Baker Pacific
Corporate Development and M&A

By David M. Shanberg

Who Can I Trust on This M&A Deal?

In a recent segment of the Wall Street Journal's Deal Journal Video: The Dark Arts of Investment Banking, Evan Newmark remarks, "… for the people involved, the incentives are almost always to get the deal done." This captures a well-known problem in dealmaking, but what is the solution?

In many cases, even company management has an incentive to complete a transaction (larger empire, financial incentives, etc.). For this article, geared toward the CEO decision-maker, let's assume that he or she actually wants impartial advice on a contemplated M&A deal. Who can be trusted, and how should the opinions received be filtered?

Starting with the group specifically hired to advise on the transaction – the investment bankers – they of course have the most deal expertise and experience, but they also have the most to gain from a completed deal. With some investment bankers, I'm not sure they have ever met a deal they didn't like. The key here is to read between the lines – look for whether their justification of the transaction passes the "red face test" and for their level of conviction.

On the buy-side, outside counsel also has an incentive for the deal to happen because it would likely have follow-on work in getting to closing and beyond, as well as recognition for a completed transaction. On the other hand, on the sell-side, outside counsel may be less excited about completing the transaction and losing a client. However, in both cases, their financial incentives are not nearly as strong as those of the investment bankers. Therefore, if a senior member of the legal team has the big picture of the company, industry, and the transaction, and also has the business savvy, then he or she might be able provide a valuable opinion.

The internal Corporate Development executives are likely to have both the insight and the background to provide good input. In most cases, they won't have strong financial incentives based on completed transactions (for this very reason). In addition, the more experienced ones have done enough deals to avoid letting personal desire get in the way of corporate responsibility. So, generally they will be impartial.

Other internal executives, including Finance and the relevant GM should also be able to provide unique perspectives on the transaction. The Finance executives may tend to be risk-averse, and the GM may have conflicting personal agendas (lots of disruption, but a larger empire), but both have a depth of company knowledge that is essential to a good decision.

Finally, be on the lookout for any member of the team (including yourself), in "deal heat," in which the desire to complete and momentum behind a transaction trump debate over the difficult decisions.

In the end, like may high-level decisions, it's about synthesizing the opinions of a diverse team into a decision, and taking into account the motivations behind those opinions. In the case of M&A transactions, the motivations can be particularly powerful because the stakes are so high.

(On a side note, the fact that I now work in the most conflicted of the above groups is not lost on me. Despite that, I do my best to make sure my impartial internal dealmaker viewpoint comes through loud and clear.)

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.