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M&A TRANSACTIONS A NATURAL FIT FOR LEGAL PROJECT MANAGEMENT

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Let's face it: law firms are not usually thought of as hotbeds of innovation, especially when it comes to their service delivery and fee models. While increasingly clients expect their law firms to share certain transaction risks and establish a fee structure that encourages efficient delivery of legal services, most firms continue to bill on an hourly basis. Law firms have also been slow to adopt project management principles that were embraced by other professional services firms years ago. Since legal project management (LPM) and value-based pricing appear to represent a coming long-term shift in the lawyer-client relationship, rather than merely a fad precipitated by The Great Recession, law firms are beginning to reevaluate their service delivery and fee models to more closely align with their clients' expectations, interests and demands. M&A transactions are a natural place to begin implementing these strategies.

While every M&A transaction is unique, most deals progress through a fairly common lifecycle, and a process has evolved for buyers and sellers to evaluate, negotiate and ultimately document the risk allocation inherent in every deal. Lawyers, however, have historically been more focused on the uniqueness of their role in the deal than on developing ways to standardize certain aspects of the acquisition process. M&A lawyers finally are developing and refining process efficiencies that can help reduce overall costs to clients and allow lawyers to focus their time on appropriate tasks and provide the most value to clients. Measures such as implementing formal due diligence policies and procedures, developing standardized (but customizable) transaction documents, and forming and maintaining lawyer teams familiar with a particular client's needs and preferences are all ways to streamline involvement in the M&A process.

Process efficiencies, however, are not enough to satisfy the increasing demand for the efficient delivery of legal services. Law firms are now beginning to adopt project management principles to modernize their M&A practices. When done properly, LPM provides a framework to structure the delivery of legal services performed in the typical M&A transaction, but it's more than just a management philosophy – it's a practical toolkit that helps lawyers and clients:

- Identify and evaluate the uncertainties and risks that can impact the cost of an engagement;
- Create a realistic, detailed and reliable budget;
- Monitor performance against budget during the full course of the engagement;
- Improve attorney-client communication; and
- Promote a meaningful post-engagement review of services provided during the deal, as well as ways to improve performance in subsequent engagements.

LPM commences at the outset of an engagement. However, since deals are often under way by the time lawyers are brought in, advance planning and preparation is critical. Law firms should ask about the deal's importance to the client's overall business objectives, the client's risk tolerance and the role of the client's internal team, all of which can impact scope and cost. Clients should express their expectations regarding staffing and timing. Law firms that effectively adopt LPM develop tools to facilitate these discussions and use what they learn as the basis for a project budget.

LPM can change how lawyers and clients budget for M&A engagements. Historically, most law firms have provided "back-of-the-napkin" fee estimates, complete with a laundry list of exceptions and assumptions, rather than a meaningful budget such as businesspeople expect from nonlawyers. The fact is, law firms have access to a tremendous amount of data regarding the costs of M&A engagements. While the most active client may complete 30 deals in any given year, law firms with sophisticated practices assist with hundreds each year. If properly harnessed, data collected from these deals help firms create detailed, accurate budgets based on actual fees from prior transactions. By using a comprehensive set of task codes, law firms adept in LPM can aggregate their fee data and develop budgeting tools to systematically create detailed budgets based on actual experiences in prior transactions.

After the preliminary work of thoroughly fleshing out the transaction's details with the client and leveraging the firm's historical data, the agreed-upon, more precise budget can then be shared with both the internal and external teams to set expectations. When the key stakeholders have collaborated to create the budget and everyone on the team knows their responsibilities and timeframes, the entire engagement can be more efficient with less re-work and higher-quality output.

Unlike the traditional fee estimate, an LPM-based budget can be valuable during an M&A engagement, and not just at the outset. The relatively few law firms that have embraced LPM have developed systems to monitor performance against budgets, and they give this information to clients in real time. With these systems in place, lawyers and clients can identify potential cost overruns before they occur and avoid a situation that both lawyers and clients despise: the surprise bill. Comparing actual fees against budget following an engagement can also identify tasks where efficiencies can be gained, as well as those aspects of the transaction where a law firm is adding the most value. In each case, an LPM-based budget provides clients greater transparency regarding the nature and amount of legal services rendered.

While effective LPM can improve the delivery model for legal services in transactions, it does not always change how lawyers price their services. Value-based pricing has been used by investment bankers, accountants and other M&A professionals for decades, but most lawyers rarely deviate from the billable hour. They have been reluctant to stand behind their fee estimates by quoting a fixed fee, perhaps because they lacked tools to provide accurate, detailed and transparent budgets. For their part, clients may be uncomfortable with a fixed fee or other fee arrangement if they feel they are relying on law firms to understand how much legal work is required or how much it will cost, or if they believe a fixed fee encourages lawyers to cut corners or maximize profitability at the expense of quality and client service.

LPM provides law firms and clients with the tools to bridge this information gap. A law firm that has adopted an effective LPM program can be confident in the budget it helped develop and comfortable using that budget as the basis for a fixed fee or other value-based pricing arrangement. Similarly, pre-budget discussions and the transparency offered by performance monitoring and post-action reviews give clients the information they need to confirm their lawyers are spending time in a way that maximizes value and not profitability.

The LPM budgeting process also provides a foundation for discussion of more traditional value-based pricing arrangements in M&A transactions, such as broken-deal discounts and closing premiums, which, along with LPM, generally can be an effective way to align law firm and client interests.

Effective legal project management and value-based billing in M&A transactions can foster a "trusted adviser" attorney-client relationship by positioning lawyers to add value rather than simply acting as timekeepers who bill in six-minute increments. As the use of these strategies continues to develop and become more common, we should expect that clients will have increasingly higher expectations of their law firms, and will ultimately be more satisfied with the value of the legal services they receive.

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