

Protecting Confidentiality while Marketing a Deal

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Overview of the Marketing Process

- ⑥ Prepare disclosure document (confidential information memorandum)
- ⑥ Set up data room
- ⑥ Identify/contact potential parties
- ⑥ Sign up confidentiality agreements with interested parties
- ⑥ Distribute disclosure document
- ⑥ Provide access to data room

Confidentiality – From Whom?

- © Employees
- © Investors
- © Suppliers
- © Customers
- © Competitors

Confidentiality – What?

- © That the company is being marketed
- © The identity of the “bidders”
- © The terms of the bids
- © Confidential information concerning the company’s business and affairs

Confidentiality – Why?

© Ask yourself:

© what happens if the deal doesn't happen?

© How could a leak affect negotiations?

Confidentiality – Why?

- © May provide a bargaining/business advantage to:
 - © Customers
 - © Suppliers
 - © Competitors
 - © Bidders

Confidentiality – Why?

- © May unnerve

- © Employees

- © Customers

- © Suppliers

and destabilize the business

The Conundrum

- © The parties interested in the deal may be the very parties you want to keep from obtaining confidential information
- © Internal parties needed to assemble the information for the marketing process may include those who should be kept in the “dark”

The Conundrum

- © Can't eliminate the risk – work to mitigate the risk through a deliberate planned process

Co-ordination

- © Marketing a deal should be a coordinated effort of:
 - © Key company people
 - © Investment dealers/financial advisors
 - © Auditors/accountants
 - © Lawyers

Confidentiality Agreement

- © Defines what is confidential information
- © Establish a process for disclosure/protection of confidential information
- © Restrict use/distribution of confidential information

Managing the Disclosure Process – General Rules

- ⦿ Limit the number of people involved
- ⦿ Impress on those involved the importance of maintaining confidentiality
- ⦿ Appoint a single person as a point person
- ⦿ Deal only with a single point person for each bidder
- ⦿ All data flow should be between the point people only

Managing the Disclosure Process – The Data Room

- © Data Room – the collection point for all data exchanged.
- © Used to be a physical place
- © Now, it is commonly a virtual space

Managing the Disclosure Process - Advantages of a Virtual Data Room

- © Just about ubiquitous now – highly recommended
- © Provided by investment bankers, law firms financial printers and a host of others

Managing the Disclosure Process - Advantages of a Virtual Data Room

- © Keeps bidders separated from each other
- © Keeps bidders away from your employees
- © Keeps record of who accessed what when

Managing the Disclosure Process - Staged Disclosure

- © Like dating – don't tell bidders everything about you at once.
- © Begin with summaries of the relevant information
- © Make more fulsome disclosure when the field of suitors has been narrowed down.

Final Thought

- © Protecting confidential information while marketing a deal is difficult and the risks cannot be eliminated BUT through deliberate planning and coordinated activity the risks can be mitigated.