TRANSCRIPT OF WEBINAR:

NONPROFIT MERGERS AND ACQUISITIONS: IS NOW THE TIME FOR YOUR ORGANIZATION?

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BEGIN TRANSCRIPT:

GEORGE CONSTANTINE: Well, good afternoon or good morning. Thank you for coming to today's webinar from Venable, Nonprofit Mergers and Acquisitions: Is Now the Time for your Organization? We've got what we hope is some great and relevant content for you, and some great speakers to talk about this. And just before I turn it over to my colleague, Cindy, I just want to note, there's an ability for you to post questions as this goes along. We'll do our best to get to the questions that are posted, but we also have an opportunity after the event to look at the questions and perhaps get back to you after our webinar closes. So, Cindy.

Oh, before I go to Cindy, we do have a couple of other nonprofit webinars on the schedule. Actually, we have two that we've already booked for April 28th and one for May 19th. And I think they're also on topics that we've been getting a lot of questions on and we think would be very relevant to you and many of your colleagues, if not yourself. April 28th is a lobbying content program, Lobbying Considerations for Nonprofits: What Your Organization Needs to Know. [00:01:02].

And then, May 19th we have a program called Staying Remote, Returning to Work or Both? Legal Considerations for Nonprofits. Obviously, there's a lot of consideration on the return to work issue. And we've actually booked a little extra time for that one because there's a lot of points to go through. So, that one is... unlike our usual one hour, that one will be an hour and a half. So, you'll be seeing invites for those through the e-mail, and you'll be able to register for those shortly. So, with that, I'll turn it over to Cindy.

CINDY LEWIN: Hi. Thank you, George. And that lobbying too, new Congress, new White House, that's not on anybody's mind. So, those two topics, hopefully, will be of interest.

GEORGE CONSTANTINE: Right.

CINDY LEWIN: But for today, we're talking about mergers and acquisitions, which again is a topic of interest. We've seen a tremendous amount of activity over the last year in that, and we’re very, very happy to have Marc Cadin here who has been involved in some of that activity that we’ve seen. [00:02:02].

Marc is the CEO of Finseca which is a professional society of financial security professionals of all kinds. Before that, Marc was CEO of AALU, the Association for Advanced Life Underwriting. And one of the things we’re going to talk about today is how Marc went from being CEO of AALU to being CEO of Finseca, which is a large organization following a merger. Marc is a consummate deal maker and always has to have a deal in his pocket. Marc, it seems like you get bored easily. I don’t know what it is, but... So, Marc brings a tremendous amount of experience, not just from the deal he’s going to talk about today, but from others.

George and I are the co-chairs of the nonprofit practice at Venable, and we are lucky to have... co-chairs of the largest practice in the country. So, with over 700 clients we’ve seen a decent amount of deals too, although Marc is setting a new record for fast pace and moving. [00:03:01]. But, anyway.

So, today, here’s a quick... On the screen you see a quick overview of the agenda, how you start, what is the life cycle, what are the key issues that usually [hang these up] (ph), deal structures. We’ll give Marc a little bit more chance to talk about Finseca. And then, what we’ve learned, what all of us have learned. So, that’s the quick overview.

So, why start down this road? That is the question. We’ve put up some common answers there. But Marc, I’d like you to start by telling us why AALU and GAMA International began to think about these things. And I remember talking to you early on and hearing about disrupting the industry, which I think fits well into this vision realignment. But over to you, Marc.

MARC CADIN: Well, thanks. Thank you, Cindy, thanks George. Delighted to be on this St. Patrick’s Day webinar about a topic I’m really, really passionate about. [00:04:00]. And we’re all in the nonprofit business, whether you’re in a (c)(3) or a (c)(4), we’re in the nonprofit business because we believe in the cause, right? And we have donors, we have members that come to us, whether we’re a trade association or foundation, regardless of our legal structure, to advance some cause that we believe is in the best interest of society.

And I was at AALU for 20 years before we combined with GAMA and created Finseca. And one of the things that I found that I think that probably a lot of people find in the nonprofit sector is you, sort of, bang your head against the wall. You know that what you’re doing is meaningful and important to the American people, to people around the world. But there is limits to what you can achieve based on the structure of your organization and how many different organizations compete with you within your particular space. [00:05:02].

So, I think this slide really captures it. It’s about what is the vision? How can we be more effective in serving the mission, in serving the cause that brought us to the organization? How can we make sure that...? There’s usually a bunch of different players in a space, and the reality is, when you’re a nonprofit, you compete with (inaudible) attention and money of your respective memberships. And so, it’s really not about the cause, it becomes about how do we elbow in and become better than the next nonprofit, who’s, sort of, in a parallel space?

I think that necessity for many, particularly in this economic environment, it's really, really, really hard to fulfil the mission when you're focusing on the competition and trying to get more members and trying to get more donors and more money. [00:06:02]. And so, many organizations, particularly as COVID has come through, simply don't have the ability, they don't have a sustainable business model. And so, they have to do something. And then, but if they open up their eyes and really look at the opportunities, the ability to take advantage of scale... I mean, there's a lot that goes into these deals, obviously. But you can take advantage of scale and seize new opportunities on behalf of the cause.

