No Stone Unturned: Best Practices for Benefit Plans During a Merger or Acquisition

RETIREMENT & BENEFIT PLAN SERVICES

If your organization is facing the prospect of a merger or acquisition, the impact on retirement and benefit plans may be substantial and requires careful planning and strategy. This paper discusses considerations for organizations that may be looking at such a corporate event now or in the future.

Undertake a thorough analysis

There are numerous implications for retirement and benefit plans as a result of a merger or acquisition, and smart organizations will make a comprehensive assessment very early in the process, well before the effective date of the deal. According to Stephen P. Ulian, Head of Institutional Retirement Relationship/Sales and Investment Services at Bank of America Merrill Lynch, "Essentially you need to do a deep dive on the target company and employee audiences affected, and compare and contrast benefits, literally plan by plan, line by line, for both companies. It is critical that you leave no stone unturned in your review."

Roy E. Williams, head of Defined Benefit Services, agrees. "When focusing on an acquisition target, an organization should engage legal, accounting, actuarial and human resource subject matter experts at the outset, as part of the due diligence process, to specifically review benefit-related implications of the planned merger or acquisition. A disciplined review can uncover cost implications, liabilities, protected benefit issues, redesign opportunities and other related hurdles well before the deal has been consummated."

Your organization will need to understand all the implications of the deal in terms of benefits strategy, plan design, cost and compliance impacts. Because of the complexities and the number of issues that could arise, it is prudent to conduct a rigorous review early in the process.

With a defined contribution (DC) plan, your pre-merger review may uncover many things that need to be addressed. According to Thomas E. Kuuskvere, director, Plan Sponsor Consulting, the devil is in the "details." "Areas to look for in DC plans include different matching contributions, vesting provisions and investment menus. For example, one organization may have a five-year graded and the other a three-year cliff vesting schedule. One organization may have a limited investment menu, the other may have a brokerage window," he says. "Or perhaps there are grandfathered plan provisions. All of these things must be factored into your merger or acquisition strategy."

When you merge DC plans your organization will have to decide which of the features you will keep and your choices can impact ongoing benefit costs and employee morale during the merger process.

Other landmines include the presence of collectively bargained plans, which have their own set of issues. Among them is the loss of certain flexibility in strategically planning future benefit offerings. For example, with a salaried defined benefit (DB) plan you can terminate a duplicate or costly plan fairly easily. With a salaried 401(k) plan you can adjust the investment menu if you need to. But with a collectively bargained plan, you will likely not have that leeway. Senior management may need to negotiate with any impacted unions or bargaining units with a view toward redesigning benefit offerings.

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Five-step implementation plan	
STEP 1	**Discovery —** A rigorous review and side-by-side comparison of plans, looking for issues that can impact deal terms.
STEP 2	**Compliance assessment —** Compliance activities, testing, plan valuation, funding.
STEP 3	**Transition planning —** Including win/loss analysis, projected costs, plan mergers or termination, etc., after you have agreement but before the effective date.
STEP 4	**Execution phase —** Implementation of your strategy, including employee communication.
STEP 5	**Monitor and review —** On a monthly, quarterly or at least annual basis, depending on your needs as an organization.

Understanding the cost and time implications

The transition timeline will be greatly impacted by the details of the plans for each organization involved. For example, with a DB plan, you may discover plan liabilities that are virtual deal breakers.

According to Roy Williams, "The cost implications associated with acquiring a company with a pension plan funding deficit can be enormous and can have an immense impact on the corporate bottom line. Funding issues could potentially require increased cash flow requirements to cure funding deficits, as well as trigger additional regulatory disclosures and administrative requirements," he says.

Compound the issue of cost by putting together two organizations, who both sponsor a DC or DB plan, with each plan having its own unique design, investment policies or funding health conditions, and you can begin to see how important it is that due consideration be given to fully reviewing an acquisition's benefit structure.

"What if the DC plan in the company you are acquiring has failed its discriminating testing? You may need to look at participation by non-highly compensated employees. Should you consider an automatic enrollment feature in the new plan? There are many issues to consider that can add considerable time to the process," says Tom Kuuskvere.

Once an organization has decided on a benefit and compensation strategy associated with a merger or acquisition, it can often take years to actually implement that strategy. Human resource, finance, accounting and audit staff will very often have to dedicate hundreds of hours to plan for, complete and document benefit structure features and requirements post-merger. That means planning up front to determine how to handle the day-to-day work not associated with the merger or acquisition.

