M&A INSURANCE SOLUTIONS

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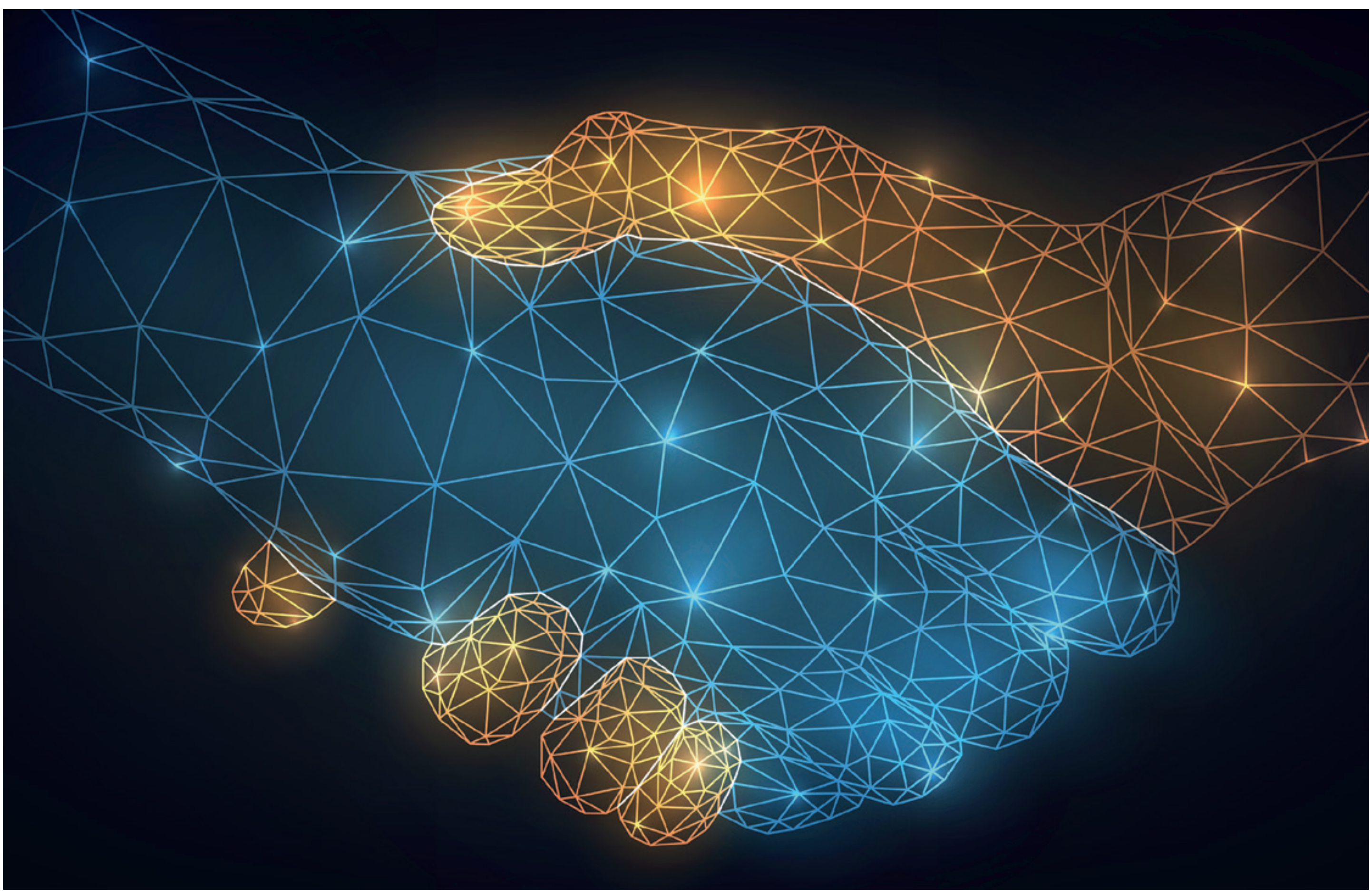
The use of technology in M&A

FW discusses the use of technology in M&A with Kirk Sanderson, Sanjay Hebbar and Steven Vanden Heuvel at M&A Insurance Solutions LLC.



