



Navigating an M&A Transaction with Outside Counsel

Presented by

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Key Stages of a Transaction

- Structuring
- Non-Disclosure Agreement (NDA)
- Letter of Intent (LOI)
- Due Diligence
- Definitive Agreements
- Closing
- Post-Closing

Structuring

- Stock Purchase vs. Asset Purchase vs. Merger
- Advantages/Disadvantages
- Liaison with Business and Tax Teams
- Decide whether outside counsel or other specialized help will be necessary
- Tip – Get involved as early as possible!



Non-Disclosure Agreement (NDA)

- Essential before disclosing any confidential information (particularly if seller)
- Should it include non-solicit or non-hire provisions?
- Consider disclosure in stages to protect particularly sensitive information



Letter of Intent (LOI)

- Sets the "baseline" for future negotiations
 - Structure
 - Consideration
 - Payment Terms
 - Other Key Deal Points
- Binding vs. Non-Binding
- Lock-up/Exclusivity provisions
- *Remember*, the final deal is still subject to due diligence!

Due Diligence

- Coordination of various teams
 - Legal
 - Financial/Tax
 - Operational
 - Real Estate/Environmental
- Key – What are the material risks?
 - Tax
 - Employee benefits
 - IP
 - Real Estate
 - Litigation
 - Regulatory
 - Contracts
- If risks are identified, how should they be addressed?
 - Modified purchase price
 - Holdbacks/escrows



Definitive Agreements



- What are we talking about?
 - Purchase Agreement
 - Disclosure Schedules
 - Escrow Agreement
 - Employment/Contractor Agreements
 - Leases
 - IP Assignments
 - Restrictive Covenants
 - "Closing Documents"
- Who will draft?
- Who's leading negotiations?

Closing

- What needs to be "tied down" before finalizing documents and exchanging funds?
 - Payoffs
 - Third Party Consents & Filings
 - Regulatory Approvals
 - Public Communications
 - Wire Instructions
 - Waivers
- Simultaneous Sign & Close vs. Deferred Closing
- Hooray, we've closed! *But*, is our job done?



Post-Closing



- Now the hard work begins!
- Who's running the show?
- Transition Services
- Integration –
Operations/Business/Culture
- Potential Legal Issues
 - Indemnification claims
 - Earn-outs
 - Purchase price adjustments
 - Tax matters

Best Practices – Outside Counsel

- Clearly define roles
 - Negotiations - Out-front, back office, etc.
 - Division of labor
- Maintain open lines of communication
 - Who is the contact person
- Set clear expectations (including budget)
 - Remember, we work for you!

Contact Us

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