



## **Protecting Confidentiality while Marketing a Deal**

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# Overview of the Marketing Process

- ② Prepare Confidential Information Memorandum
- ② Set up data room
- ② Identify/contact potential bidders
- ② Execute confidentiality agreements
- ② Distribute Confidential Information Memorandum
- ② Provide access to data room
- ② Obtain expressions of interest/begin to negotiate

# Confidentiality - What?

- ④ That the company is being marketed
- ④ The identity of the “bidders”
- ④ The terms of the bids
- ④ Confidential information concerning the company’s business and affairs

# Confidentiality – Why?

- ④ Ask yourself:
  - ④ What happens if the deal doesn't happen?
  - ④ How could a leak affect negotiations or other business relationships?

# Confidentiality – Why?

- ④ A leak may provide negotiation/ business advantages to:
  - ④ Customers
  - ④ Suppliers
  - ④ Competitors
  - ④ Bidders

# Confidentiality – Why?

- ④ A leak may unnerve:
  - ④ Employees
  - ④ Customers
  - ④ Suppliersand destabilize the business

# The Conundrum

- ⦿ Potential bidders may be the parties you most 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

- ④ Marketing a deal should be a coordinated effort of:
  - ④ Key company people
  - ④ Investment dealers/financial advisors
  - ④ Auditors/accountants
  - ④ Lawyers

# Confidentiality Agreement

- ④ Defines what is confidential information
- ④ Establishes a process for disclosure/ protection of confidential information
- ④ Restricts use/distribution of confidential information

# Managing the Disclosure Process – General Rules

- ④ Limit the number of people involved
- ④ Impress on those involved the importance of maintaining confidentiality
- ④ Appoint a single person as a point person
- ④ All data flow should be between the point people only

# Managing the Disclosure Process – The Data Room

- ⑥ Data Room – the collection point for all data to be exchanged
- ⑥ Used to be a physical location
- ⑥ Now, it is commonly a virtual space

# Managing the Disclosure Process – Advantages of a Virtual Data Room

- ④ Keeps bidders separated from each other
- ④ Keeps record of who accessed what, and when
- ④ Provided by investment bankers, law firms, financial printers and a number of other providers
- ④ Consider developing a data room even if a deal is not imminent

# Managing the Disclosure Process – Staged Disclosure

- ⑥ Like dating – don't tell bidders everything about you at once
- ⑥ Begin with summaries of the relevant information
- ⑥ Make more fulsome disclosure when the field of bidders 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

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