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Building Your Deal Team

Assembling the right players important for finance, sales, and/or merger moves

By Kenneth Marks

As economic activity improves, some small and mid-sized companies are seeking to launch strategic initiatives to move their businesses forward. In some cases this means raising capital, and in other cases it means partnering with or selling to an investor or buyer with deep pockets, or where there's a strategic fit. No matter what the case, having the right team can make the difference — not just in the value and quality of the deal, but whether you actually get the deal done.

So, before you jump into a transaction and start negotiating, make sure you have the right players on your side.

Legal counsel: A critical member of the team. As management considers its alternatives and potential actions, it needs to understand potential ramifications. Your lawyer should be experienced with transaction structuring and securities law issues, and should be someone whose judgment you value and trust. There are many issues that arise out of the various corporate finance and M&A (mergers and acquisitions, which includes selling a business) transactions. It's important to have a lawyer who is a "deal doer" as opposed to a "deal killer."

Deal doers have the best interest of the company and shareholders in mind and are focused on completing deals and finding ways to make transactions close. In all deals, there are obstacles and emotions that arise even after the business principals have agreed on the major terms. A lawyer who can think creatively can facilitate solutions to overcome these obstacles.

Though you may have a long and successful relationship with personal counsel that may be strong in real estate, estate planning, or some other discipline, that lawyer may not be the right counsel for corporate finance and M&A transactions. Typically, these folks will focus on the wrong issues and spend too much time getting up to speed, the end result being either a poorly done deal or a failed transaction. If current counsel lacks the skills you need to achieve a successful transaction, ask him to help you locate and evaluate new counsel with the right skills; do this before you begin the transaction process, not afterwards.

Having counsel that is known for doing deals and for expertise in transactions can be invaluable in the process and will lend credibility in reaching your goals. Lastly, some law firms have partners that cross over from counsel to an informal investment banker. This is not bad if they have the marketing skills, deal instincts, experience, and available staff time; but it can be problematic if their role is not well understood and defined.

Investment banker/M&A specialist: If you are selling your company, this role is a must. If raising capital, others on the team may be willing and able to assume the position; it depends on the stage of the company and the type funding required. Investment bankers and M&A specialists are intermediaries that drive the transaction process, help present and market the company, and may actively participate in negotiating the deal. You can think of them as the "deal quarterback." In some cases you will find a strategic adviser or consultant filling this role, which is fine too. The process of selling a business is reasonably complex and requires an integrated effort of the entire team to get the best results. The key is to have a partner-level professional with transaction AND business experience that understands the entire process, the subtleties, and the inter-related issues, and opportunities.

Accountants: We use the plural because there are usually multiple accountants involved in the process. First there is the need to have financial statements that comply with generally accepted accounting principles (GAAP). Valuations tend to boil down to a multiple of EBITDA (earnings before interest taxes depreciation and amortization) or cash flow. The audit accountant can help your team ensure that you have defensible earnings information that will likely be required in negotiating the deal. Without it, you will be operating from a position of weakness and constantly being second guessed by the investor's or buyer's team.

Second, there are the tax accountants. Particularly in the sale of a company (versus financing), there are a number of decisions that can directly impact the eventual after-tax cash proceeds to the shareholders. Your ally and partner in making these decisions is either your tax accountant — who should have corporate finance or M&A transaction experience — or a tax attorney with the same.

Board members and management: No one knows your business better than you and your management. There is a dual purpose in choosing your internal players: (a) to have multiple eyes and minds that understand the intricacies of the business and its industry, and (b) to represent the interest of the shareholders and key stakeholders that will be required to get the transaction complete. A critical investment component for many investors and buyers is management. In addition, having your senior team members on-board early in the process is usually key to successfully presenting and marketing the company. It enables outsiders to observe the breadth and quality of management, and allows management to evaluate potential investors or buyers in real-time as the process progresses. At a minimum, expect to have your CFO or controller, and key board members ready to engage as required.

Carefully interview and assemble a group of professionals who have the focus, expertise, network, and mind share to enable you to make sure-footed, solid decisions as you contemplate and execute on the financing or M&A process. Keep in mind that not all advisers are needed at once — prioritize, and be aware of the cost and benefits of the engagements and timing of support. The mix of these professionals and their firms is a function of the credibility of your company's management, size of the business checkbook, stage and industry of the company, and the realistic growth opportunity of the business.

Kenneth H. Marks is a managing partner of High Rock Partners, providing growth-transition leadership, advisory and investment. He is the lead author of the Handbook of Financing Growth *published by John Wiley and Sons, www.HandbookofFinancingGrowth.com. You can reach him at khmarks@HighRockPartners.com .*