



Professional Shareholder Representation - A Must for Sellers

The founders of SRS Acquiom launched the company because they saw a growing need for sellers to have professionalized shareholder representation after the closing of an acquisition. The founders' observation has proven to be correct. Since the company's founding in 2007, the company has represented more than 190,000 shareholders, handled more than \$93 billion in M&A payments and completed more than 2,050 transactions. The company currently offers a full portfolio of M&A closing and post-closing solutions including shareholder representation, payments, escrows and representation and warranty insurance. M&A was able to sit down with Chris Letang, a managing director on the company's professional shareholder representation team, to discuss why professional shareholder representation has become more popular and accepted in today's M&A environment. Letang and his team manage post-closing claims against escrow funds, earnouts and purchase price adjustments. Prior to joining SRS Acquiom, Letang practiced corporate law for Cooley LLP and Cravath, Swaine, & Moore LLP. Below is an excerpt from our conversation.

How would you characterize the M&A environment today?

The market is hot right now and quite favorable to sellers. Valuations are high, deal terms are more favorable to the sellers and there are more competitive bid situations.

What role do lawyers typically play in a transaction process?

Historically, the role of the lawyer is to draft the deal documents, negotiate deal terms and make sure their clients are protected from a legal standpoint.

However, today we are seeing deal parties relying on their counsel for outside the box guidance more than in previous years. They are using their lawyers help on how they should be structuring deals given today's market conditions. There are a lot of different ways deals are getting done today.

What role can a professional shareholder representative play in a transaction process?

Our role as a professional shareholder representative is to protect the interests of the seller shareholders after the closing of the acquisition. For one thing, we protect the shareholders' rights to any funds placed into escrow. If the buyers have any claims against the escrow funds, we make sure they are addressed. If there is any additional money that should be coming to the shareholders based on an earnout, such as the achievement of post-closing revenue targets, we are on top of it. When it comes time to distribute escrow or earnout proceeds, we play a role in figuring out how the funds are allocated and the logistics for distribution, which can be very complex depending on waterfalls, number of shareholders involved, and other factors. For obvious reasons, significant issues can arise if you accidentally pay the wrong the people—and it can happen. We also



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Chris Letang,
Managing Director
Professional Services

make sure the shareholders are kept informed as to what to expect and what is happening post-closing.

Why is having shareholder representation important now?

If you go back about 10-12 years, before SRS Acquiom was founded the concept of the shareholder representative wasn't there. There was no professionalization of the role. Usually a board member got stuck doing it for the group. That was not ideal because they could be doing better things and moving on to their next deal. We have a staff of people focused on post-closing issues. It's their sole focus to make sure shareholders are protected and everything that is supposed to happen after the closing does happen.

Shareholder representatives work for the sellers. Do they matter at all to buyers?

The party that is hiring the shareholder is the sell side, but the buying company definitely has an interest in who the shareholder rep is. Buyers want to work with someone who is professional and will ensure the process is as efficient as possible. Ten years ago there may have been some skepticism from the buy-side, but through the years buyers have found it easier to work with a professional who has experience and can map the process efficiently.

What should shareholders be looking for in a shareholder representative?

If you are on the sell side, you want people who have experience and know what they are doing in every situation. The sellers want to have someone who can protect their interests and actively manage the process on their behalf without having to worry. Difficult matters do arise. A shareholder representative should be able to handle all the issues with skill and professionalism.

Are there some deals where hiring a professional shareholder rep doesn't make sense?

In some very small deals we can sometimes see the cost-benefit analysis not making sense to hire a professional representative. However above that threshold we believe the sellers really should consider hiring a professional to be the shareholder representative no matter how tempting it is when a board member or the CEO volunteers to do the job (presumably for "free.") What the volunteer may not understand is the amount of time that it takes to do the job well and the personal liability risk they take on. For instance, if a post-closing dispute with the buyer ends up in litigation, the designated shareholder representative will likely be a named party to the lawsuit. That can have all kinds of unpleasant ramifications. In addition to the time and hassle, an individual shareholder representative's personal peace of mind can be at risk as well.

How else can a shareholder representative help?

Everyone assumes the deal is going to close and there won't be issues. And the fact of the matter is most deals wind up with claims against the escrow, purchase price/working capital adjustments, or other material issues. We have people who focus on the accounting aspects of the working capital adjustment. Getting that right requires a high level of expertise. We also frequently see claims from third parties pop up. For example, a deal closes and a third party says the seller violated their intellectual property rights. These types of claims can be quite costly. There are frequently tax issues

and audit issues across various states. It's hard to say what issues may arise, but the takeaway is that a lot of things can happen that are outside of the sellers' control. You want to be buttoned up and protected, and to have an advocate on your side who has experience with all the vagaries of post-closing issues.

How do sellers choose the right shareholder representative?

There are different factors that come into play, but when sellers are choosing a shareholder representative they want to feel comfortable that their choice can handle it all. There is a good chance that a deal will have legal, accounting, tax, and other issues come up. The representative should have experience dealing with all of these things.

Sellers need to be looking at the track records of potential shareholder representatives and the outcomes of the issues they handle on behalf of the sellers.

We have been a shareholder representative for more than 10 years at this point. We have reduced claims made against our clients' escrow funds by \$1.5 billion in more than 1,200 deals. We have a talented and experienced team dedicated on staff to work on claims, earnouts, and proceeds distribution. We also have the benefit of offering payments and escrow services at SRS Acquiom. We have seen it all, and we work together well. We make the process as easy and smooth as possible for our clients.