company. It was a very beneficial transaction to all involved (including Heinz investors 3G Capital and Berkshire Hathaway who led the transaction). There were a lot of people involved but John was a key facilitator and enabler. Had the Kraft CEO been a long-time veteran in the job, would he or she have been open to the transaction so quickly? John is an example of someone who is on one hand a company guy – he cares about his people and the company's culture – but is also not wed to the status quo if it's not the right thing to do."

Butler believes that the Kraft-Heinz merger will be a future business school case and says the Cahill example should be emulated by long tenured CEOs. "That is their principal reason for being CEO. They should be asking themselves 'How can I always have one eye on opportunities that may change the status quo but will be better for everybody?' The most effective CEOs have that innate ability to wake up every morning and survey the world and make dispassionate decisions and do it over and over again, always with a willingness to undertake course corrections. And they don't become slaves to deadlines, consultants and analysis-paralysis that stops innovation."

From his many years counseling CEOs, Butler says he has seen some very effective chief executives with a strong sense of self and where the company should be heading "making lots of money, with strong internal teams,

"How the management team behaves in good times and bad can be telling. Management teams in distressed situations are often more willing to listen to advisors and adopt consiglieres."
~ Jack Butler

supportive boards and shareholders. Other companies are rudderless, extremely challenged, and suffer material value diminution when they don't take affirmative action they lose their investment grade rating and undergo much more radical restructurings that would have otherwise been necessary," he says. How the management team behaves in good times and bad can be telling. "Management teams in distressed situations are often more willing to listen to advisors and adopt consiglieres. They often recognize they need sophisticated outside help. Very healthy companies sometimes have a culture that 'I can do it all myself, I don't need any help.' Management teams and CEOs have a wide berth of discretion to do a wide variety of things. Unfortunately, some CEOs worry that the affirmative taking of an action can put them more in harm's way than not taking an action. They can get all locked up in their own thought process, history and culture. It's not always the case, but there is sometimes a higher risk of insularity with larger and more successful businesses. Likewise, the more distressed the business, generally there is more willingness to listen assuming the management team is prepared to recognize the realities facing the business and is motivated to do something about it.

Butler observes one common trait that most successful CEOs possess is a willingness to solicit and carefully evaluate contrary points of view. There was a very famous CEO years ago who said in a New York Times article: 'I don't trust anybody.' That insular approach ultimately led to the CEO's departure. You need to be able to trust somebody. You have to hear the contrarian view if it's relevant. A consigliere, a trusted advisor can fill that role."

Butler agrees with other professionals who say global and domestic M&A strategies are basically the same – but the costs and risks of such deals can be vastly different. CEOs should be educating themselves about cross-border investing, looking at businesses that may not even be for sale. Still, he adds, regulatory, cultural, financial, legal, tax and other issues tend to play out much differently across borders than in domestic deals. "You certainly have to be aware that a cross border deal is more complex and takes longer. It may have additional risk factors. But cross border deals that extend a company's reach and mitigate regional risks may generate much higher business enterprise value in the end."

Part IV: Views of Cross Border M&A from Across the Borders

"Typically when you do a transaction with lawyers from a mature jurisdiction, the first cut of any transaction document itself is fairly balanced. While in India, the first cut drafts are very often one sided and quite aggressive, that can result in cumbersome negotiations and sometimes an unpleasant process."
– Rabindra Jhunjhunwala, Partner in the Corporate Law practice group in the Mumbai office of Khaitan & Co

Rabindra Jhunjhunwala and Marcello Hallake are experienced M&A lawyers in India and Brazil, respectively. Both are veterans of scores of inbound and outbound deals in their respective countries and serve as trusted advisors as well as experts to their clients. Jhunjhunwala is a partner in the corporate law practice group in the Mumbai office of Khaitan & Co., a leading law firm in India. He cofounded the firm's Mumbai office and heads the firm's France desk and Germany desk initiative. He specializes in domestic and cross-border mergers and acquisitions, private equity investment, and transaction documentation work. He also advises his clients regularly on all aspects of foreign investments (both inbound and outbound) and regulatory approvals. Hallake, based in Sao Paulo, Brazil, for the past four years, after practicing in New York and elsewhere in the US and in Brussels, Belgium for 18 years, is a Partner with the International law firm Jones Day, focuses his practice on advising U.S., European and Asian companies, financial institutions and investment funds in cross-border mergers and acquisitions, joint ventures, privatizations, private equity, and other financing transactions, particularly in Latin America and around the globe. He also counsels Brazilian and Latin American companies in cross-border M&A transactions.

