



# Anatomy of an M&A Deal

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- Where to Start
- Deal Structure Basics
- The Letter of Intent
- Understanding Due Diligence
- Key Deal Documents
- Negotiation Tactics
- Deal Killers
- After the Deal Closes
- War Stories

# Where To Start

- Non-Disclosure Agreement
- Make Sure You're Really Ready to Sell
- Start Preparing for Your Exit from Day 1
  - Avoid high-risk, unique deals
  - Get and keep your paperwork in order
  - Follow standard financial practices

## Where To Start (cont'd)

- Do Yourself a Favour – Hire Great Advisors
- How?
  - Get references
  - Look at more than billing rate and intellect
  - Check negotiation style
  - Check for experience in comparable deals
- Top Tier Firm can mean Second-Tier or Junior People on your Deal

# Deal Structure Basics

- Asset Purchase
- Share Purchase
- Other Deal Structures:
  - Joint venture
  - Merger of equals
  - Amalgamation
  - Minority strategic investment
- General Rule: Buyers Prefer Asset Deals while Vendors Prefer Share Deals

# Deal Structure Basics (cont'd)

- Anatomy of an Asset Purchase Deal
  - Included and excluded assets
  - Included and excluded liabilities
  - Allocation of purchase price
  - Working capital adjustment
  - Employees to be hired



# Deal Structure Basics (cont'd)

- Anatomy of a Share Purchase Deal
  - Acquisition of 100% of shares through formal takeover process, standard share purchase procedure or plan of arrangement structure



# Deal Structure Basics (cont'd)

- Purchase Price
  - Cash vs. Shares vs. Combination
    - Type of Shares Purchaser is Using as Currency
    - Securities Law Matters
    - Registration Rights



# Deal Structure Basics (cont'd)

- Purchase Price (cont'd)
  - Structure
    - Deposit (refundable or not?)
    - Timing of Payments
    - Working Capital Adjustment
    - Earn-out
    - Management Retention Pool
    - Escrow/Holdback

# Deal Structure Basics (cont'd)



# Letter of Intent

- What is it?
  - Non-binding expression of business deal
- Get advisors involved at LOI stage



# Letter of Intent (cont'd)

- Basic Terms
  - Type of Deal
  - Purchase Price
  - Closing Date
  - Conditions Precedent
  - No Shop Clause / Exclusivity
  - Break fee
  - Avoid “Standard” Language



# LOI's Signed, So You're Done Right?



# Not Even Close!



# You're Just Getting Started...



# Due Diligence



# Due Diligence

- Objectives of Purchaser
- Objectives of Company
- Advance Preparation is Critical!
- Use a Deal Room
- Disclosure