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Kirk Sanderson leads the M&A Insurance Solutions team and is responsible for overseeing all aspects of M&A/R&W insurance programme structuring, product development and driving the firm's vision of a global digital M&A workspace. He brings 15 years of strategy, innovation and technology expertise at the intersections of M&A, insurance and law.

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Steven Vanden Heuvel drives strategy and operations for M&A Insurance Solutions. He is responsible for identifying and bringing to life new, innovative ideas within the insurance, M&A and legal space, and is the firm's lead project manager for all tech build-outs. Prior to M&A Insurance Solutions, Mr Heuvel was with Jet.com, developing and executing private brands for their sporting goods e-commerce categories.

FW: Could you provide an overview of how technology is being used in the M&A process today? Are you seeing rising awareness among dealmakers regarding these benefits?

Sanderson: As technology becomes more prevalent in all things process management, we are seeing an increased focus across both the legal and insurance landscapes through InsurTech and LegalTech specifically – two areas that have been slow to capture the efficiencies of automation. Virtual data rooms dating back to the 1980s were just the beginning of streamlining the trading of mass quantities of documents, eliminating the need for dealmakers to physically be onsite to perform diligence. The cloud now makes it easier for these deal professionals to practically digitalise all of their workstreams in some shape or form, to capture the efficiency and transparency that technology solutions are providing.

Hebbar: A growing number of M&A professionals understand and appreciate the benefits of technology for their transactions. In fact, according to a recent study by Accenture Strategy, over 40 percent of all companies polled view technology as a disruptor in their growth strategies. For example, technology has been used as a catalyst during the due diligence process, as well as the expedition of post-closing integrations. The bottom line is that technology will soon be seen as a requisite part of a dealmaker's toolbox – it is not a question of 'if' but more so, 'when'.

Heuvel: The most prominent way that I have seen technology being used in M&A is through the rise of cloud computing, allowing 24/7 access to crucial deal documents from anywhere in the world. Technology has allowed deal teams to organise deal documents into one central location and facilitate collaboration through the cloud. Other technologies that are being used currently are spin-offs of mass-market technologies like salesforce, 1-to-1 document comparisons, and electronic delivery, signature and banking. While the market has seen steady growth of awareness among dealmakers, there is still limited growth in technology platforms specifically designed for M&A like we find in other industries.

FW: What are some of the specific ways that technology is helping to expedite the M&A process? How can dealmakers maximise the benefits from deal origination through to completion?

Sanderson: Like all things tech, adopting each specific workstream from a programmatic approach allows firms to capture the greatest overall benefit. While efficiency, transparency and speed are all inevitable, by tailoring each workstream across the whole firm, repeating the same process every time out, the benefits from programme insight and control become exponentially more valuable with the addition of each set of project details. When looking at the R&W/W&I insurance workstream, giving practitioners the ability to instantly access information, such as previous rates, deductibles, premiums, counterparties and other metrics in one location at the push of a button, can provide benefits far beyond just the placement of a single R&W/W&I policy.

Hebbar: There is a tremendous amount of information currently available on completed M&A transactions and industry trends, which can provide insight to dealmakers in structuring and valuing future transactions, as well as anticipating any areas of potential disputes. Social media, including Twitter, LinkedIn, and deal networks such as Intralinks DealNexus, has also been employed by companies in their M&A planning, particularly in deal sourcing. Due diligence, often a tedious and painstaking process, can be streamlined by using artificial intelligence (AI) and machine learning (ML) tools to perform contract analysis. For instance, one of the innovation finalists at LegalTech NYC 2020 was designed specifically to reduce the time spent simply comparing and reviewing 80-page purchases agreements – allowing professionals to focus on more value-added tasks. Thus, dealmakers can use technology to abbreviate deal negotiations and obtain more accurate valuations, as well as greatly reduce the risk of possible transaction failure.

Heuvel: One specific way that technology is helping expedite the M&A process is by speeding up the amount of time it takes to sift through and share documents while working collaboratively with a team across the globe. Global firms should seek out platforms that allow every part of the organisation to connect in a central location, so all deal members gain the benefits of full transparency into the life cycle of not only the current transaction but all past transactions the firm has been involved with.

FW: Given the vast volume of information that must be compiled, collated and analysed by numerous parties during the M&A process, what technology solutions are available to assist the exchange of information and facilitate collaboration?