Beyond retirement plans

Beyond the retirement plans affected by the corporate event, equity compensation decisions can have a large impact on the P&L, according to Takis Makridis, director, Equity Plan Services. "The actual impact will depend on the acquiring organization's overall equity performance philosophy and strategy," he says. "With equity compensation programs, a merger or acquisition presents a number of significant challenges, with design, accounting, legal, employee relations and even global repercussions. And all of this should be considered well before the transaction, even though these deals tend to move at light speed."

According to Makridis, there are generally four areas of exposure that apply to equity compensation during a merger or acquisition:

1. **Equity strategy —** Will you impose your equity practice on the organization you are acquiring, or will you integrate it with the new organization? Will you cash out the affected senior employees?
2. **Process —** Based on your equity strategy decision, your organization may face time-intensive data migration issues and be subject to new accounting rules.
3. **Pay equity —** How do the performance awards compare between the two organizations? If one group of employees receives higher levels of equity compensation, how will this be handled going forward?
4. **Global issues —** If your organization has operations outside of the United States, you will face cultural differences, be subject to local labor law and practices and may even experience unintended tax consequences.

The role of plan providers

According to Stephen Ulian, it's important to engage your providers to help in your decision-making process. "Involve them early, seek their assistance in the benefits analysis, and obtain their recommendations," he says. "At Bank of America Merrill Lynch, we are involved in hundreds of mergers or acquisitions each year and can offer valuable perspective. Our involvement spans the entire spectrum from up-front analysis and consultation to implementation."

Depending upon your situation, your provider can help you determine the answers to some key questions such as:

- Will you be merging benefit plans to achieve optimal savings and synergies?
- How should you structure the 401(k) plan investment menu?
- Will you be freezing or discontinuing a pension plan?
- If you have a 401(k) plan conversion, will you need to have a blackout period as part of the transition?

Tom Kuuskvere says that it is important to recognize that the terms of the deal can impact the options that are available; for example, in stock or asset transaction scenarios. There may also be operational implications. "For instance, an organization may have one set of vendors while the other company has its own set of vendors," he says. "You may be looking at an organization that has a single payroll provider merging with one that has multiple payroll providers." In that case, it is important to assess what will be the best service environment and perhaps the best service provider for the new company.

Best practices for retirement and benefit plans

Best practice	Benefit to plan sponsors
Review retirement and benefit plans early in the M&A process and engage the appropriate subject matter experts.	A disciplined, up-front review and analysis can help you prepare for the unknown and uncover costs and opportunities well before the deal is consummated.
Factor in the human resource and cost implications.	Mergers and acquisitions are time-consuming and expensive. Recognizing this up front will enable you to align internal resources and engage the appropriate partners so the day-to-day work can continue.
Recognize the opportunity and the positives.	While change can be stressful for an organization, it can also be positive. The merger or acquisition may result in a more competitive plan for your organization.
Understand the change management implications and plan accordingly.	A strong, well-thought-out change management strategy can help your organization maximize employee satisfaction and productivity throughout the deal process.

Looking ahead

A merger or acquisition has broad change management repercussions for your organization. Changes, both positive and negative, to the retirement and benefit plan offerings can have an immense impact on morale and employee productivity. Planning and effective communication are essential to keeping employees well informed in an effort to minimize dissatisfaction and concern.

Ultimately you have to look at a merger or acquisition as an opportunity that may culminate in a very different looking company. This event can be a great time for an organization to reevaluate its retirement and benefit strategy so that it is in a position to attract and retain the right talent both now and in the future.

For more information about how we can help your company and its employees, contact your Bank of America Merrill Lynch representative or call 1.888.550.7705. Visit us online at benefitplans.baml.com or email us at benefitplans@baml.com.

About us

At Bank of America Merrill Lynch, we're committed to innovation in retirement and benefits. That means that our proven benefits professionals don't only seek to meet your needs — they seek to exceed them by delivering insightful guidance and a full suite of integrated benefits solutions.

With an integrated solution, you can enjoy greater simplicity and economies of scale while your employees can gain a greater appreciation for the full value of your benefits. Plus, our open investment architecture gives you the choice of thousands of nonproprietary funds from hundreds of investment managers.

We can help your employees with financial needs beyond retirement, including paying for college and managing day-to-day expenses. It's all part of our commitment to helping keep you and your employees well positioned for any financial benefit challenges that come your way today, tomorrow and well into the future.

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