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**Cooley U: Common Issues
Involving CEOs as
Directors in
Mid-Market M&A
Transactions**

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Common Issues/CEOs as Directors, Mid-Market M&A Transactions

- When and what does a CEO have to tell/should tell her or his Board about preliminary acquisition discussions (including term sheet discussions)?

Common Issues/CEOs as Directors, Mid-Market M&A Transactions

- When the CEO informs her or his Board about preliminary acquisition discussions that seem likely to advance, a Board member recommends that the CEO hire a different law firm for the possible acquisition transaction that is different from the company's day-to-day law firm—what should the CEO do?

Common Issues/CEOs as Directors, Mid-Market M&A Transactions

- If a term sheet is signed, can the CEO lead the acquisition negotiations on behalf of the company?

Common Issues/CEOs as Directors, Mid-Market M&A Transactions

- If the CEO is leading the acquisition negotiations, what kind of issues might she or he seek Board guidance (from one or more Board members) on prior to taking the negotiated agreement to the Board for approval?

Common Issues/CEOs as Directors, Mid-Market M&A Transactions

- What process/procedures should a CEO director who is leading her or his company's acquisition discussions implement to try to ensure as smooth a Board approval process as possible?

Common Issues/CEOs as Directors, Mid-Market M&A Transactions

- What issues should a CEO director who is leading her or his company's acquisition discussions anticipate to ensure as smooth a Board approval process as possible?

Common Issues/CEOs as Directors, Mid-Market M&A Transactions

- What happens if an acquisition is negotiated that the CEO does not support but the rest of the Board does? What happens if the opposite occurs?

Common Issues/CEOs as Directors, Mid-Market M&A Transactions

- For a CEO director who is leading her or his company's acquisition discussions, what is disclosable to the Board and to shareholders about the CEO's personal stake in the acquisition?

Common Issues/CEOs as Directors, Mid-Market M&A Transactions

- What is a management carve-out plan and how do those plans work, and how does a CEO who is a director approach implementing a carve-out plan in advance of a possible acquisition transaction?

Common Issues/CEOs as Directors, Mid-Market M&A Transactions

- Does a CEO who is leading her or his company's acquisition discussions have to recuse herself or himself from Board discussions and approval of the acquisition?

Common Issues/CEOs as Directors, Mid-Market M&A Transactions

- Does a company where a CEO director leads the company's acquisition discussions have to shop itself for the Board to satisfy its fiduciary duties?

Common Issues/CEOs as Directors, Mid-Market M&A Transactions

- Generally speaking, what would a director (including a CEO director) want by way of indemnification protections for the director's service as such in connection with an acquisition transaction, understanding that the director's company is being acquired and the director will cease serving as a director of the company but may have liability for pre-acquisition and acquisition-related liabilities?

Common Issues/CEOs as Directors, Mid-Market M&A Transactions

- What can I as a CEO director do now to prepare for a possible future acquisition?