Sanderson: We are seeing a big trend toward digital platforms bringing together multiple parties that previously would not have collaborated – all to meet the requisite speed and execution necessary in current M&A markets. The R&W/W&I insurance market, for instance, has been one where the broker was previously in charge of disseminating all documents and communications from the client's deal team to the insurers deal team, and back and forth – more than 250 emails with documents – just to obtain a single policy in order to close the greater transaction. Now a cloud platform exists to allow all parties to interface directly, providing full transparency in not only communications, but also a shared roadmap for delivering the policy. The end result is an infinite repository that all stakeholders can use to proactively manage this workstream on a global basis.

Hebbar: Technology can be used to trawl a company's network in order to differentiate contracts from other documents. Any key terms contained in such contracts can then be drawn out for review. In fact, AI tools can even analyse word combinations for comparison to provisions that may be written differently but have the same meaning. Thus, machine learning can be adapted to transaction-specific terms and language to provide a marked improvement in speed and accuracy as compared to solely human efforts. Moreover, search queries can be set up to analyse specific contract components focusing on particular areas of concern, such as regulatory compliance and corporate risk.

Heuvel: The most common technology at the present moment for collaboration is the use of a digital data room where all information is stored and accessed 24/7 from any device connected to the internet. This has allowed all parties – from business development to bankers, to lawyers and to the deal team itself – to be working on the same document at the same time and understand when and what changes have been made and entered back into the data room. As these technologies continue to evolve, AI for identifying and automatically sorting 'data dumps' into the appropriate folders of these data rooms will significantly increase the expediting of this function for sellers' benefit.

FW: To what extent does technology bring its own set of risks? How can dealmakers manage and mitigate these risks?

Sanderson: Not all things need to be put in the cloud or digitalised. Sometimes it is enough to just do standard legwork and practices. It is the tasks that recur on most transactions – those that are more than 80 percent administrative in nature and which use up valuable and expensive resources – yet can be automated to a large degree, where M&A professionals can gain significant value. Even then, technology is only as good as its ability to mirror and enhance a firm's requirements and standard processes. Properly vetting tech solutions and taking a gradual adoption process are

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> M&A Insurance Solutions LLC

best practices toward ensuring a firm is not putting all its eggs in one basket.

Hebbar: Data leaks and breaches are obviously a primary concern where technology is being utilised. For example, vulnerabilities are inevitable during the M&A process, given the extensive use of virtual data rooms and electronic exchange of information. In the 21st century, threats can come from a variety of sources, from hackers trying to gain confidential information regarding ongoing transactions to online activists looking to disrupt corporate dealings. Data security risks are of course particularly amplified for public companies or others with high-profile players in the public eye. When building tech solutions, our firm has typically worked backwards, using security as the main hurdle to a solution being viable in the M&A market specifically. As such, all risks may add to the cost of M&A transactions to ensure adequate security infrastructure is in place.

Heuvel: In most cases, the benefits of technology far outweigh the risks of using it though dealmakers should still be sure to vet and then remain vigilant with their devices. One idea is to have two-factor authentications on every single device that you use, to ensure that no trade secrets or securities information are leaked to the public and risk a legal issue. It would be a good idea to have a cyber insurance policy in place for firms that may have a wide variety of people with access to confidential deal documents.

FW: With M&A under scrutiny, how important is it to carry out the process with an audit trail in place? How is technology being applied to enhance transparency and accountability?

Sanderson: Compliance is probably one of the top considerations when looking at adding tech to a specific workstream. The ability to instantly recount specifics from a particular workstream across the multiple parties' contributions and deliverables is intimately important should there ever be a need to go back. An effective solution will give users the ability to access the full trail of exchanged documents and comments any time for future reference. Obviously, from an insurance standpoint, claims do arise, and being able to go back and point to the records brings both the insureds and insurers that much closer to sorting out the facts quickly and early, resulting in less cost associated with the discovery and dispute process, again for both sides.

