

NACD Event Highlights

March 8, 2011 Breakfast Event

M&A Today – Real Time Decisions to Foster Growth and Value

Event Overview

As the economy recovers, many companies are not yet seeing strong organic growth and are looking at acquisitions to boost revenues and consolidate industries with excess capacity. Wall Street rewards the management teams that can demonstrate growth. Developing and executing a solid acquisition strategy is one way to deliver that growth and increase shareholder value.

Attendees at the NACD New England Chapter's March 8, 2011 Breakfast Event had the chance to observe and then participate as board members working through a public company M&A scenario pitting a strong-minded CEO against an independent board. The event's five panelists played the roles of CEO, CFO, lead director, outside counsel and investment banker in considering an acquisition opportunity being presented by the CEO to key directors and their outside advisors.

The greater part of the role play consisted of lively and often provocative dialogue as the CEO, CFO, lead director and the board's outside advisors aired their opinions on the prospective acquisition's pros and cons. When the lead director became convinced that the transaction likely had merit, he invited the event audience to join the role play as members of the company's board. After caucusing at their tables for a short time, NACD members and their guests barraged the panelists with questions and opinions of their own.

Panelists

Introducing the panelists and outlining the role play scenario was Jeff Levinson, General Counsel of NETSCOUT.

Playing the role of CEO was Shirley Singleton, Chairman, President and Chief Executive Officer of Edgewater Technology, which she co-founded in 1992. She also serves on the Foundation Board for Bunker Hill Community College, the Board of Directors of The Commonwealth Institute, and the Bentley College Dean's Advisory Council.

Patrick J. Scannell, Jr. played the role of CFO. Senior Vice President, CFO & Treasurer of Netezza, he has more than 30 years experience in finance and operations and led the company's 2007 initial public offering on the New York Stock Exchange. Scannell previously served as CFO of Photonex and SVP and CFO of Silknet Software.

The role of Lead Director was played by Tom Bogan, Chairman of Citrix Systems and a current and past board member of several public and private software companies. He previously served as a partner at

venture firm Greylock Partners, President and COO of Rational Software until its acquisition by IBM in 2003, and CEO of Avatar Technologies and Pacific Data Products.

Jay Bothwick played the role of outside counsel. A partner in the Corporate Practice Group at WilmerHale, he joined the firm in 1981. He focuses his practice on mergers and acquisitions, and has significant experience in venture capital and corporate finance transactions as well. Bothwick has advised public and private companies, both domestically and overseas, in mergers and acquisitions, tender and exchange offers, proxy contests and public and private offerings.

Playing the role of investment banker was Tom Cibotti, Managing Director at Covington Associates LLC, a Boston-based specialty investment banking firm serving the middle market sector for more than 20 years. He joined the firm in 1993 and has more than 20 years of transaction-related experience across many sectors. He has completed more than 60 buy-side and sell-side assignments representing more than \$6 billion in transaction value.

Scenario

The CEO of an NYSE-listed technology company (the “Company”) with annual revenues of \$500 million and a \$1.25 billion market cap has discovered a potentially strategic acquisition target (the “Target”) she believes is undervalued. The Company has built a solid reputation on Wall Street and its hardware and software products and solutions are in a category that is evolving from “nice to have” to strategic for its customers, but demand for its products is mediocre. The CEO wants to move fast on the Target. It has interesting intellectual property and highly competitive, complementary products, while being smaller and more leveraged than the Company. The Target’s stock market performance has been choppy.

Despite a thoughtful and often impassioned pitch by the CEO, both the CFO and lead director initially are not persuaded on the merits of the deal. They are concerned about the Company’s lack of a developed acquisition strategy, potential execution risks, and whether the CEO has sufficiently accounted for economic conditions or adequately considered alternative approaches, such as accelerating the Company’s organic growth. The lead director’s hesitancy also stems from the fact that the Company has only recently paid down its previously burdensome debt, coming close to violating debt covenants before doing so.

The CFO and lead director’s resistance softens when the Company’s outside counsel and investment banker articulate their perspectives on the deal. The investment banker describes the current transaction environment, outlines his valuation analysis, and discusses the prospects for operational synergies and earnings accretion. The outside counsel discusses ways to structure the transaction and execute the board’s legal and fiduciary responsibilities. At that point the lead director opens the meeting to the “board members” attending the event.

The Audience Weighs In

Some of CEO Singleton's prior comments add a confrontational flavor to this part of the role play. She is not convinced that the board really understands the business and the climate in which it operates. She implies that she has not always relied on the board's advice in the past. She is firmly convinced that this particular deal is the only feasible path for growing the Company from \$500 million to \$1 billion in revenue, and seems unwilling to let the board stand in her way.

When it is their turn to participate, audience members rise to the occasion with a series of thoughtful and frequently confrontational questions and comments. The first questioner challenges the CEO to explain how the deal fits into the Company's strategic plan, knowing full well that such planning is lacking. Another asks whether the CEO is certain that it would be impossible to achieve the same transformative goals organically.

Other questioners ask the CEO, CFO Scannell and lead director Bogan to explain the due diligence that has been performed on various aspects of the Target's operations, such as products and sales contracts. They ask for an estimate of what it will take – in terms of employment contracts – to keep the Target's founders productively engaged over the long term, and whether an understanding has been reached with the founders as to their future roles in the combined company.

The panelists are then asked whether they looked at other potential acquisition targets and, if so, to describe the evaluation process. Another "director" asks why the board was not brought into the process sooner, and another questions whether a separate board committee will be created to evaluate the deal. There are more queries related to post-deal integration planning, and whether the Company's senior management team has been brought into the process at this point.

Several questions are directed to investment banker Cibotti and outside counsel Bothwick, leading to a lively discussion about no-shop clauses and the board's Revlon duties in a scenario such as this, as well as preparations for the inevitable lawsuits once the deal is announced. One director pointedly asks the investment banker to predict how the Company's shareholders will react to the deal.

As a follow-up, the panelists are asked to explain their plan for selling the strategic and financial merits of the transaction to Wall Street. They also are asked about their plan for communicating with other public audiences if the deal will result in plant closings and layoffs. The session ends with a detailed outline of next steps and overall scenario wrap-up by lead director Bogan.

Upcoming NACDNE Breakfast Event

NACD New England Chapter President Bill Earon closed the March 8th session by reminding the audience about the Chapter's next breakfast event: *A New World of Governance for Non-Profit Boards*. The event is scheduled for Tuesday, April 12th at the Downtown Harvard Club, One Federal Street, Boston.