




Today's Quote

When the naked man sold you his shirt,
remember that it was your own blindness,
the dazzling vision that danced before your
eyes, not his skill, that closed the deal.

-Harvey Mackay

“Show me the money”

- Understand the need for a deal-closing strategy
- Understand methods and strategies for deal-closing
- Understand how to evaluate different deal structures



Arranging a loan or investment infusion
is as much a marketing issue as a
financial issue

True or False?

- Control, Income, and Value are inseparable.

True or False?



- You should never give up control of your business

True or False

- The fewer the shareholders, the better

Reasons to bring in a new owner



- Provide new capital
- Provide specific new assets
- Provide specific services or expertise
- Provide new customers or clients
- Train a successor
- Promote an employee
- Estate planning or income tax planning

Issues related to new owners

- Share of control
- Share of profits
- They may still own the stock after they leave you
- Voting rights, notice of meetings
- Access to books and records

Alternatives to equity sharing with employees

- Bonus based on share of profits
- Bonus based on share of sales proceeds
- Tenure or golden parachutes
- Buy / Sell agreements to get stock back

Maintaining Control



- Non-voting stock or debt
- Super majorities
- Voting trusts
- Voting agreements
- Different classes of stock

Know your investors

- More motivated by fear or by greed?
- Who are their personal and business contacts?
- Their perspectives and expectations
- Their *need to know* quotient - frequency and content
- Interest, commitment, and experience level
- Their risk tolerance
- Their hidden agendas
- Who else they have funded

Know your Numbers

- Company valuation and rationale
- Comparable deal structures
- Stock structure alternatives
- Cash flows
 - Monthly
 - EBITDA, CAPEX
 - Cash flow to owners
- Debt and equity needs

Anticipate Contingencies



- Death
- Disability
- Voluntary withdrawal
- Employment termination
- Expulsion
- Divorce
- Individual creditor problems

Terms to work out - Equity



- Control
- Dividends
- Liquidation preference
- Conversion
- Dilution
- Restrictions and limitations
- Redemption
- Covenants
- Further issues

True or False?

- Credit card debt is a wonderful source of new venture funding.

Debt Issues



- Guarantees
 - Assets – inventory, A/R, buildings, etc
 - Personal
 - Other
- Costs
- Other Terms

Terms to work out - Debt

- Interest
- Payments
- Due Dates
- Security
- Warranties and guarantees
- Other costs
- Covenants, events of default

Typical Covenants

- **Affirmative Covenants:**
 - Maintain acceptable accounting records
 - Protect interested party's rights and values
 - Allow periodic inspection
 - Maintain certain financial targets
 - Pay all taxes and other items when due
 - Maintain adequate insurance

Typical Covenants

- Negative Covenants:
 - No other debts, pledges, or encumbrances
 - No material changes in character, management, or direction of business operations
 - Not in violation of any laws
 - No mergers, reorganizations, etc.
 - No selling of assets or other items of interest
 - Only approved investments
 - No loans, dividends, distributions, etc.
 - Thou shall not miss your planned numbers



"I tried hunting and gathering. But I'm really more at home in a corporate culture."

Timing is everything



- Don't sell too soon
- Don't sell too late

In many (if not most cases), the parties have opposing interests

- This is true between:
 - investors / entrepreneurs
 - partners
 - buyers / sellers
 - creditors / debtors

Who's interest prevails?

- Who has the most bargaining power?
- Where do each of the parties need to end up?
- Which factor is critical to each party?

Negotiation is the Heart of the Deal



- Know what you want –
 - Size of Deal
 - Deal life
 - Your ROI
 - Intangibles, control issues
 - Guarantees
 - Covenants
 - Costs
 - Services, assistance, etc.

Negotiation is the Heart of the Deal

- Know what the investor or lender wants –
 - ROI
 - Timing
 - Exit plan
 - Risk Appetite
 - Management team expertise
 - Cash flows
 - Guarantees

Negotiating Points

- Know what you want before you ask.
- Have throw-away items you can give up.
- If you think you're an MVP, act like one.
- You gain strength if you have competing offers.
- Being tough doesn't mean being dishonest.
- Know who is across the table from you.

More Negotiating Points



- Don't fumble.
- Live to fight another day.
- To develop a long-term relationship, it is necessary to negotiate a contract that is mutually beneficial.
- Always leave something on the table.

More Negotiating Points

- If people like you, they will want to work with you and will give you the deal you want.
- If you are perceived as sincere, the relationship will be healthier and more beneficial to you.
- Always have a walk-away point

Other factors



- Operating agreements and covenants
- Due diligence
- Security
- Securities laws
- Valuation

Buy / Sell agreements between owners



- Retirement
- Death
- Disability
- Incompetence
- Need a funding mechanism if any of these triggers occur:
 - Insurance
 - Installment payments
 - Savings plans

Due Diligence



- Accuracy of financial statements
- Appropriate accounting policies
- Historical data - explain fluctuations in performance
- Review for overstated assets or understated liabilities (includes valuation issues)
- Review working capital requirements
- Evaluate projections of future
- Search for unrecorded liabilities (environmental, pension, legal, golden parachutes, etc.)
- Other Operating Statistics

Be prepared to pay:

- Due diligence costs (both sides)
- Commitment fees
- Legal and accounting fees (both sides)
- Monitoring fees
- Unused line fees
- Annual renewal fees
- Early termination fees

Taxation

- Controlling C-Corp double taxation
- Sales vs. tax-free reorganizations or mergers
- Hidden traps in partnership liquidations
- Deferral of gains by reinvesting proceeds
- Qualified Small Business Stock

Safe selling

- Make sure that you have adequate protection:
 - warranties
 - guaranties
 - security
 - indemnities
- These will usually be provided by both sides.

Asset vs. Stock Sales



- Taxation issues
- Transfer of liabilities
- Transfer of NOL credits and other tax attributes
- Step up in asset basis

Helpful Hints

- Never guarantee a loan for an income-producing asset beyond your proportional interest in that asset.
- Never cosign for a loan unless you put the entire amount into your business and you control the business.

More Helpful Hints

- Read *every* word in a contract before you sign it.
- Make sure your rights under the agreement are just as strong as the rights of the other party.
- Do not waste time with agreements by permitting nonsensical revisions to them.
- Sign legal documents only when they say what you want them to say.