Hebbar: Audit trails are critical for M&A transactions, especially considering regulatory risk, such as data privacy, antitrust and national security issues, as well as the risk of costly M&A-related litigation. Such risks may become more likely in the event of a downturn in markets, which we may likely be heading for this year. Most due diligence applications are equipped with the capacity for maintaining audit trails, though they may differ in the level of detail and specificity, so it is important for dealmakers to understand the actual functionality provided by their technology provider. For instance, the latest R&W/W&I cloud platform holds each users – investors, lawyers, brokers and insurers, among others – policies going back six years and recoverable at a moment's notice, along with the full set of documents and communications that transpired in the placing of those policies, in the instance of a claim dispute.

Heuvel: It is important to carry out the M&A process with extreme accuracy. Tracking each step of the way with an accurate and well-kept audit trail of all parts of a transaction enables buyers and sellers to understand where they are and mitigate costly mistakes. The current blockchain technology being developed keeps a 100 percent permanent trail of documents and communications, ensuring that users are unable to edit past events to their benefit. Blockchain technology will continue to drive this transparency and accountability as it reaches a more mature stage.

> **AUDIT TRAILS ARE CRITICAL FOR M&A TRANSACTIONS, ESPECIALLY CONSIDERING REGULATORY RISK, AS WELL AS THE RISK OF COSTLY M&A-RELATED LITIGATION.**
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FW: What essential advice would you offer to buyers and sellers looking to utilise technology to conduct their transactions in today's market?

Sanderson: Lots of emerging technologies are just getting their footing and the ability to work with the solution providers to cater to your firm's specific needs are being encouraged. Just because a platform does not look exactly like you want it to today, does not mean with a little support and feedback that the provider will not make appropriate investments to tailor it to your work in a way that provides the benefits you are looking for. If speed is the deciding factor, say so. If cost is, say so. Most digital platforms we find are initially focused on speed and execution, but more recently we are seeing firms placing greater value on the compliance and control aspects.

Hebbar: The use of technology in all aspects of the M&A process is bound to become more popular so I would advise dealmakers to embrace it, while also being mindful of its limitations and risks. M&A professionals should not use technology blindly and perhaps not allow it to wholly drive their decisions in a transaction, thus retaining some human element in deal making. While technology will always provide considerable improvement in speed and accuracy over human performance, personal interactions may provide some benefits technology cannot duplicate. For example, in-person negotiations can allow parties to develop a degree of confidence in each other, which is perhaps not possible otherwise and may result in the prevention of future conflicts or disputes.

Heuvel: Figure out what your weakest or most time-consuming tasks are and then work to find a technology solution that solves those problems. Identify what your own needs are before just jumping into the technology headfirst. Understand that some technologies are better than others, so it pays to do your research beforehand. You will discover the best solution by participating in demonstrations, talking with other customers, and seeking out what your business needs and requirements are before you decide to take the plunge.

FW: Looking ahead, how do you anticipate technology will evolve in the short and long term as a key part of the deal process? What solutions are set to impact the M&A space?

Sanderson: In the short term, most workstreams are being digitalised and will soon make their way to consolidation under comprehensive digital platforms. These platforms will start from deal origination through each subsequent change of control and integration workstream, with the ability to look back to the inception of assets – a virtual data room that holds documents and associated conversations from each workstream through infinity, connected by hyperlinks for each reference to a document and workstream. In the long term, AI will take this to yet another level, with suggestions for professionals to view these documents and workstreams at the early onset of a new change in control. This could allow M&A professionals that already work 12-hour days or more to undertake full due diligence on a target company in less than a week, with significantly less worry that they somehow missed something material.

Hebbar: Technology has already had a lasting impact on the M&A process. The use of virtual data rooms is now ubiquitous and a vast improvement in security and efficiency from the days of their physical counterparts. We have only just seen the tip of the iceberg with respect to the role of technology in M&A. AI is just in its infancy and is poised to exponentially increase the automation of the M&A process. The role of M&A professionals will certainly change in light of these technological advances but will unlikely be removed entirely from the process, just as the modernisation of the printing press did not result in the end of the publishing industry.

Heuvel: Looking forward, the vast majority of all M&A work will have one platform that maps out an entire deal from start to finish to bring a roadmap to the M&A process. This will make it easier to train new employees, store documents in the right place and, ultimately, get deals done faster, with less friction. One area likely to impact the M&A market will be within the negotiation space, and how quickly lawyers can scan through and negotiate a full set of agreement terms, without the need to leverage a large and expensive team of associates. ■

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