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Mergers and Acquisitions (M&A) and Hazcom Due Diligence

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Presenter Biography

Sonia Razzaque (Ruh-zack) stumbled into Product Stewardship (PS) 24 years ago - and is eternally thankful to the Career Gods that she did. Her career has spanned Dow Chemical, Huntsman, Univar, Celanese, and most recently, Michelman where she serves as the VP of Regulatory Compliance & Product Stewardship.

An ardent proponent of PS, she thrives on demystyfying this part-science-part-art craft and extolling its virtues to anyone who will listen - a passion which has landed her speaking engagements at various PS/ regulatory conferences.

She is a 7-time “M&A survivor” and is considering therapy to overcome the PTSD she has experienced from working on those projects.

M&As are like Marriages…

Up to 90% of mergers fail to achieve the objectives that were initially established!

The goal of M&As → ach[illegible] and new capabilities that drive shareholder value and enable the new organizatio[illegible] accomplish what could not be achieved alone

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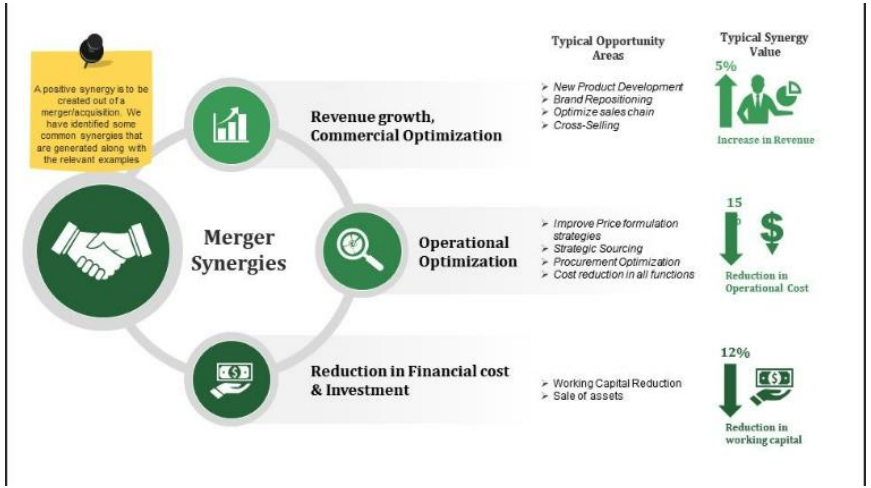
M&A Introduction

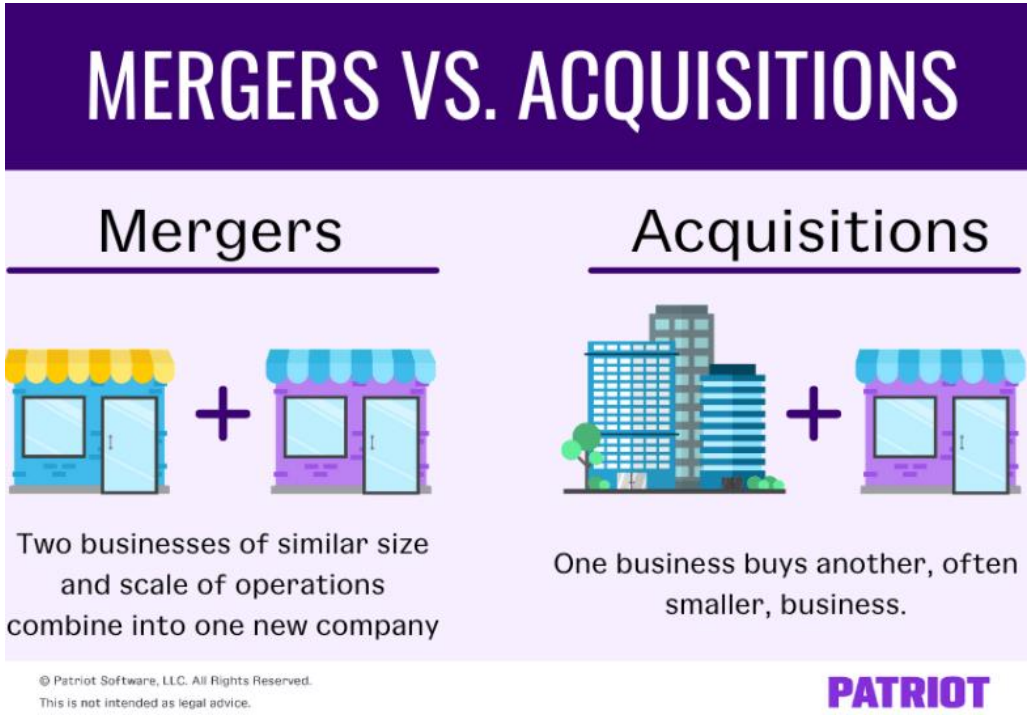
- Mergers and acquisitions (M&A) is the process through which companies consolidate via **acquiring** or **merging** with other companies, including the acquisition of a company's assets as well as its equity.

