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Investment Bankers vs. Attorneys

Which should lead an M&A Transaction?

Question:

In your experience, who has more frequently driven/led the negotiations in an M&A transaction or a private placement transaction, the investment bankers or the corporate securities attorneys? Why?

Answers:

In my experience both investment bankers and outside attorneys, with internal management acting as point people. This worked out well in most cases. I think because of more experience and the need for making sure everything is done exactly right.

- A very experienced corporate F1000 director, public and private.

In my experience it is management, teamed with the investment banker. Why? The investment banker can readily explain market concepts to the seller and comp pricing to show the "fairness" of the deal.

- Very experienced F1000 corporate director, public and private.

My experience has consistently been that the attorneys have led the negotiations. Admittedly I'm not unbiased. In my experience second place goes to the clients themselves, if they happen to have someone on staff that is qualified. I have always considered that the investment banker's job is in other areas, i.e., helping the seller get the company ready for sale, marketing the company, finding the buyer, etc.

- Attorney

In my experience, it has been the investment bankers…having said that, the lawyers always lawyer it to death, so leading means driving the lawyers.

- Governance expert and professor of business

Good question. My experience is that it depends on the size of the deal and the role and qualifications of the investment banker. In a mid-size and larger deal, where the role of the IB is full service, then they drive and lead the deal. This includes finding the right buyer/seller, the necessary financings partners, the deal book and then the auction process hopefully at the end to get a fair price. Many times in a smaller deal, however, the IB functions more as a broker trying to find and put together the parties, but then the attorney, management and the board take it from there. An excellent book I am reading addresses this matter rather well. It is "The Perfect Corporate Board: A Handbook for Mastering the Unique Challenges of Small-Cap Companies" by Adam Epstein. In either case, I have found a special committee of the board, composed of independent directors, can add significant value to the process in working with the IB and attorneys in whatever roles are appropriate, as well as advising management. I have just completed two special committee processes where this occurred.

- *Very experienced corporate director, public and private.*

In regard to your questions:

1. M & A Transactions – in my experience the answer is neither…it has been the principals that have driven and led the negotiations at least on our side as buyers. On the other side, it depends on the nature of the transaction but I would say it is split relatively evenly between the bankers and the lawyers.
2. Private Placements – experience is very limited here so do not have a view.

- *Managing partner of a successful private equity firm*

Considerations In Selecting An Investment Banker

As with the selection of any vital corporate advisor there are a number of considerations. The best choices are a blend of objective and subjective evaluations. Even the objective ones however can be somewhat subjective. There are few quantitative scales to measure professional service providers like these. Therefore, since there are no clear concise measurements it may be best to approach the selection process without black and white expectations, but rather with a blend of objectivity, intuition and chemistry.

Key Evaluation Categories:

- Trust
- Experience in transactions similar in size and nature to those desired.
- Experience in transactions in the same industry and business space as the client.

1. Trust: Do you have confidence in their advice? Do their dealings with you instill trust? Do they have a reputation for forthright dealings? Can you see yourself delegating important tasks to them? Do you feel that they are sincerely interested in your objectives, and that they clearly understand them? Do you get the feeling that they are trying to fit you and your transaction into a pre-determined format, or do they strike you as being sufficiently creative and knowledgeable in structuring a more creative structure. If you assume that you have narrowed your 'short list' of candidates to those that checkout as very qualified, the final decision should arguably come down to trust.

2. Transaction Experience: Experience in transactions similar in size and nature to those desired essential. Some may argue that direct experience in the clients' specific industry and space is more important than experience in the specific transaction category – the size and nature of your desired transaction. I submit that this is not the case. It is better to have deal experience because in the end it's the deal structure that will deliver value. Has the team configured deal terms that meet the maximum range of your objectives and concerns? These are rarely unique to any industry, but rather largely based on the professionals' direct experience in crafting deals of a similar size, nature, and structure. They need the ability to negotiate your key requirements and prioritize those over others that are of less concern.

3. Industry Experience: Familiarity with the industry and the client's specific business is important. This knowledge will accelerate familiarity with industry players, deal history in the space, valuations, industry dynamics, and more. Research can in fact provide most of this information. However, research cannot replace the deal making experience. One of the more important factors often accompanying deep familiarity with a given industry, and one that

cannot be researched or improvised is connections. A banker with years of activity in a given space knows the key personalities personally and can call on them for insights, scarce information, other introductions, and ultimately suggestions of potential partners.

Why is the ability to sell less of an issue? If your banker does an excellent job of researching, packaging and presenting your company, it will just be a matter of identifying interested buyers, partners, or investors. The prospects will quickly be able to identify the potential of your transaction and determine their level of interest. Making the most attractive and compelling case will attract he most motivated buyer. The identification of the players is crucial and then having the skill to play them off each other effectively to surface the best fit is the key. This is strategy, not sales. It may not strictly be price. Other factors will include, how the company's employees will fare? Are there downstream performance incentives? What are the employment arrangements for key members of management? What is the reputation of buyer for deal completion and adherence to terms? What are the contingencies of the deal? What is the balance between cash versus other currencies? What is the timing? Etc.