Jhunjhunwala says that for many large companies, cross-border M&A is a necessary means of survival, "as the home market doesn't offer enough opportunities, or a growing economy offers more opportunities. It could be simply to innovate or expand their scale of business, or to diversify across geographies," he says. During the past decade India has been a favored market for foreign investment and acquisitions from abroad. Most of Jhunjhunwala's clients come from abroad. “Most of the time, I am helping clients invest into the country. Typically, I will be dealing with a client or a law firm or multiple law firms at a time. The deals are in all sizes – most $100 million-plus, some a few billion dollars as well,” he says.

Hallake observed: “Today almost every Fortune 500 company needs to be global, so almost all of our clients spend a lot of time thinking about and executing transactions globally. It is so very important for our firm to be positioned globally. You might be a US company acquiring a company in Germany. In addition, the target German company might have subsidiaries in places like China, India and Brazil. So, in addition to US and German lawyers you probably need counsel in China, India and Brazil. We’re so often dealing with teams of M&A lawyers in our offices all over the world on M&A transactions that it might at first appear as ‘bland’ as an acquisition of a German company by a US company. I think that all of the clients that we see today, which tend to be multinational companies or financial institutions, have or should have global strategies. It’s very unusual for any successful and large company to operate in only one geographical market anymore.” As a perfect example, Hallake cites his own firm. Jones Day was originally a local law firm in Cleveland, OH. Today is a global leader with 44 offices worldwide. “We were strong locally in Cleveland in the 1950s and 1960s representing large industrial, midwest corporations. Then those corporations began developing nationally and we expanded first into Washington, New York and Los Angeles and then grew to become the largest law firm in the United States with about 1,600 lawyers in the US in offices in virtually all of the major domestic markets. In the last 25 years or so these corporations have expanded globally and Jones Day has followed our client’s international expansion with 2,500 lawyers now in 44 offices all over the world. All of this was in response to our clients’ growth strategies. Through our own growth you can virtually see the international growth of corporate America in the last fifty years.”

Foreign investors rely on local counsel like Jhunjhunwala and Hallake because they are experienced and intimately familiar with the nuances of the cultural, legal and regulatory issues in their countries. “India’s legal fraternity is developing,” says Jhunjhunwala. “It is not as mature a market, as in the US or England. Typically, when you do a transaction with lawyers from a mature jurisdiction, the first cut of any transaction document itself is fairly balanced. While in India the first cut drafts are very often one sided and quite aggressive, *"The first priority for the CEO and the corporate development leadership should be to select good advisors that they trust. It is imperative to put together a good team with whom they have the highest comfort level." ~ Marcello Hallake*

that can result in cumbersome negotiations and sometimes an unpleasant process. I like to create a fair document – it is more efficient and in the process I see many more deals close. I have also seen business leaders or client advisors who say 'no, we have to be aggressive and do it our way and then we meet mid-way' - quite often these deals do not get done. CEOs and advisors have to learn that the more efficient and quicker the deal process, there is a higher likelihood that the deal will succeed."

Hallake says having local counsel in cross-border deals brings valuable skill sets to work on across industries and sectors, as well as borders. "You need to have different types of people in place," he says. "The strategies may be similar but the due diligence, work and comfort level will be very different, especially in the first instance when you're going into a new country. You have to become familiar with the laws, regulations and people. You have to be comfortable that your product will sell." And, for cross-border M&A novices, particularly in emerging markets or in highly regulated or unstable environments, he adds: "The chances that they will at some point give up are pretty high. When they start looking at the deal they may assume that it's what they expect at home more or less. Once they start talking to the lawyers and getting reports about the local landscape and risks they get nervous. Many times they will just be scared off. This is normal. The role of the experienced cross-border M&A lawyers of course will be to explain things so as to give more comfort to the client that things will nonetheless be able to get done, even if differently than at home."

What can local counselors like Jhunjhunwala and Hallake provide today's multitasking CEO in the way of value-added advice and service in cross-border deals? Jhunjhunwala says good local counsel provides neutral third party insight into M&A transactions. "Using one's prior experience, the complicated issues involved in M&A are similar and they will overlap," he says. "With the experience of advising several clients on cross-border global M&A deals, one can predict the situation and the solution. An outside advisor is in a unique position to handhold on the risks and provide strategic insight to the CEO or corporate development team. They tend to think more out of the box and bring practical insight as well. The CEO should not be averse to listening to new ideas." Anecdotally, Jhunjhunwala says he often draws intriguing stares when the first question he asks a potential client is which lawyer or firm will be representing the other side in the deal. "Most lawyers first ask the size of the transaction," he laughs. "But I want to know how tough the negotiation is going to be. I get that purely through experience dealing with many, many attorneys." He adds that the best example of a superior strategic CEO he has dealt with was "someone on the other side who changed his lawyers because I advised him to do so, not because we wanted a friendly set of lawyers, but we could see the deal was falling away. We consulted with their investment banker, and they found another set of lawyers, and the deal happened. The CEO realized the value and the need for a fresh set of eyes."