- The goal of M&As is to achieve synergies and new capabilities that drive shareholder value and enable the new organization to accomplish what could not be achieved alone cost effectively:

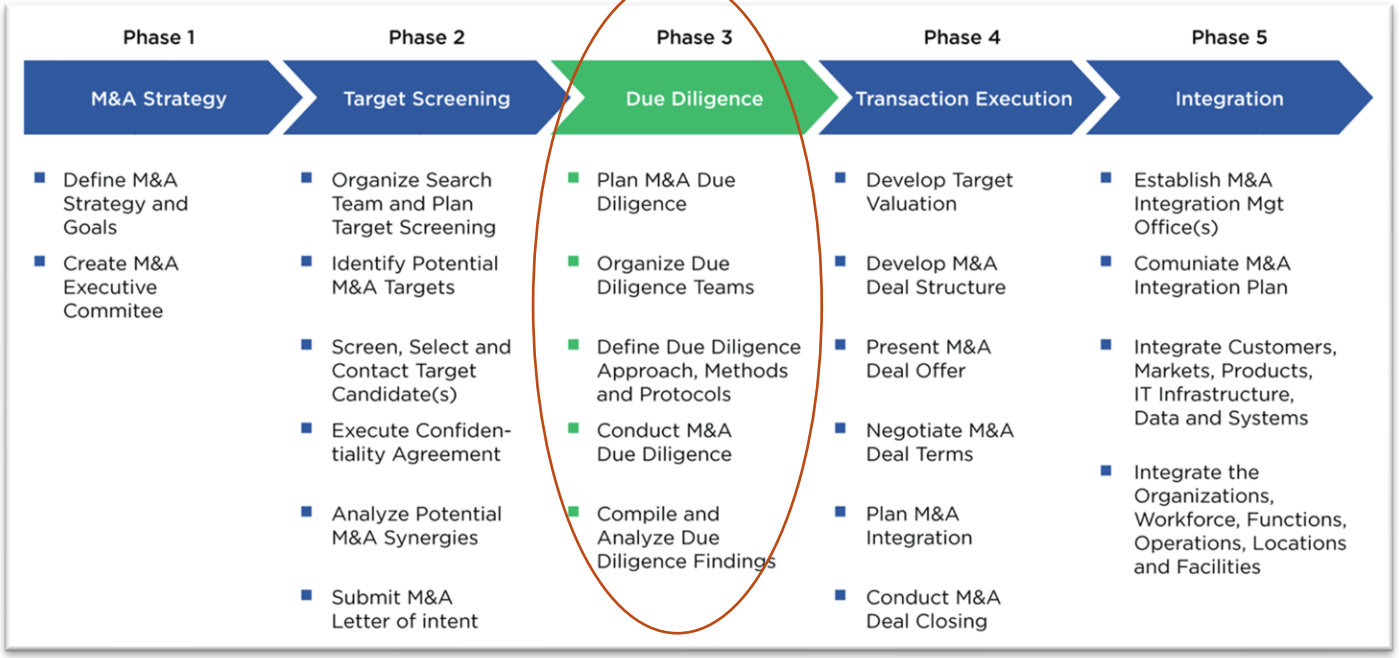


- ➢ Diversify product portfolio
- ➢ Acquire new IP/ technologies
- ➢ Penetrate new geographies and markets
- ➢ Realize operational/ supply chain efficiencies
- ➢ Take advantage of tax breaks
- ➢ Increase market share and revenue

Mergers vs. Acquisitions



General M&A Process Overview



Due Diligence is usually the most demanding step in the process because every function is involved

Due Diligence During M&As

- Proper due-diligence (“courtship”) is critical to realizing the synergies of the transaction (“marriage”)
- Company A acquires the assets, operations and liabilities of company B (“target”)
- Goal of due-diligence is to uncover red flags, serious compliance issues and understand potential remediation efforts (cost, timeline, resources) and adverse business impacts before close of deal
- Proper due diligence provides an opportunity to walk away (“break up”) or adjust valuation and negotiate a lower sale price if serious compliance gaps are uncovered pre-close

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Product Stewardship Due Diligence

- Product Stewardship is often overlooked during pre-close due diligence which can have serious business implications post-close
- Imperative to create a comprehensive Product Stewardship Due Diligence Checklist for M&As
- Identify compliance gaps and establish a remediation plan to close gaps
- Estimate and articulate resources needs, cost and timeline of remediation plan to M&A team
- Communicate potential business implications to M&A Team and senior management ASAP

Compliance gaps can lead to serious business interruptions and delays in synergy realization

General Due Diligence

General

- Is target company a Responsible Care™ company?
- In what countries are products manufactured?
- To what countries are products shipped?
- How many new raw materials and products?

Process

- Is Product Stewardship integrated into business processes?
- Do regulatory processes exist?
- Are processes automated or manual?