So, I'm a firm, firm, firm believer in the opportunity attached with mergers and acquisitions. And so, as Cindy said, like, I run towards them with as much speed as I can muster because I think that's what's required for us to fulfil our mission.

CINDY LEWIN: I think that's great, Marc. And one of the things... You know, so, I think you touched on all of these reasons, but I want to point out a couple. [00:07:01]. One of the things that we don't see on this slide... Sorry. Whoever that was, I just hung up on them. One of the things that you don't see on this slide is, "Oh no, I'm going out of business. I can't make it. I don't have enough money. Let me find a white knight to rescue me." And we do see a lot of deals like that. And I do see people acquiring organizations choosing to be that white knight to save a particular program for the community or whatever the reason might be.

But that failing organization often turns out to be an albatross around the neck of the white knight. And that isn't... sometimes the best... If you can't make it, sometimes the best thing to do is to just (inaudible). Anyway, we don't see that as a great reason to do this. [00:07:55].

Another thing that comes up a lot is when the CEO is retiring organizations are thinking, the boards start thinking, "It's really hard to train and find and get... Start all over with the new CEO, especially after it's been a founder. Maybe now is the time to merge or be acquired." And again, I don't think that's a great reason. I do think, as we'll talk later, that getting one of the CEOs of two organizations that are transacting, getting that one out of the picture, those remove an obstacle, but it's not a reason in itself.

But as I said, we've seen so many of these this year. And I think it isn't because people have been going out of business because of the pandemic. I think somehow the pandemic helped people think differently, think bigger, get that (inaudible) this is bigger than all of us, and how can we have the most impact? Egos seemed to, sort of, fall (ph) away parochial interest. And people thought a lot more about how they could really do better. And we saw a lot of that this year. George, I don't know if you have anything to add on this slide. [00:08:58].

GEORGE CONSTANTINE: I only echo Marc and your great points and add a few other points. I will say, yeah, our practice, thanks to, not just Marc, but a lot of other associations and other nonprofits seem to be going through this at this time. And maybe that's anecdotal information. But it's a lot of anecdotes of that happening. And I think, Cindy, some of your speculation on that might be true.

I would just point out, a lot of the, I think, the reasons I've seen for the mergers that I've worked on have really focused on that competition for a limited market. That's our second point down here. The nonprofit world is very crowded. And, I mean, you just look at the statistics, obviously, there are a lot of small nonprofits, tons get formed each year. The last data that the IRS has has it at 92,000 nonprofits formed in 2019. Now, obviously, not each one of those is going to quickly become a successful, sort of, merger target or acquisition target. [00:09:56].

But I think it highlights the fact that there is a pretty flooded market when it comes to nonprofits, both in the traditional 501(c)(3) world based on different causes, but also in associations too. And I've seen some of that happen with industries that may have started to coalesce around issues that they had been separate on before. There was a large combination recently announced in the renewable energy space, where an association was formed to combine multiple renewable energy formats as opposed to having them separate by wind or solar, for example.

So, that has been a big driver from what I've seen. I will say, a few cautionary notes, and we'll get to this later on in the presentation. But the economies of scale, the administrative efficiencies that we all expect to realize for these may at times be out of our reach for whatever reason. [00:10:56]. We'll talk a little bit about just combining systems, and the very nuts and bolts of getting two different groups together that have different IT background or backbones with them. And there's also, with economies of scale, that comes with some tough decisions on employment too. We'll talk about that.

And then, yeah, the last thing I would say, it's on the last point, on the new opportunities. We are working with one association that's a rather large trade association, established association in an industry that has started to see some startups who nip at its heels a little bit on a technology-focused aspect of what that trade association does. And has really started to pick up a little bit of interest, and perhaps divert a little bit of support that would normally go to the established trade association. So, that's a way to, perhaps, get into a different area that the established association hadn't thought of more quickly than trying to start it up on their own. [00:12:01].

CINDY LEWIN: That's a good point. So, this is why start down the road? And now, the next question, of course, is how do you start down the road? And I think, and Marc touched on this too, the first thing is you have to have a combined vision and a strategy. If you don't have a true north that both parties believe in and that you can hold that as this vision that everybody is working toward and that you can coalesce around, then, again, the parochial interests would take over and people would be... You have to have something inspiring that really makes sense about impact, about how much better you can do. So, figuring out what that vision and strategy is in the conversation with people.

And I also want to really emphasize the culture. It doesn't seem like that, "Oh, these two organizations who are all nice people, what could go wrong?" Getting organizations together, cultures can really be different. [00:12:56]. I mean, I've seen it with faith-based organizations and non-faith-based organizations, whether you start up every staff meeting with a prayer, and sometimes there are people who very... Didn't come from an organization with that and are very uncomfortable. And do you have alcohol at events? And things like that.

But even if one organization prides itself on being very organized and orderly and buttoned up and by the book, and we do everything right, and the other organization is free-wheeling mavericks, at every stage, at every decision along the way in the whole organization it's going to be just constant grinding and conflict. If the culture doesn't work, I mean, that is really something you have to think about at the most, anyway. George, why don't you take the next couple?

GEORGE CONSTANTINE: I liked that culture point a lot, and I think it's... Also, you look at, are you merging a staff-driven organization with a board-driven organization? And how do you, sort of, mesh those two together, is one that I've seen recently. [00:13:58]. But the other couple points here, as you're thinking about going down the road of a merger and acquisition... And we're using the term merger, by the way, sort of generically right now. And we'll talk a little bit more about some of the specifics of the types of combinations that organizations can enter into. And it's certainly not limited to the traditional statutory merger.