When representing buyers, Hallake says he and his colleagues at Jones Day sometimes deal directly with CEOs, except at Fortune 100 companies where the contact is more often the CFO, the general counsel or the business development team. "But in the cross-border world, even if the company has a very large in-house legal department, they will almost always rely heavily on outside counsel on sophisticated M&A transactions. The internal team will not be comfortable with other jurisdictions. They will want boots and brains on the ground." Collaboration between CEOs, corporate development teams and outside advisors is crucial to getting the best outcome, he adds. Hallacke maintains "The first priority for the CEO and the corporate development leadership should be to select good advisors that they trust. It is imperative to put together a good team with whom they have the highest comfort level."

Part V: Working with the CEO: Advisor's Perspectives

"All deal advisers, whether lawyers or bankers or consultants, learn quickly to understand their CEO clients and CEO counterparties. . . . We advisers are ultimate students of leadership." – Marshall Sonenshine, Best Practices of the Best Dealmakers (chapter one, fifth edition)

Olivier May and Simon Tilley have been highly attentive students of leadership during their careers as M&A advisors. May is a principal at Deloitte in Chicago with over twenty-five years of industry and M&A consulting experience advising domestic and international Fortune 500 clients. Tilley is managing director at DC Advisory in London and head of the European Financial Sponsors Group, supporting sector and product teams in the execution of advisor assignments with financial sponsor clients. Both see cross-border M&A as essential to corporate strategy today. "I have only been involved in one deal in the last five years that wasn't global in nature," says May. "If you are the CEO of a successful domestic business," Tilley adds, "then the opportunity to replicate your success across multiple markets can be a significant opportunity."

May is currently working with the CEO of a $25 billion company on a very large transaction involving over 30 countries and 400-plus locations. "He is heavily involved," May says. In the past five years, this CEO has completed numerous deals, including two multi-billion transactions. "The CEO has a vision of how he wants to transform his company. He sets the true north. He explains the rationale of the deal. He works with the executives and advisors. And he ensures that we are executing his strategy that he set two years ago. It can be a long journey in some cross-border deals." A collaborative effort, based on the CEO's strategy, is the most effective way to close a global deal, May adds, but he should not take his eye off the ball once the deal is closed. "The CEO should be heavily involved with the company's leadership team and board to develop and execute strategy. Very rarely do the corporate development guys stay around long enough to see the value of their deal realized. Their job is done after the closing and they're looking at the next transaction." May says capturing synergies and the real value of the transaction usually takes at least a year or two after a deal closes. "What the CEO can do – and the advisor can help with – is staying involved post-closing to monitor and ensure that cost and growth synergies are achieved. The CEO should have a chief integration officer that he meets with regularly. There's always an opportunity to improve on the deal. You don't have to keep the whole original M&A team involved but you need some continuity throughout the process. As an industry, we all could get better at doing this."

Tilley works with both strategic and financial company CEOs, primarily in the UK and Europe. He recently advised a health care sector business that was bought by a private equity firm. "Their aim is to expand from the UK business base into Europe," Tilley says. "Part of the CEOs strategy ongoing is to enhance European operations through M&A and to build out the European footprint. In time they could become a global player." The main challenge this strategy faces is the differing nature of health care markets across Europe. "This is not an obvious thing to do because heath care markets do differ," Tilley says. "The UK market is one of the more developed markets for this particular type of health care service so it's the application of best practices in other markets. It's an opportunity to enter other European markets to leverage skills and know-how and to make a difference. You can go at this process by the greenfield method, which is slow, or you can go at it through M&A. This company is using M&A predominantly." He adds that the greenfield method would be applicable in less well-developed markets such as Poland, which has few businesses of scale for M&A, "but from a Europe wide perspective, M&A is the preferred solution."

How can the CEO be the most effective in leadership through M&A? Tilley says: "Establish a clear strategic vision. Clarity is vital. Set a cultural tone. Instill corporate values. It's vision, mission, values. This minimizes the risk of corporate culture clashes." In addition, CEOs need to build and nurture a cohesive international leadership team with clear lines of authority and accountability. And stakeholder communication is a further critical element of effective leadership. "Communicating with stakeholders is absolutely critical," he emphasizes. "If its private equity, your shareholders will be on your board. If you are going to pursue international M&A you must bring them along and explain why it is that this really expensive thing can be great for the company."

