

M&A Playbook for Ethics and Compliance Leaders

A 2021 BELA Publication



EXECUTIVE SUMMARY

In light of the many business disruptions during 2020 and the anticipation of a possible increase in merger and acquisition activity on the horizon, Ethisphere enlisted the members of the Business Ethics Leadership Alliance (BELA) as well as its own experts to create the M&A Playbook for Ethics and Compliance Leaders.

During M&A activity, the primary role of ethics and compliance is to uncover potential liabilities associated with acquiring or merging with a potential target company and eliminating those risks or at least ensuring the business has the information it needs to plan and prepare for them once known.

The Playbook is not intended as a prescriptive “how to” or step-by-step framework. Recognizing that each company is very different, and indeed each deal an individual company undertakes is unique, the publication presents a collection of data, advice, and shared experience compliance leaders can tap into as they prepare for their role and the role of their ethics and compliance program during upcoming M&A activity within their company.

Featured in the Playbook:

- Tips for using checklists and workflows
- How to get a seat at the M&A table
- How to assess for cultural fit
- Recommendations on improving assessment tools
- Understanding the role of communications and training
- Key data points from Ethisphere’s 2020 World’s Most Ethical Companies dataset

CONTRIBUTION HIGHLIGHTS

While each of the experiences and approaches shared in this publication have their own value as real-life examples of M&A work within the compliance function, common themes and advice emerged. We have summarized them on the following page.

Major themes and key considerations: Pre-M&A

Liability identification and mitigation

Liability identification and mitigation is the focus for compliance during M&A. Efforts made to improve programs and resolve issues can mitigate the impact of successor liability.

Risk affects deal valuation and viability

Identified risk areas are a basis for negotiating costs of remediation and target company valuation adjustments. A target company's viability for an M&A deal is a measure of the totality of the risks identified. Individual red flags might be overcome, but a weak program coupled with a concerning historic event is going to be problematic.

Having a voice if you don't have a seat

If ethics and compliance is not directly involved on the M&A Team, checklists can be used as a proxy to identify and document obvious compliance risks that should be questioned further. Never wait for someone to give you due authority to raise a concern. As the ethics and compliance function we're the subject matter experts. That's what we've been hired to do.

Get to know the "who" and the "where"

Get to know the "who" and the "where" of the target company activities: Due diligence protocols should include geographical risk profiles and screening owners, partners, and all known third parties of the target company.

Relationships can be revelatory

Use opportunities to speak to members of the target company to continue to assess cultural compatibility and risks.

Information gathering is a process not an event

Timing of information searches is critical and inquiries are an ongoing process. The few months between the signing of the agreement and the closing can give you a buffer. There are opportunities to do ongoing diligence in that time.

Major themes and key considerations: Post-M&A integration

Integration is about process and people

Integration is a process, not an event, and requires communication between business functions. Partnership and cross-functional collaboration create foundation for successful integration. Be sure to have the right people at the table during post-sign integration planning BEFORE the deal closes.

Training and communications set the tone and pave the way

Use KPIs to measure the effectiveness of awareness and education. Strong communications makes for a smoother integration. Communication and training on core policies drive the timeline, but be aware that one of the most common hurdles can be the integration of learning management systems. Ethics champions or ambassadors can be a great asset for facilitating change related communications and training on key policies and practices.

Be very mindful of culture and be prepared for surprises as cultures mesh

Consider using a culture survey to establish a baseline for future measurement. Leveraging the regional leadership teams can be instrumental to help understand areas of cultural differences and norms.

Pace integration activities

Find the balance between meeting priorities and avoiding culture backlash. Resist the urge to integrate too much or too quickly where not absolutely necessary to allow time for familiarization and adoption of common company values. It takes time to build some confidence and trust and relationships.

COMPANY CONTRIBUTORS





The full playbook is available exclusively to BELA members. To learn more about BELA and ways to access our research and reports, contact Jonathan Whitacre at bela@ethisphere.com. For information about BELA, visit bela.ethisphere.com.



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Ethisphere's Business Ethics Leadership Alliance (BELA) is a global community of companies who recognize the inherent value of ethical leadership and who are working together to move business forward with ethics and integrity. BELA members are senior legal, ethics, and compliance leaders from 60+ industries in more than 300 companies worldwide. The community shares best practices and expertise and has access to exclusive data, benchmarking, and opportunities to showcase their programs.

Available exclusively to BELA members, the BELA research projects and reports are created for, by, and at the request of the community to take a deeper look at important topics. BELA routinely assembles working groups of leading companies and organizations, collects data and examples from member organizations, and uses Ethisphere's datasets and expertise to capture trends and insights, and showcase leading practices in ethics and compliance.