But, anyway, look at the synergies and practical implications that may be involved as you're thinking about this. And I think, again, to reiterate what I said on the last slide about, be careful about assuming administrative efficiencies and savings, that on closer inspection, might not all be there. Be realistic in looking at that.

But the other side of that coin is what are we, sort of, by combining with this other organization, what are we bringing in that will be the plus, the additional source of revenue, the additional types of donors, the additional entrée to maybe government contracts, so that sort of thing. [00:14:58]. And what is duplicative?

And if we're going to the same donor base or we're going to the same member base, be realistic as you're thinking about it. So, one plus one doesn't necessarily equal two then. One plus one may equal one and a half. And there are a lot of combinations that happen for just that reason. The large members, particularly in a trade association, where the large members see themselves being pulled in two directions for sponsorship dollars and membership dollars, and see some alignment that could happen there. So, it's driven more by that concept rather than the notion of maybe saving on expenses or growing or doubling the size of the organization.

And then, on the practical implications I talked about, and this is something that Cindy has been so great to highlight in the past too. Those IT systems, are they really going to work? Do we have existing contracts? Are there possible too long-term leases? Everyone we're dealing with these days wants to know about how they got (inaudible at 00:15:59) lease.

CINDY LEWIN: Right. And we'll talk about that later, yeah.

GEORGE CONSTANTINE: And then, it's important, I would say, to get something down on paper early on, at least a rough concept. And I would say on that, it's important to look both to the... Try to identify early on what you think are the deal breaker points. And we'll talk a little bit about governance, staffing, who gets what in this combination? And also, what points to be flexible on? And understand that whatever you rough out, it's going to look a lot different by the end.

CINDY LEWIN: So, Marc, why don't you talk about deal makers? Because I've watched... You have clearly been one of the key deal makers, but you haven't been alone. And I also want to point out that this is your point at the end (ph), but you have to talk about staffing first. So, why don't you take those two?

MARC CADIN: I have to make an editorial comment about George's... He's mentioned now technology twice in I think we're four slides in. [00:16:56]. And every time he does, I don't know if it shows up, but I'm getting the cold sweats due to having lived through the technology integration and still living through it. So, George, if you just go ahead and not say that anymore? I want to make sure I survive the balance of this presentation.

But designate your deal makers and staffing, I'm actually going to do these together. Because I think that they are the two most critical parts of working through and actually closing a merger or closing an acquisition. I actually think the most important piece is the staffing. And I totally agree with Cindy that a CEO retiring is not a reason in and of itself to do a deal. I totally agree. I think she said that really, really well. But I do think that it is a unique window of opportunity that doesn't come around all the time. [00:17:58].

And usually, I mean, let's be honest, with all organizations, I don't care how big you are and what space you're in, there are too many associations, too many nonprofits and too many similar spaces. So, this should be... There are the need for greater consolidation to fulfil the mission in every sector, in every space. And the biggest obstacle in getting home on that is the staffing. And it's the CEOs who like the idea of being a CEO, they run their organization, they're probably pretty good at it, there's a certain amount of ego involved. And this is where real compromise has to take place.

And whether you're a retiring CEO or an existing CEO, the next CEO, or somebody that's got to step down from the CEO role, I don't care what role you're playing in this play, it's not going to be fully satisfying. And that's just the reality. [00:19:02]. If you're the next CEO, you're going to have to share the spotlight, and you're going to have to compromise and provide care for the CEO who's stepped down. If you've stepped down, there's going to be a loss of control, and those kinds of things. So, that's really, really important.

But as important as that, I think, is making sure there's really effective governance attached to the discussions. So, the members, donors, they're involved. They don't have to be involved in every nook and cranny part of the deal, but I think really good trade associations, professional societies, professional trade associations, nonprofits, all have an element of being member-driven, member-centered. And so, they have to be a part of that process. [00:19:52].

And so, we've had really effective, we had to have, in the multiple conversations that we've had and are having, as part of Finseca's goal to unify the profession, the idea is to... You've got to lead with a humble heart. You've got to be able to have those fierce and honest conversations. Be clear about what you want, and listen to what the other senior staff person wants, reach agreement early on, and then facilitate a process where the volunteers, the members of the board are engaged regularly on those key decisions.

I'll just make one other point, and this is not a paid plug. But I think the piece that's not on here that should be is hire a good lawyer who doesn't just know the law, but also knows how to do these things. What are the watch points? We've used consultants, we've used all kinds of different things. [00:20:55]. And I tell you the partnership that I've had with Cindy has been extraordinarily valuable because I know some pieces about the law, but just having the right lawyer help navigate this is critical. And I'm not saying that because they're paying me, because I'm not being paid.

CINDY LEWIN: Wow. Marc, that is incredibly nice of you, and I really appreciate it. But I think that everything you said about staffing is key too. And also, not just at the CEO level, but the CFO. Worked on a deal where one of the CFOs just said, "I will leave." And he worked for over a year to make this happen, and then he walked away. And it was heartbreaking. That was the deal he made. And I really, really admired and respected that. Anyway, thank you.

