Baker Pacific
Corporate Development and M&A

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Insider Trading and Avoiding Leaks

Insider trading is a popular topic in the press.

A recent New York Times article highlights the frequency of suspicious trading activity ahead of M&A news (Whispers of Mergers Set Off Suspicious Trading). The conclusions are based on an analysis by Measuredmarkets Inc. for the NY Times. What is particularly telling is that in some of the cases, "the abnormal trading occurred during periods of significant behind-the-scenes progress in the mergers."

And the Wall Street Journal reports on possible unusual trading in credit-default swaps (Can Anyone Police the Swaps?).

First of all, trading anomalies ahead of M&A activity doesn't necessarily mean insider trading. However, it's likely that insider trading does account for some of the cases in question.

I suspect that in most cases, the parties involved in any insider trading are not those most closely affiliated with the companies party to the M&A activity, but are instead linked to individuals that indirectly involved on the fringes of the deal. Of course, trading in credit-default swaps would be institutional in nature rather than individual.

Regardless, the key for the Corporate Development executive is to avoid any leaks in the first place, as they generally work against getting a deal done.

So, this is a good time to share best-practices on avoiding leaks. The list below will come as common sense to many, but it never hurts to have a reminder.

1. Keep the deal team as small as possible as long as possible. Inevitably, additions will need to be made to the team, but make them judiciously.

2. Keep track of everyone who knows about the deal and the date they were "brought over the fence."

3. Instill the legitimate fear of disclosing (intentionally or inadvertently) such highly confidential information to the outside world.

4. Get the deal done as quickly as possible, as time is the enemy when it comes to leaks.

5. Be especially careful with the number of outside advisors involved, and the size of their teams. As the company hires new outside advisors, and the advisors each fill out their teams (and respective support staffs), the odds of a leak increase exponentially. For example, bring in investor relations, PR, and others that will be involved with the announcement as close to the announcement as allows them to get their job done. They'll hate me saying that, and I don't blame them, but nobody had as much time or as many people working on a deal as they'd like.

David Shanberg has led communications, Internet, software, and other technology mergers, acquisitions, strategic alliances, venture investments, business development, and finance activities for the past 16 years, completing transactions totaling over $90 billion. He also has a previous 4 years of experience in technology consulting.

Baker Pacific specializes in corporate development strategy and M&A transactions for technology companies. Baker Pacific is especially well-suited for situations where a company finds itself contemplating or facing a significant transaction (such as a sale of the company or an acquisition) and needs additional expertise and bandwidth to be successful.

Baker Pacific's philosophy is not to just do deals, but to do the right deals. Its orientation reflects the impartiality and deeper industry understanding of an internal strategy and corporate development executive, as opposed to a transaction-oriented outside advisor. Baker Pacific is not afraid to advise against doing a deal.