Most advisors give due respect to CEOs and the demands of their jobs, but advisors also recognize that even CEOs are fallible. "There's a perception that the CEO has all the answers, but the reality is he or she does not, particularly when it comes to international M&A," says Tilley. "But the last thing a CEO wants to do is to fess up to his investors or board that he doesn't have all the answers. So how do you put in place a structure for success? You turn to your trusted advisor or advisors. You have them challenge you in your way of thinking about which countries we should be going into and why—which companies and how much do we pay for them?" Tilley adds that in order to gain that trust, an advisor should have a clear understanding of the client's corporate strategy and the critical success factors for the business in question. "You can assist with market mapping, identification, and prioritization of acquisition targets," Tilley says. "You should support and challenge the CEO in his evaluation of M&A opportunities. You should be a sounding board and a sparring partner. The most valuable advisory relationships for the CEO are his or her most trusted relationships. M&A can actually be destructive if all potential outcomes are not considered. So having a trusted advisor is a really important thing."

A best practice in Deloitte's advisory business is to always recommend bringing in local counsel on cross-border deals. "Some companies I've worked with in the past have struggled with the geographical variations involved in global M&A transactions," says May. "They have a hard time understanding regulations, taxes and cultural differences. Labor laws vary greatly from country to country, as well as talent management issues. For instance, in India they expect rapid promotion and you have to keep them motivated/inspired or you can lose a lot of top talent quickly. In France or Germany, simply trying to consolidate two existing offices a few miles apart into one, could require work council approval; and strict limitations exists on where you can or cannot store employee data. So one of the best practices we always recommend is to bring in local subject matter advisors (SMAs) and we leverage Deloitte's global footprint to do just that. We also advise our clients to at a minimum deploy some of their internal resources at the regional level (EMEA, South America, Asia), if they can't afford to have presence in every single country involved during a large global M&A transaction." May adds: "The playbook is different for domestic and cross border deals. You don't need to build a spaceship to do a domestic deal. But you need to add experts and talent for cross-border deals." Finally, CEOs need to recognize that "cross border deals absolutely are more costly and time-consuming. CEOs and boards need to take that into consideration. There's a real education process that takes place with a client that is not common practice in domestic M&A."

But the rewards of education in cross-border M&A strategy are worth it. According to Tilley, "You will develop a more diverse business. You will find more growth opportunities, in particular in large markets. You will mitigate the perceived risk in the minds of investors of single market exposure, exposure to regulatory changes, and other exposures. You can exploit a successful business model and institute best practices across multiple markets, in particular where the new markets are less mature than existing ones. And you can lift up valuations – there is a clear correlation between valuation multiple and a company's scale and geographic reach," Tilley says, adding: "Internationalizing needs to be for the right reasons – and investors will ask why you've done that. Replicating a successful business model and serving your most valuable customers across multiple markets can so dramatically increase the scale of the opportunity. It isn't a defensive measure, it's an offensive measure."

CONCLUSION

The CEOs leadership in successful M&A begins with setting the strategy and building a strong M&A team. This is particularly critical in today's cross-border M&A, which has grown to be essential for continued growth for establish companies. CEOs say they are taking an increasingly hands-on role in the execution of the M&A strategy, particularly in the middle market. And they are relying on trusted advisors, in some cases a "consigliere" for outside-the-box thinking and push-back if needed. In cross-border deals, employing competent local counsel can make or break a deal. CEOs and corporate leaders need to educate themselves on regional and local cultures in addition to laws, regulations, and tax schemes. All agree that global M&A opens new opportunities for growth and value creation, but it comes at a higher cost than traditional domestic transactions, both in money and time. And while global M&A may be down during the first half of 2016 from its torrid pace of 2014-15, the number of cross-border deals continues to take a bigger share of the overall M&A pie.

In the next chapters of *Best Practices of the Best Dealmakers* (fifth edition), we will be sharing insights from CEOs, corporate development officers, and top M&A practitioners on negotiations leading up to letters of intent, due diligence leading up to closings, and navigating the post-closing integration in today's cross-border deals. Readers are invited to share their views and experiences on those topics.

AN ESSAY BY MARSHALL SONENSHINE

What Does Global Mean Now?

The reader of this chapter's stories of global executives will know that the business world today is essentially global. Horizon Global, a US components manufacturer, and Sutherland Global, a business process outsourcer, are each globe trotting to do deals in Europe, Latin America, Asia and Africa. This is global M&A today, in the CEOs office, up close and personal – and global. But what is unique about today's concept of global business and of the somewhat shopworn term, "globalization?"