So, here is a quick overview of the steps in the combination process. And we're not going to spend a lot of time on this slide because we're going to break this down a little bit. And I also want to mention, I see questions coming in, and most of the ones I'm seeing, we're trying to get to. And if not, we'll address them at the end. [00:21:58]. But the strategic assessment we've talked about. Involvement and engagement, that's what Marc was just talking about. You have to involve people. Member-centered, donor-centered, beneficiary-centered, whoever it is.

Due diligence and negotiation, due diligence is where a lot of deals go to die. We've hinted at that. We'll talk about systems integration, but this is where you see big leases. Today nobody knows if we're going to be able to sublet. It feels like there may be a surplus of excess property. So, if you have two organizations, they have two long-term leases. Again, one of those leases, you can't get out of it, you can't sublet, that may be enough to kill the deal.

The legal documentation, of course, that's the easy part. We take care of that for you. But there is a lot of negotiation that goes through there. And then, implementation and integration, that's where George and I just walk away. And that's where the culture fit, all the work you did on culture is really going to pay off (00:22:56).

So, breaking that down a little bit. This is an overview of the legal life cycle of a transaction. So, the very first thing you need to do if you're starting to talk with people, and I believe, Marc, you did this before I ever got involved. You sign a nondisclosure agreement. You're going to be sharing your strategic plan, you may be sharing your member lists so that you can look, and your donor list, so that you can look and see what overlap there already is and whether that is going to be one plus one equals two, or just one and a half. All kinds of proprietary information, trade secrets, you have to protect that right out of the gate.

You can combine that with the letter of intent if the timing works out right. The letter of intent is something that you sign, and it holds both parties to agreeing to negotiate in good faith, which hopefully goes without saying. But what I like to put in my letters of intent is exclusivity. My client is going to spend a lot of time working with the opposing client or the other client to come up with an idea, a strategy, a way that we could be bigger than both of us, what we could build.

[00:24:05]. They're going to spend time, money, legal fees. I do not want the other party to take that deal that my client has creatively cogenerated and shop it to other nonprofits. I want exclusivity. I want people to sign off on that.

Now, I know there is a deal right now where an organization has decided that it's time for it to go out of business, and it has asked for RFPs from other organizations. "Tell us what you could do with us, with our assets, with our programs?" And you're not going to get exclusivity in that kind of a situation. So, there you're not going to have that kind of letter of intent. That's why you might have an NDA separately. But NDA, letter of intent, negotiations throughout. But after that letter of intent is really where you're, at least roughing out everything and putting that vision, that true north together that's going to inspire you. [00:25:00].

Due diligence. And I see we've got some questions on due diligence. We could do a presentation on that in itself. Obviously, you're looking for liabilities, you're poring through with a fine-tooth comb on the financials. I like to read board minutes and board committee minutes, finance and audit committee. That's where, if there is a big problem, hopefully the board has been talking about it.

So, by the time that you should be looking at the organizational charts, you should be looking at employee comp structures. If these two organizations have very different comp structures, that's the kind of thing that unless you're willing to give everybody on one side a huge raise, that's the kind of thing that could really be problematic.

Looking for litigation. I did work on a deal that just closed in January, where everything we talk about... They had a big lease they couldn't get rid of. The organization that was going to be acquired. They had a big lease. They had hotel contracts. [00:26:00]. You see these groups get together, they both have hotel contracts going out multiple years. They combine. They only need one set of hotel contracts. Can't get out of the other ones, that's a problem.

And this particular organization had an employee litigation suit. So, they agreed that as soon as the organization could take care of everything, they would merge. The just closed in January, more than two years later. Took more than two years to work all of those things out. And in the interim, the two organizations agreed to do a shared services agreement. So, the larger organization took over management, basically. That poor CEO, she managed two boards for more than two years before she finally got what she wanted, which was a full integration.

So, due diligence, each party bears their own expenses ideally, but very expensive (ph). Then you get to a term sheet. As George said, you write down at every stage. You want to make sure you're on the same page, so keep writing things down, keep writing things down. When you see it in black and white, you often find out, oh, that isn't really what I meant. [00:27:04]. You can make it a binding term sheet depending on how much you're going to rely on it. Or it can be a nonbinding term sheet that you're just using for discussions. And then you have to get to the board. And George, why don't you pick up there?

GEORGE CONSTANTINE: Great. Thanks. Yeah. And, yeah, to reiterate what Cindy said at the outset, this is the legal lifecycle. There's a lot of non-legal work that's going on in the background during all of this as well. And I'll talk further about, sort of, the differences between a merger and other types, like an acquisition. But I want to cover it briefly here. Because the general, kind of, legal concept of a merger is you've got two entities that legally combine into one, with usually the larger one surviving entity. The smaller entity essentially goes away. It's subsumed into the larger one.

And there are state nonprofit corporation law requirements for how a merger should work. Each state nonprofit corporation statute has some provisions about how you merge, be it two domestic nonprofits or a domestic and foreign. [00:28:04]. And you've got to follow those rules. And almost always one aspect of that approval process that must be accomplished is approval by both boards on both sides.

