Mergers & Acquisitions and the Impacts on Your Credit Department

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Agenda

1. Harmonizing credit department contracts, documents, and policies
2. Preservation and maintenance of pre-transaction credit protections
3. Preserving culture of a merged/acquired credit department
4. Using a merger/acquisition as an opportunity to improve the credit function

Harmonizing Contracts, Documents and Policies

- Pre-merger, presumably, each of the parties to the transaction had separate credit departments, and therefore, different contracts and other documents being utilized:
    - Credit applications
    - Terms and conditions
    - Credit enhancements (guarantees, security agreements, etc.)
    - Credit and collection policies

Harmonizing Contracts, Documents and Policies

- Assuming that post-merger, the merged companies will be operating as a single entity (or will at least have their credit functions consolidated), it is critical to have a single, harmonized set of credit department documents, contracts, and policies implemented
  - Furthers the overall merger/consolidation of the entities
  - Allows the new credit department to present to customers as a unified front
  - Avoids inconsistencies in application of policies post-merger
  - Enhances collections and efficient implementation and enforcement

Harmonizing Contracts, Documents and Policies

- Credit policies
  - Why do we recommend them?
    - Source of stability and continuity for the credit department and the company as a whole
    - Standardizes evaluation of risk
    - Keeps sales and credit on "same page"
    - Acts as a guide for less experienced credit employees
    - Monitors effectiveness of credit procedures

Harmonizing Contracts, Documents and Policies

- Credit policies (cont.)
  - A good first step for the combined credit department is to create a new credit and collections policy, whether drawing from the pre-merger entities' existing policies or creating new policies entirely
  - Sets a foundation by which the combined credit department can efficiently operate
  - Also provides starting point for other credit department documents and contracts

Harmonizing Contracts, Documents and Policies

- Other credit department documents
  - Utilizing the “new” credit policy, other key documents can be created
  - Draw from the documents previously utilized by both entities
  - Create new/harmonized terms and conditions and create new “standard” credit terms based on the needs and mission statement of the merged entity
  - Ensure that all documents are consistently applied and contain consistent provisions

Preservation and maintenance of pre-transaction credit protections

- Personal/cross-corporate guaranties
  - Review existing guaranties to ensure that they can continue to be utilized post-merger
    - Do assignments of guaranty to post-merger entity require written consent of guarantor?
    - Is an amendment to the guaranty necessary/advisable to reflect merger entity, new choice of law/jurisdiction/venue, etc.?
  - Consider whether you can/should require entirely new guaranties from existing guarantors as condition of doing business with merged entity

Preservation and maintenance of pre-transaction credit protections

- Security agreements / UCC filings
  - If the post-merger entity has changed name, state of incorporation, etc., two steps will need to be taken: (i) amendments to pre-merger security agreements; and (ii) filing of amended UCC-1 financing statements to reflect merger/name change
  - As for part (ii), generally will be submitted through a UCC-3 financing statement amendment
  - Pay attention to expirations of existing UCC-1 filings for both pre-merger entities; ensure that continuation statements are timely filed (within 6 months of 5-year duration under UCC 9-515(d))

Preservation and maintenance of pre-transaction credit protections

- Other credit protections
  - Standby letter of credit: review LOC documents carefully concerning assignment procedures; make sure they are strictly complied with
  - Payment plan agreements: notice of assignment or a standalone amendment may be necessary, depending on what agreement provides

Preserving culture of a post-merger credit department

- Whose credit department/finance function is expected to "lead" the department post-merger?
  - Culture may be dictated in part from the surviving leadership
  - However, leadership should also get to know the culture of the merger partner and implement positive characteristics of the partner's culture into the "new" department
  - What if the merger is truly a "merger of equals"?

Preserving culture of a post-merger credit department

- Culture is also a product of the company's overall mission
- For instance, is the company "sales-driven," such that credit department decision making is intended to promote sales at all costs (i.e., lax granting of credit, willingness to accept bad debt/write-offs in the furtherance of sales growth?
- Or is the company more conservative, and willing to sacrifice growth to ensure responsible granting of credit, and mitigation of risk (i.e., minimize bad debt)?
- Are the management styles of the merged entities similar or different?

Using mergers to enhance the credit department's performance

- A merger creates an opportunity to "start from scratch" in a sense
  - Evaluate what worked and what didn't
  - Use the performance of both merger partners to determine best practices for the merged entity
  - Borrow from those best practices in creating credit policies and department contracts and documents

Using mergers to enhance the credit department's performance

- Use merger as an opportunity to "plug holes"
  - Shore up credit enhancements (guaranties, security agreements), or as part of an account review, use the merger as an excuse to request enhancements that did not previously exist
  - Require customers to sign new (or for the first time) credit applications for the merged entity
  - Notify all existing customers of changes to terms and conditions to promote compliance with new regime

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