

# Foreword

Where resiliency reigns, security sustains.

The Information Age fully envelops our business and personal lives, carrying with it the dark, twin diseases of privacy intrusion and data insecurity. As information becomes more economically important, so grows the vitality of protecting data integrity and preserving our exclusive rights to determine information's application. Further, as this guide demonstrates, we have reached a point where the very ongoing operations of our businesses depend on access to data, and where a lapse in care may sink the entire enterprise.

The media obsesses over hacking, cracking, and information protection. Affecting everything from our retail purchases to our democratic process, the cyber safety of our companies is discussed in apocalyptic terms. Although the consequences of failure are clear, the paths to success are hazy. Shifting threats, emerging technologies, and widely varying resources and expertise among businesses keep cyber protection a nebulous and shuffling target.

Corporate mergers and acquisitions are dangerous times in the lives of businesses. One or both companies expend resources and take full responsibility for all the beauty and ugliness contained in the other. Woe to the company that swallows a target enterprise without properly cracking it open and poking all the moving parts.

Given that mergers and acquisitions frequently are driven by monetary considerations, financial due diligence receives the most attention. A rare merger has been sunk because the parties did not understand each other's fiscal conditions. Operational due diligence is more difficult to effectively plan and complete, however, and of all a company's operations, its cyber status often is the most mysterious.

This guide illuminates an important topic that is underreported and poorly understood in today's business world: how a company can properly investigate and account for the cybersecurity posture of a target company in a merger or acquisition. Due diligence in corporate deals is both an art and a science, and this guide provides tactics and strategies to improve the due diligence necessary for an M&A deal as well as intuitive divination of risks and solutions. For companies awash in data, securing the data captured, the data flow, and the ability to access and rely on this data is an existential quest, and this guide provides a roadmap to succeed.

The *Guide to Cybersecurity Due Diligence in M&A Transactions* provides a legal reference and a practical guide for corporate M&A specialists and their clients. They always understand the financial numbers and the sales statistics, but they may not know about the fundamentals of cybersecurity due diligence and the risks that cyber incidents pose to their deals. They may not understand where published standards end and real-time information protection begins. They may not know about advanced, persistent nation-state threats and what, if anything, can be done to stop them.

The authors and editors of this guide encompass an excellent team of practitioners who understand the depth of the cyberspace diligence issues from daily practice and hard experience. They provide a realistic and thoughtful narrative for any person undertaking a due diligence exercise in a merger or acquisition, and lists of topics, laws, and ideas to inspire the deep and broad analysis required in today's corporate combinations. These authors and editors have worked in government, academia, and private law firms in the United States and United Kingdom and with nearly every kind of business combination imaginable. They have much to share with you and have done so in a tightly organized treatise.

All corporate lawyers should study this book. Their clients will be better served and their deals will operate more smoothly with the understanding gathered here. Effective cybersecurity is the key to corporate resiliency for any Information Age company, and the faster we learn the lessons of this treatise, the safer our mergers and acquisitions will be.

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