In the first half of 2016, global M&A declined almost 20% to $1.7 trillion versus $2.1 trillion for the first half of 2015. Many factors contributed to this trend, including continued anemic economic growth, Brexit, continued slowdown and rising indebtedness in China, increased geopolitical and security concerns, tax reform of inversion deals, and new economic turbulence in developing markets, particularly in Latin America. Given these trends, global M&A for 2016 could be closer to $3 trillion than the $4 trillion reached in 2015. But as the current volume of *Best Practices of the Best Dealmakers* illustrates, no CEO today of any company, large cap or mid market or otherwise, thinks the world is not going to continue to be a global marketplace requiring global business skills.

There is nothing new about the idea of globalization even if, in its current incarnation, the construct feels essentially modern. The world has been going global for centuries, from the 15th century maritime revolution that created world trade to the 18th century trade wars in Europe and North America to the 19th century industrial revolution that reduced the costs of manufacturing, transportation and communications. All these great historical evolutions facilitated global trade and empire building from Europe to the Americas, Africa, Asia, and other emerging markets.

Adam Smith, widely viewed as the first major economist, predicted in his eighteenth century treatise, The Wealth of Nations, that the division of labor and related creation of more efficient manufacturing would lead to increased integration of local, national and cross border economic activity. He was right, even more so today when even components and sub components of manufactured goods are globally outsourced as are services from law to consulting to engineering.

A key reason why the idea of globalization feels essentially modern is that today's globalization dynamics are in fact different from and more robust than those of prior periods. Part of this is the historical fact that the twentieth century saw a balkanization of trade and investment in the course of two world wars, one Great US Depression, and a long geopolitical Cold War. It would take several decades of building global economic institutions and post war rebuilding of fallen economies in Europe, Asia and elsewhere to see renewed economic integration in the late twentieth century.

A second and more commercial explanation for our new turbocharged globalization era is that a century after the industrial revolution came the technological revolution. Technology has dramatically reduced costs to transport, communicate about and produce goods and services globally. This cost reduction, coupled with the rise of new purchasing markets particularly in emerging economies, has incentivized business to compete across increasingly global labor, manufacturing, capital and consumption markets. Hence Apple, IBM and General Motors manufacture or source globally as do law firms, accountancies, banks and other service providers.

A third and sometimes overlooked explanation for modern global dealmaking is transactional: today's business world uses legal and financial tools unheard of in prior global business periods. Throughout the 20th century, legal, accounting and financial market reforms in American, European and other securities markets had established a new and reliable baseline of global norms and protections for transnational business. Few cross border deals even today would rely on certain emerging market legal systems for choice of law in a deal. As late as the early twentieth century, prior to the enactment of the modern US securities laws and bankruptcy code, many foreign investors not unreasonably declined to invest in even US industry for fear of inadequate legal protections. But companies doing deals anywhere today can confidently draft deals under well established laws in the US, Canada, Europe, Israel, Japan, Hong Kong and other jurisdictions where legal protections for dealmakers are well understood. And international arbitration norms provide further inducements to transactions. Whether in manufacturing, healthcare, technology, retailing, or services, CEOs buying and selling companies around the globe know they can reliably transact deals.

Similarly, and more recently, late twentieth and early twenty first century financial market growth and integration have further driven growth in cross border dealmaking. These growth drivers include newly global equity markets, international bank markets and not only US but increasingly non US subordinated debt and alternative lending markets all growth. Global institutional research and investment services have further supported international risk taking. Stock exchange integration has facilitated IPOs and equity trading that can be as global as the underlying businesses that companies wish to own.

Finally, in today's global financial world, commodities that drive business – from oil to agricultural to financial risk management – are more efficiently and globally priced than in previous periods. Even derivatives, once the scourge of modern finance, are now traded more reliably, so it seems, in the brave new world of financial regulation, with its higher capital ratios, improved disclosure rules and centralized clearing houses. Companies from Royal Dutch Shell to Boeing to Barclays Bank can price and hedge commodities and financial resources. As a result Tidus, CEOs and other corporate executives can think and act – and transact deals – globally with confidence.

Thus, when one reads in the present chapter about components manufacturer Horizon Global or business process outsourcer Sutherland Global, both mid market companies, globe trotting for acquisitions on multiple continents, one is reading the ever unfolding history of global business. The current news cycle includes new trade agreements, currency wars and new protectionism. As those political pendulums swing to and from, right and left, the net vector will remain the same as always: the economic world is global, and CEOs know this and act accordingly.

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