

CEP Magazine – July 2020 Gaining a seat at the M&A table

By Kasey T. Ingram, JD, CCEP

Kasey Ingram (ingramk@iskamericas.com) is the General Counsel & Chief Compliance Officer for ISK Americas Incorporated in Concord, Ohio, USA.

Mergers and acquisitions (M&A) tend to happen fast. Once a decision has been made to buy, time becomes essential. For the in-house ethics and compliance (E&C) team to be effective, it must be involved *before* the decision is made to buy. To effectively address E&C due diligence efforts during the M&A process, the E&C team needs to find and join the M&A team, get buy-in for M&A compliance due diligence, and then train the M&A team on that process before the first deal happens. This article will set forth advice to help you do just that.

Finding the team

Ideally, you will be notified in advance when your company has decided to go shopping. Many companies form specific M&A teams that do nothing but evaluate and execute potential deals. For the purposes of this article, it will be assumed that your company has an M&A team. That, however, may not be accurate in every instance. In the event that your company does not have a formal M&A team, there will likely be a point person running the deal. There is also often a member of the legal department assigned to the deal. If there is no formal M&A team, approach those two individuals and ask for a meeting to explain your role in the process and how it will assist their efforts.

I recommend using that opportunity to push for a formal M&A team to conduct M&A compliance due diligence. At the very least, the core employees running the deal should be treated as an M&A team for purposes of M&A compliance due diligence. You may require assistance in building this team. I have found that both internal audit and legal departments can be great allies in this process.

Joining the team

You may not be invited to join the M&A team. Do not wait for an invite. Approach the M&A team and ask for a meeting. Do not expect the M&A team to just roll over and do what you want. Corporate dealmakers tend to be tough, so you will likely get pushback and difficult questions. Be tough right back. If you wilt, you will fail. Respect matters, and the M&A team will likely not respect you if you don't stand firm for your right to be involved. You are not asking permission. You are telling the M&A team that you have a job to do, and here is how they will help you do it. Do not make this seem optional.

Generally speaking, M&A teams have enough experience and aversion to risk that they quickly accept the need for M&A compliance due diligence. If that does not happen, you may need to seek assistance from executive management or other E&C champions in your organization to influence the M&A team.

Times like these demonstrate why executive support for E&C remains critical. If the M&A team refuses to cooperate, escalate the issue as needed to get access. If that doesn't work, you may want to consider checking out the SCCE Job Board for a position with a company that has more respect for E&C.

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