And I make that differentiation between a formal merger as opposed to an acquisition where usually the smaller organization effectively dissolves after it transfers all of its assets over to the larger organization. Because technically, a board approval for the acquiring organization may not be necessary under the law, although there'd be a lot of reasons to want to do that anyway. An acquisition doesn't necessarily require that the acquiring entity get board approval. Almost always the entity that's going away will need to get board approval at a minimum, if they are dissolving after transferring all or substantially all of their assets.

Most state laws under the board approval process, and we'll get to the member approval as well because if there is a membership, there will be member approval requirements almost certainly too under a merger. [00:29:07]. Most state laws are going to mandate some sort of plan or merger or agreement of merger being approved.

So, that, sort of, bring us to the next box here on the timeline is finalizing and signing that binding agreement. You're going to want to put the merger agreement, and some states call it a plan of merger, which may attach the merger agreement. You're going to finalize that after you get the board approval.

As I said before, if you are going through a merger with membership organizations, there's almost always going to be a membership approval requirement as well. And that can be a wildcard. It's real important that your communications to members are baked into the process. It is not really the legal side as much as a communications side, so that you're bringing your membership along to the extent you can. [00:29:58].

Obviously, there are some confidentiality considerations when you're early on in the stage of negotiating one of these. But as soon as you... Particularly if you're an association like most I work with, with large boards, as much as you try to harp on the need for confidentiality, word gets out. And so, if you can be the driver of that communications process, working closely with the other organization, you're going to be in a far better position when it comes to the member vote.

And I will say we've worked on a lot of these over the years. I don't recall ever working on one where the members did not approve it. But it's come close. And it's also a tough way to get started if you've got a lot of, sort of, wrangling and discussion and chat room talk about this or that supposed hidden reason for the merger, or this is so-and-so's is power grab or something like that. It's particularly the case for the members of the organization that will be going away in the merger. So, it's real important in your communications about the transaction, obviously, you have to be forthright as to how it's going to work. [00:31:00]. But to the extent you can portray these as mergers of equals, and I think Marc will talk a little bit about that too, I think that's real important for getting that member support.

Legally, there's a few important points to note here on member approval, notice, quorum and I call it manner of acting. Most state statutes are going to have specific requirements for merger approval by members that involve these points. And they trump anything that's in your bylaws. So, if your bylaws provide certain provisions with regard to notice or quorum or other member vote processes, don't assume that that's just going to take precedence.

The merger provisions in many of these statutes sometimes require a higher quorum requirement, or require very certain specific notice requirements such as you have to provide the plan of merger to the members, and you have to give X amount of days before the meeting to have the vote. [00:31:58]. So, don't rely on the bylaws. Obviously work with your counsel. We'll be there to make sure that we're meeting not only the requirements of your documents, but also the requirements of the state statute.

For notice, it's important to see what documents need to be provided to the members, and how long in advance that notice needs to be given. For quorum, some states are going to require approval from a majority of all members, not just a majority of a quorum. So, don't just assume if you have a quorum at a meeting, and you get approval from the quorum, that you've got it. Work with your counsel to make sure that you understand that, and understand early on, because obviously that's a big point and could affect how you go about the communications plans with your members.

And finally, manner of acting. We are all... The state statutes are all, sort of, catching up with technology when it comes to requirements for votes and ballots and member meetings and things like that. We're seeing good movement and changes that are allowing for more approvals to take place by a membership ballot, perhaps an electronic ballot, as opposed to at a meeting. But not all states have gotten there. [00:33:01]. So, another point to understand early on, because if you're going to have to have an actual meeting, that could be a logistical consideration and something that needs to be hammered out early.

These last points I'll go over quickly. Closing conditions. As Cindy pointed out, there are going to be things that come up in due diligence, almost certainly. There's just always something that comes up in due diligence that could be an issue. And so, you may want to build into your contract some contingencies that need to be in place at the time of closing for the final merger to be finally approved and gone forward with. It may have to do with allowing for contracts to be assigned or approvals from funders that may have restrictions on their grants and those sorts of things. It may just be as simple as the ministerial requirements for getting these documents filed in the right way with the state and other government approvals. [00:33:58].

But obviously before we close, we have to get those conditions met. And then we hit the closing date. And that's the date on which the deal is considered consummated, the assets are deemed transferred, and the employees become employees of the merged and combined entities. And then, finally, we have the important but more, sort of, again, ministerial requirements of filing the paperwork and making sure that we get the articles of merger or dissolution, as the case may be, in with the state.

And then, don't forget the IRS. If you go away and dissolve, you have an obligation to still file that final Form 990 four and a half months after your dissolution date, for example. And there is notice requirements for the IRS, which usually can be accomplished through the 990 in the event of a merger or in the event of a name change.

CINDY LEWIN: Thank you, George. Right, never forget the IRS. And you mentioned something very important. And I want to… Speaking of things that are important. [00:34:56]. For those of you who want to get CLE for this... (Laughs). George is laughing at me. But what could be more important than CLE? For those of you who want to get CLE, the CLE code for this session is Organization 2021. Again, the CLE code is Organization 2021. And you'll receive whatever necessary paperwork you need after the session.

So, we've talked a lot about the house and what's... And we've talked about some of what will bring these organizations down. But here we've tried to collect on one slide the things that really are the things that you will have to grapple with throughout this process. We've talked a lot about the big three: vision, strategy, and culture. George and I can't fix that. I did have a deal, my deal that is closing on Monday. One party wrote in that the surviving organization would pay a lot of attention to the employees, their culture, and their morale. So, I wrote that in. Okay, I did that. It's done now, right? [00:36:02]. So, those are things that are huge, and we don't want you to overlook, but they're not really the legal things.

