

NEW ACCOUNTING RULE FOR M&A TRANSACTIONS

A new accounting rule announced last month will change the way companies account for legal fees and due diligence expenses in M&A transactions. Under Financial Accounting Standard No. 141R, “Business Combinations” — which will go into effect in fiscal 2009 for calendar year-end companies — all acquisition-related costs, including legal fees and due diligence costs, must be expensed as they are incurred. Previously, companies could include such legal costs among their acquired assets and capitalize them as goodwill. But FAS 141R makes clear that such costs are not acquired assets and may not be recognized as goodwill.

With this change in accounting standards, in-house counsel overseeing M&A transactions will now need to control not only the amount, but the timing of outside legal expenses. Because reporting companies will have to disclose legal expenses for due diligence as and when those expenses are incurred, in-house counsel must consider how such disclosures will impact potential acquisitions or deals not yet publicly announced. Under FAS 141R the timing, scope, process and cost of due diligence will have greater significance than ever before.

When selecting outside counsel for M&A transactions, companies will now have to be that much more sensitive to a law firm’s experience, expertise and efficiency. Finding firms that understand and appreciate a company’s need to contain costs will become all the more important. We hope your search will bring you to Pryor Cashman LLP, where for more than forty years we have provided expert, cost-effective services to the business community. Nimble enough to represent small companies, yet large enough to handle billion dollar deals, Pryor Cashman has vast experience guiding both public and private companies in all manner of merger and acquisition transactions. For more information about our firm, please visit www.pryorcashman.com.

The foregoing is merely a discussion of the new Financial Accounting Standard No. 141R and is not intended to provide legal advice. If you would like to learn more about this topic or about how Pryor Cashman can serve your legal needs, please contact Rich Frazer at rfrazer@pryorcashman.com or 212-326-0416.