People

- Is regulatory compliance managed in-house or outsourced?
- Names of the main contacts for regulatory knowledge transfer

Tools/ IT Systems

- What tools are used for managing regulatory data?
- What tools are used to assess compliance?
- Where are historical customer letters archived?
- Where are regulatory reports/ agency submissions archived?
- Where are product test data archived?

PS Program = People + Process +Tools

RM/ Product Due Diligence

Raw Materials (RM)

- Is a list of raw materials available?
- Are RM SDSs available, current and where are they kept?
- Is supplier-provided regulatory information on all RMs available, current and where are they kept?
- Is a list of supplier contacts available?
- Any RMs with special compliance requirements?
- Any RMS with TSCA 12b requirements?
- Any TSCA 5(e) consent orders, SNURs?

Product

- Products with new chemistries? E.g., polymers vs. chemicals, reactive chemicals vs. mixtures, etc.
- Any products with special compliance requirements? E.g., DEA,
- Products with special testing requirements? E.g., USP class VI,
- Any product certifications/registrations that need to be transferred? E.g., UL, NSF
- What grades of product are available? E.g., Kosher, Food grade
- Any substances requiring registrations? E.g., EU REACH,
- Any PMNs, NSNs in progress?
- Any TSCA exempt polymers? Where is the supporting data?
- Any substances subject to volume restrictions? E.g., NDSL
- Any special customer contractual agreements?
- What regulatory claims are made in marketing literature?
- What test data is available for products?
- Any products with reporting obligations?

Hazcom Due Diligence

Hazard Communication

- Any RMs with new/ unfamiliar hazard classifications?
- Products with new chemistries or hazard classifications?
- What data was used for classifications?
- Where are product compositions kept?
- What is the product naming nomenclature?
- Which components (if any) in formulations are considered proprietary/ trade secret?
- What assumptions are made when authoring SDSs? (off-gassing, residual solvents, etc.)
- Are product SDSs available, current and correct?
- Are they available for all ship-to countries and in all required languages?
- What is the tool used for authoring SDSs and labels?
- Are labels compliant with current requirements?
- Are there any products with special labeling requirements?
- Any tolling, private labeling, contract manufacturing, etc.?

Workload Assessment Tips

- How many new RMs are being inherited as a result of the M&A?
  - RM data needs to be reviewed and entered into tools
- How many new product SDSs are being inherited?
  - Reauthoring with new name/ logo
  - Corrections may be needed (format/ content)
  - New country-specific SDS regulations/ templates may be needed
  - New language translations
- How many Labels are being inherited?
  - Recreate with new logo/ name
  - Label templates will need to be redesigned to accommodate new/unfamiliar requirements
- How many new SDSs/ labels requests/ month?
- Any re-labeling/ private labeling agreements?
  - New processes will need to be established to manage this

Application Due Diligence

Application/ End Use Specific

- New regulated/sensitive end-uses? E.g., Medical, biocides, direct food contact
- Applications specifically targeting vulnerable populations? E.g., Babies, elderly
- Any Drug Master Files (DMF) or device Master Files?
- Any “off-limits” or restricted applications?

Site Specific

- Any site registration/ certification or permit requirements? E.g., FDA registration
- Any site audit requirements? E.g., kosher audits

Reporting Requirements

- Any new reporting obligations? E.g., TSCA polymer exemption reports

Common PS Due Diligence Observations

- Different compliance culture/risk tolerance in target company
- Missing/outdated regulatory information on raw materials and products
- Undefined/ undocumented compliance processes
- Unscalable manual processes
- Lack of knowledge and/ or preparation for emerging/ new regulations
- Insufficient/ Incorrect knowledge of compliance requirements in ship-to countries
- Customer letters with questionable verbiage/ improper legal disclaimers
- Regulatory compliance claims with little/ no documentation to substantiate statements
- Loss of institutional knowledge and data gaps due to people from target company leaving as a result of M&A

M&A Learnings

- ~~Fight~~ **Hustle** for a seat at the M&A table and participate in the M&A planning and due diligence process!
- Engage with regulatory personnel at target company and start your due diligence sooner rather than later
- Secure a budget for pre-close and post close PS M&A work (contract resources, regulatory consultants, translations, additional testing, etc.)
- Estimate change in scope of work and workload increase post M&A; recruit business stakeholders to draft business case and start lobbying early for additional permanent resources
- Report red flags and non-compliances to M&A team and senior management right away
- Negotiate a Transitional Services Agreement (TSA) if possible pre-close

TSA = An agreement between the buyer and the seller to ensure business continuity during the early days of integration post close. The seller agrees to provide certain services to the buyer at a predetermined price for a predetermined time until the buyer is able to manage those activities on their own.

Be prepared for some chaos!

M&As are like Marriages…….

M&As, like marriages, are HARD WORK!

> "As is the case in marriage, business acquisitions often deliver surprises after the "I do's""
>
> -Warren Buffet

Good Luck!

Effective PS due diligence,

- **Decreases** the probability of nasty surprises which can result in operational challenges, legal headaches, and reputational damage
- **Increases** the odds of a strong M&A made in corporate heaven!

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Thank you!

Any questions?