

Chicago Daily Law Bulletin®

Volume 162, No. 7

Serving Chicago's legal community for 161 years

Building a winning team best way to tackle a M&A transaction

It looks like 2015 will go down in history as a very active year for mergers and acquisitions. Valuations and deal volume continued to ratchet up last year as the months flew by.

Some of you transactional attorneys finally may be getting some rest after a heavy number of hours in December to get one or more M&A deals across the finish line in 2015. No doubt those of us in the Chicago deal community are hoping that 2016 will continue to see a high number of M&A transactions.

As possible fuel for sustained deal flow, there are hopeful indications that more middle-market businesses owned by baby boomers are becoming ripe for sale and will eventually (soon?) be coming to market. You may even have such a client and in 2016 receive a call from someone asking what he or she should be doing to get a business ready to sell.

If you don't regularly handle M&A transactions, you may be wondering about the sort of preparations an individual entrepreneur or family seller of a privately held business should be undertaking. Here's a brief overview of a few considerations (but by no means an exhaustive list):

Build a team

In addition to corporate M&A counsel, your client will need the assistance of a deal-oriented team of other subject-matter attorneys to help get ready to sell and then close a transaction.

Depending on the type of business being sold, you may need to tap colleagues with practices in labor and employment, employee benefits, real estate, intellectual property and environmental and regulatory areas for advice. In addition, your client may need to engage other law firms, including lawyers in foreign countries or

local jurisdictions to successfully close a deal.

A tax professional with M&A experience is one of the most important advisers your client will need on the team. Whether it's one of your tax partners or a professional at an accounting or consulting firm, it's critical that your client have solid tax advice on the front-end to help structure the transaction.

Lawyers may be integral in the sale process, but we and the tax professionals can't do it alone.

Your client would be extraordinarily well-served to talk early in (ideally far in advance of) a potential sale process with one or more of the many reputable middle-market investment bankers in the Chicago area who specialize in helping family and entrepreneur-owned businesses consider their strategic options.

These experienced specialists can provide access to a wealth of potential buyers and are vital to helping identify the best option for the disposition of your client's business. The best investment bankers in town are often glad to have a "no strings attached" introductory meeting with private business owners, which you can help arrange.

As possible fuel for sustained deal flow, there are hopeful indications that more middle-market businesses owned by baby boomers are becoming ripe for sale and will eventually (soon?) be coming to market.

As your client moves forward with a possible sale, they may also need to tap other advisers, such as those in the accounting, environmental and real estate industries.

Assemble company information

With a high company valuation comes deep and detailed due dili-

BY DAVID T. CELLITTI

David T. Cellitti is a partner at Quarles & Brady LLP, where his practice focuses on middle-market mergers and acquisitions and other corporate transactions. He also provides legal services on a wide range of business law matters, including as outside general counsel.

gence by potential buyers into your client's business. One of the goals of a seller (and its counsel) as a company is preparing for sale is to know everything possible about the business being sold to anticipate any questions a prospective buyer (or its counsel) could ask.

Buyers, of course, want to see evidence of the same sort of solid legal compliance about which you have undoubtedly been advising your client. You and your client should get ready for this by gathering any and all documents and information a buyer may want to see. Now would be a good time to, among other things, make sure the client's minute book is up to date and all important contracts are in writing and fully executed.

Your subject-matter colleagues in other practice areas and your

colleagues surprises and prepare your client for this exposure — and ensuring there's a good confidentiality agreement in place first. Speaking of confidentiality, your client will want to carefully consider to whom and how it will disclose the fact it is undergoing a sale process.

Fortunately, the disruption to your client's business of a sale process can be reduced by the development of the virtual data room. Instead of a stream of potential buyers and their advisers visiting your client's headquarters in person to pore through documents, now all of that data can be posted to a secure website with varying levels of monitored access your client or its advisers can control.

Of course, your client will want to consider whether items should be redacted, such as pricing terms in contracts, appraisals or minutes and whether certain agreements have confidentiality covenants that could be breached by making them available.

Once your client finds a buyer, much of this due diligence data will wind its way onto a draft of disclosure schedules to a lengthy definitive M&A agreement you'll be negotiating on behalf of your client. This agreement will also include detailed representations and warranties about your client's business that will be as comprehensive as the due diligence a buyer will perform.

As your client moves forward in the sale process, you can also start to get him or her thinking about how to address post-closing liability (remember, it's not about how much money a seller gets at closing, but how much they get to keep), such as escrows and warranty insurance, and brace the client for all of the many documents and other issues to address in the sale process that you and the other team members will assist with.

client's other advisers also will be able to assist with compliance audits and reviews to get the business ready to sell. There are sample request lists that M&A lawyers can provide, and if you haven't seen one, you can imagine how comprehensive it is.

You can help avoid any dili-