Governance, this, George and I have been arguing about what is the sticking point. What's most likely to be the sticking point, and, Marc, you're welcome to weigh in, who is going to be the board? If you have an acquisition, and there's a much larger organization that's going to be surviving, does the organization the going away get a board seat, two board seats at most? Hard thought, especially if the larger organization would have to amend its bylaws in order to allow for such a large board. An often good compromise is to take the board of the smaller organization and turn it into an advisory committee for the ongoing program or something like that. But don't make it a permanent advisory committee. Otherwise, it's almost like managing two boards.

But here are these (inaudible) board members of the smaller organization. They love this organization. [00:37:00]. They are the board. They have fiduciary responsibilities. They don't want to just walk away after the deal and have no way of overseeing whether what was agreed to actually happens. So, very reasonable and very common to have an advisory committee of some kind or program committee for, say, two years or so, something like that.

If it's more of the merger of equals approach, you can combine the boards. That feels like the easiest situation. We'll just be one, big, happy family, everybody will be on the board. I have an organization that I spoke with yesterday. They are putting everybody on the board. So, when they're done... They both have very small boards, and they have overlaps. So, when they're done, they only have seven people. That's fine.

My deal that's closing on Monday, they did that, and they're going from a board of 12 to a board of 25. And what do you notice about that? Well, one thing you notice is they're adding more board members. So, first of all, managing a board of 25 is a very different animal from managing a board of 12. [00:38:00]. And secondly, the people from the smaller organization that is dissolving are going to have the majority of that board. And we've pointed out that, are you really sure you're comfortable with this? And they have chosen to do that. I think that's very brave of them, and it shows that they've really built up a lot of trust in their conversations and negotiations with these other...

Most of the organizations I work with, the surviving organization wants to be dominant on the board of the new merged organization. But those are things to think about. Do you start everybody over as if it's a brand-new organization? So, do you build in staggering? Do you get (inaudible) respect whatever terms people have? Those are things that we can help you with the options, but you have to argue it out. Who is going to be the board chair, which of the board chairs? I often see that where the CEO of one is chosen, the board chair of the other becomes the board chair for a certain period. But these can be really hard issues to argue through. [00:39:00].

The name, the branding, people of the organization that's going away, whether it's an acquisition or a merger, it can be... People feel very strongly about all the work that was done for, perhaps, decades under this name. What is the legacy? Let's remember it. It's great to bring in branding consultants if you can afford it. What is the brand equity? Which name really resonates? And how does either name represent what the organization is going to be doing?

And this can be a very... What Marc did is they went with a totally new name. I see, or (ph) just like people do the one happy family with the board, they try to put the whole name together. That tends to be a very long, clunky name. And I think it's not... Of course, you have to check name... from the legal perspective make sure the name you choose is available, talk about whether you want to register the trademark, all of that. [00:40:01].

Leadership, we've talked a little bit about how you probably won't end up with two CEOs. This is what I think is the biggest sticking point, even more than who gets to be on the board. But all of these personal, personal issues, we keep talking about how parochial issues and ego are what take these down. Vision and strategy are what keep them on track, and how you balance those. I don't know, Marc, if you have any comments on any of that.

MARC CADIN: Well, I have comments on all of it. I mean, it's all really well said. I mean, I do think, just to cherry pick a couple of them, building on my last comments, I would say what we did... And we'll talk a little bit about this in a minute, but as it relates to the board, we, sort of, took some from one, some from the others, brought in some new folks, definitely got a larger board. [00:40:56].

But so much of what we decided to do was create a new organization because while there were definitely cultural challenges between the different constituencies, what you had to really grind yourself on... This is where I think your first bullet is the right one. What's the mission? What's the vision? Where are we going? What are we trying to accomplish? And then look critically at the assets from the name, to the staff, to the board, to the financials, look critically at the assets that are helping us achieve the mission and realize the vision.

And then, what are the things that are preventing us from achieving the vision, right? Normally if there's things that are preventing, it's a wonderful opportunity to change them, to look at the board structure, look at the... [00:41:56]. If you've got a clear and compelling vision, then that does give you greater opportunity to push forward changes in ways that you can then operationalize through the course of the merger.

I mean, my general feeling is, though... I really believe that you have to have win-wins. I don't care if there's a big and a small. Nobody wants to be acquired, nobody wants to have failed. And there is a leadership opportunity (ph), particularly if you're the bigger organization, to allow the smaller organization to win and to feel represented. Because the last thing you want to do is merge, acquire, win all the arguments, and then lose the constituency that that organization had once upon a time. So, I just, with all of these things, I think the mindset's really important, and you have to have a win-win mindset. [00:43:00]. And if you're the bigger organization, you have more responsibility to make sure the smaller organization doesn't feel acquired regardless of the legal structure.

CINDY LEWIN: I think that is so well said, Marc. And I really admire the way you have approached that win... You have taken that responsibility to make sure it's a win-win even when the negotiating power has not been such. So, I applaud you for that. I think that's a great point.

