Beyond Six Sigma – Six Key Items to Address Before an Exit is Above the Horizon

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In M&A transactions, process can meaningfully drive outcome. Here are six proactive steps company management can take early on to minimize the risk of a protracted, costly path to closing—or a deal-sinking surprise arising from buyer diligence – in a sale transaction.

1. Realistically assess and present the value of your business.
Potential buyers may value a business in various ways, such as industry-specific EBITDA multiples or discounted cash flow, and consider projected financial performance. How would your valuation line up with comparables? Developing realistic expectations of what a buyer may be willing to pay can avoid investing energy and resources in a mistimed sale process. True success demands not only a closed transaction, but one that delivers the value equity holders reasonably expect. A company's ability to credibly convey the basis for a valuation requires correct, complete, standards-compliant—and possibly audited—financial statements, which result from devoting sufficient attention to financial controls.

2. Protect your most valuable assets.
A technology company's intellectual property and talent are primary value components. Potential IP issues can often be remedied if discovered early, so companies should proactively review their portfolio documentation. Have all employees, consultants and contractors signed solid IP assignment agreements ensuring company ownership? Have all important registrations and recordations been completed? Are the corporate practices regarding confidentiality of trade secrets sufficiently robust?

Deals can also fall apart over social issues, so consider them in advance. Because retaining and motivating key employees may be critical, seek to understand a transaction's impact on employment agreements and equity arrangements, and work with an experienced advisor to structure incentives.

3. Do your spring cleaning.
Busy, resource-constrained companies may not initially prioritize administrative organization, but a good spring cleaning mitigates the risk of delay or mistakes discovered during and post-transaction. This includes fully documenting all equity arrangements; organizing corporate governance records; obtaining complete, signed copies of all material contracts; and maintaining a record of compliance with significant applicable regulations. M&A industry sources report a surprising percentage of indemnification issues arising from venture-backed company capitalization and customer contracts, which are often avoidable.

4. Know who has a say in the sale.
Although an ongoing understanding of how a company's purchase price is allocated to its equity seems obvious, management is frequently surprised to discover who else has a voice in or from the sale. Knowing early on, not only stockholder and lender approval rights, but also which consents are required from licensors, lessors and other third parties critical to the business, may allow for preemptive action to avoid additional stakeholders dictating payouts or the timing of closing.

5. Build an A-team.
Although every deal is unique, seasoned M&A counsel and advisors with industry expertise can readily determine the most advantageous deal structure, develop diligence processes and prepare a timeline and allocation of responsibility for efficient workflow. The right transaction team is usually small, to maintain confidentiality and facilitate business continuity, but interdisciplinary.

6. Remember what this is ultimately about.
An ounce of prevention may be worth a pound of cure, but even the most rigorously planned M&A process is an endurance test that challenges continued operational focus. A successful sale is founded upon realistic expectation-setting and minimizing items outside your control to enable you to keep your eye on the business. The earlier your company takes key basic actions, the easier it will be to chart a smooth course to the finish line.