So, in terms of programs, that's another huge sticking point. I mean, just growing out of what you were saying, Marc, the impact... People do not want these programs they've worked so hard to build to just go away. If they're going to transfer their assets to a larger organization, what kind of commitment is that larger organization willing to make to ensure that they will run those programs, and for how long, and even if the funding doesn't transfer? And what are the outs (ph) for running that program for a large number of years? [00:43:58].

And what's really important, I had a deal recently where the organization said, "We have this program model, we've worked on it, we've built it up. We really believe in it. It's a tutoring program. But you can change it, but what we're requiring you to sign in blood in is anything you do must be research-based. So, you can change it, but you have to have the research to show that you're making good changes." So, they didn't say it has to be one-on-one tutoring or it has to be done during this time period or any of those specific things.

And I thought that was really interesting and, again, sort of, visionary of them, that the world will change, but do what's right, we'll let you do what's right, but you have to show us, you have to be able to show.

MARC CADIN: Hey, Cindy, can I just add a comment on programming? Because I think, again, this is the... Managing a new world where we're able to achieve more. One of the things that I think nonprofits suffer from is, sort of, the insular, circular think, right? [00:44:59]. It's, we've got to get the boards, and we've got to get everybody, and there's 10, 12, 15, 20, 30 people in a room, and they all have all the answers, and they ignore the marketplace, and they ignore data. So, we purposely did not do a lot of commitments.

And I would encourage folks to try to maintain as much flexibility as you can. (inaudible) if the program is really, really, really, really working, then it'll be profitable, and you'll have more members, and you'll have more money. And there's probably some challenge with the program that is not just a factor of how many external competitors there are. (inaudible) marketplace beautiful time to reimagine.

CINDY LEWIN: Yes. So, George, do you want to pick up on some of these? And I'm a little mind of our time because we have other questions.

GEORGE CONSTANTINE: Yeah. I'll move, kind of, quickly through these. We've got some great questions, I noticed. [00:46:00]. So, let's get through these quickly. Yeah, I talked a little bit about the membership issue. And from a very nuts and bolts perspective, combining two membership organizations, there's going to be different approaches to membership, different dues structures, different anniversary year. Like, are these members all renewing at the same time each year? Are you an association that has a rolling membership?

So, that, again, to be identified at the outset, and a transition needs to be in place almost always so that the example I gave you before of the one plus one equals one and a half, I mean, we had a situation where there was a period of time where the organization decided to... Whoever was a member of the one merging into the other got to stay a member of the merged entity for the first year regardless of the fact that maybe they're getting a better deal than they could have, that they would have.

So, understanding that, and, again, from a practical perspective, the finances will come into play here too, of course. [00:46:56]. But if the finances permit it, usually the organizations try to find a way to bring them all in within membership on a dues structure that's not going to be very painful for them at the outset. And then, look to Year 2 or 3 to address a more forward-looking membership structure that would be more permanent.

On the funding front, particularly for the more traditional 501(c)(3) donor-based charities, this has to come out in due diligence. What restrictions are in place on the funds that you have, both...? And there's a good question in the Q&A on this, both hard core, real, legal restrictions, but also, sort of, what do we feel more obligated to honor anyway? And, again, play that out at the outset and identify whether you've got to set aside some of those funds in the merged entity for a particular purpose based on those requirements.

We talked about the very important aspect of contracts and whether they're able to be assigned, and if not, how to deal with them. [00:48:02]. A lot of times with hotel agreements, if you're merging two entities, they both have hotel contracts out into the future, maybe you're able to negotiate it before the transaction closes of getting out of one without too much of a cancellation obligation with promises of further business and those sorts of things.

And that's a big difference there between merger and asset acquisition here is, generally contracts are viewed under the law as assigning by operation of the law from an entity into its merged surviving corporation. So, if you do a statutory merger, the presumption under the law is all those contracts just become the contracts, the rights and obligations of the surviving entity. There are some exceptions to that, particularly if a contract is written in a way to not allow that to happen. But it's different with an acquisition, if you're acquiring assets, you're going to need to get agreement oftentimes from the contractor depending on the wording of the contract before it's viewed as assigning over to the surviving entity. [00:49:04].

Again, on the liabilities front, I mean, it really highlights the importance of doing a great job on due diligence, identifying what's out there, and seeing what you want to do with regard to taking care of that before or after a transaction. It's good to get with your insurance brokers as part of the team of people that you may want to talk to before closing these sorts of deals.

Operational analysis, I've been asked not to talk about this by Marc. So, I'll just briefly say, we talked about it. It's real important not to assume that you're going to get economies of scale. Just do the homework, do the real work on that to make sure you understand how that's going to work. I think a lot of people post-merger will say they haven't realized to the extent they thought they would those savings. And do pay attention to what your systems will allow. [00:49:59].

Last point, we're merging two... You talk about culture, you talk about all those, sort of, important, big picture items. You're also merging two sets of employee handbooks and two sets of employee benefits. And you're trying to manage a post-merger environment where you have all of the... The people there are happy and working together. So, you have to take a hard look. Oftentimes you may have to eat (ph) a little bit more expense to go with the more generous employee benefits plan, for instance.

And also, pay attention legally to what states may be implicated. I mean, we're talking in a few months on a topic about remote work. You have to be aware of what states you have to register for payroll tax or as foreign corporations based on where your employees are based as well.

CINDY LEWIN: So, George, maybe you can fly through these types of combinations because I want to talk a little bit about Finseca. [00:50:58].

GEORGE CONSTANTINE: Yeah, we talked about it. So, I mean, merger is a more of a statutory thing. We're not going to talk about consolidation. In my 20 years at the firm, I've done one consolidation. It's a kind of a unique type of a transaction. Doesn't happen very often. The only thing I want to say here that's important and has been referenced earlier is there is the sort of the walk before you run option (ph). You could affiliate through a wholly controlled or owned subsidiary situation where there isn't a disappearance of any corporation. You still have two corporations, but there's a control aspect that comes into place. So, it's much easier to undo that if things don't work out. That's all, Cindy, you can move on.

CINDY LEWIN: Wow. You really did fly through this. So, Marc, over to you, and I know you've talked about a number of things, too. But, so, Marc, this particular transaction, AALU and GAMA, and meanwhile, GAMA had the GAMA Foundation, a 501(c)(3) organization, I, sort of assumed, well, the GAMA Foundation, which is wholly controlled by GAMA, would just come along. [00:51:59]. But I have to say, separate board, separate CEO, lots of opinions. So, did we have difficulty with this transaction, doing three instead of two? I definitely think that affected it. But maybe you'd talk a little bit about whatever you think best.

MARC CADIN: Well, I do think this journey is a pretty good place, and our foundation, now the Finseca Foundation, was the GAMA Foundation, had bylaws that really demonstrated the (c)(3) and the (c)(6) were really, in many ways, disconnected. And so, I think that, first, again, I identify the opportunity. We're actually working... I gave a speech on industry consolidation in 2015. And we went through a bunch of different iterations. [00:53:01]. And it was all about producing better outcomes.

And finally, we found a dance partner in GAMA and Bonnie Godsman, the CEO of GAMA, who we'd had off and on conversations. But we ended up having breakfast in May, got our boards together in June, announced an intent to merge in July, and this is all in 2019. We identified the right issues. We had a couple of volunteers from each side. I think, in my mind, that's about the right number. Full board's too much. You need two or three key board members on each side, and you need the right staff (inaudible) complete NDA. Did not share it with the team. We've not really talked about that. But it was fully confidential.

And in that I would say if you're in the middle of one of these or at the beginning or thinking about (inaudible), make sure you're thoughtful about when you share it with the broader staff because that will make people very, very, very nervous. [00:54:05]. Do I have a job? Consolidation, efficiencies, blah, blah, blah.

So, we went through. We kept it very small. And then what we ended up doing, we went through a lot of due diligence, everything they've already talked about. The governance, we've already talked about. And then I think the big thing is, like, we announced an intent to merge in July, but then we went on what felt like 172-city listening tour. And we talked to a lot of members. Bonnie and I, we spent the time on the presentation. We talked to a lot of members, got their feedback, talked about the why. So, when we initiated the vote, which wasn't until January of 2020, we got a 98 percent voter support. We got quorum inside a week.

The staffing piece has been a little bit more of a journey because we've had some different pushes and pulls. [00:55:01] But now we're rallying around a new strategic plan. But to become one legal entity, which for us was in September of 2020, pushed off a little bit because of the pandemic. We had to create a new name. We didn't want the association of letters that nobody can remember what the letters stand for. So, we actually created it about the cause. And we created a strategic plan for the new enterprise that drove the staffing decisions that... Where we're getting the right people in the right seats.

And the one last thing I'll say is that post-merger where we've done all this work, it's all been brilliant. And the thing I hear now more than anything from my members is, "Where is the old organization?", from both sets of members. Like, "What happened to the other one? I liked the other one better." [00:55:55]. And so, the muscle memory of operating under one culture with one enterprise, with a common goal, we still have to provide what they cared about in the previous organization.

So, we're still wrestling through the technology for sure, but we're still, sort of, working through. It just doesn't happen because you created a fancy backsplash and a nice name. You've got to continue every day to give them what they wanted (ph) for from the previous organization. So, it is an everyday challenge. But ultimately, I could see two, three, four years from now, this organization changing the way financial advice is consumed in America. And that's why we did it.

CINDY LEWIN: I think that is absolutely awesome, Marc, and it's been great to watch you do it. I know we're almost out of time, so, I'm just going to put up this key takeaway slide for people to look at. I think we've talked about almost everything on it. So, please read it. [00:57:00]. And in the meantime, I just especially want to thank Marc for joining us and sharing his up close and personal, in the organization experience, which I think has been so helpful. So, thank you all for joining us, and we look forward to seeing you in April for lobbying, May for back to work, not back to work or hybrid and whatever else. Thank you so much.

And we have here questions, and sorry, we couldn't address them individually. But I think we hit a lot of them, and we look forward to being in touch. Thank you, again, Marc, and thank you, everyone.

GEORGE CONSTANTINE: Thank you, Cindy. Thank you, Marc.

MARC CADIN: Thanks, guys.

CINDY LEWIN: And yes, the last word, you did it. Look at the scale-reaching impact you have now. And I think that that's the worthwhile goal that will keep you going. Thanks, everyone. Bye bye.

MARC CADIN: Bye. [00:57:51].

END TRANSCRIPT