Disclosure

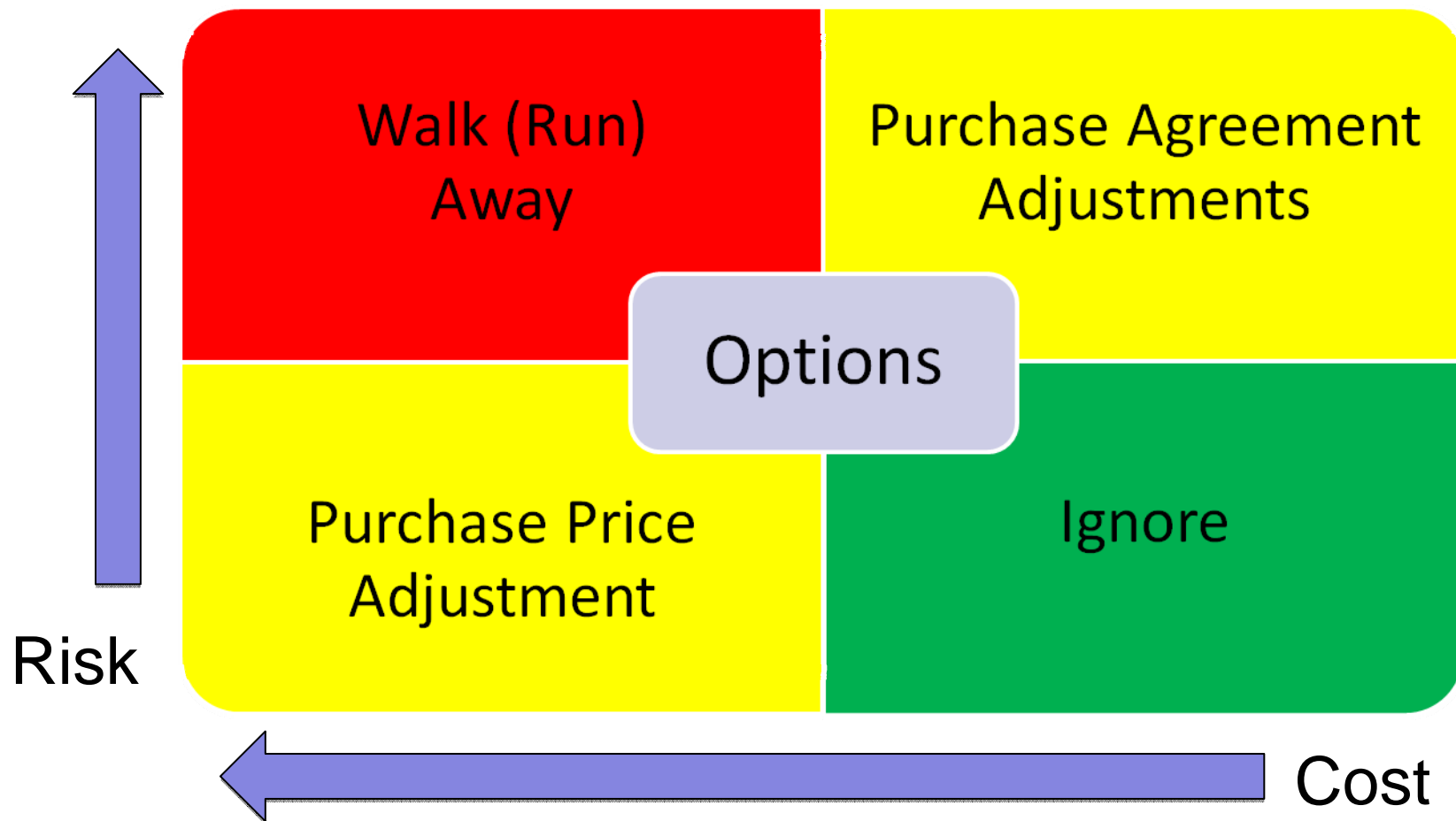
Disclosure



# Due Diligence

- An Art and a Science
- Know:
  - Where to look
  - What to ask
  - Who to ask
  - How to test the answers

# Dealing with Surprises



# Key Deal Documents

- Non-Disclosure Agreement
  - One-way v. Two-Way
  - Timing
  - What's Covered?
  - What's Not?
  - What If the Deal Falls Apart?
  - Exclusivity

# Key Deal Documents (cont'd)

- Purchase Agreement
  - Track the business deal in LOI
  - Representations and Warranties
    - By whom and for how long?
    - Consider use of separate Disclosure Schedule

# Key Deal Documents (cont'd)

- Purchase Agreement (cont'd)
  - Indemnities
    - How much?
    - How long?
    - Baskets and Caps
    - Exceptions
  - Conditions to Close

# Key Deal Documents (cont'd)

- Purchase Agreement (cont'd)
  - General Ts & Cs
    - Governing law
    - Transaction costs
    - Announcements
    - Covenants of vendor and purchaser

## Key Deal Documents (cont'd)

- Employment Agreements
- Non-competition Agreements
- Registration Rights Agreement
- Ancillary Deal Documents
  - Legal Opinion
  - Third Party Consents
  - Director and Shareholder Approvals
  - Share Certificates

# Negotiation Tactics

- Reality: Most People are Weak Negotiators
- 3 Most Important Things For You:
  - Get a Good and Fair Result
  - Understand Your Deal
  - Don't Kill Personal Relationships
- Focus on Key Elements in the LOI



# Negotiation Tactics (cont'd)

- Common Mistakes
  - Failing to Have a Plan
  - Not Researching/Understanding Your Opponent
  - Lack of Perspective
  - Not Listening
  - Getting Closure on Each Point Before Moving On
  - Falling For The “Market” Argument
  - Assuming Other Side Plays By The Same Ethical Code as You

## Negotiation Tactics (cont'd)

- BATNA (Best Alternative to a Negotiated Agreement)
  - Have a Back-up Plan
- Have Leverage
  - Competing LOIs
  - Pick Positions on Key Points and Stick to Them
  - Pre-determine Order of Negotiation Points

# Deal Killers

- Presenting Your Own LOI
- Incomplete/Late Disclosure
- Failure to meet sales forecasts during diligence period



# Deal Killers (cont'd)

- Ownership Issues
  - IP Ownership Agreements are Mandatory
  - Watch for Free/Open Source Software
- Employee Disputes
  - Need Key People Happy and Onboard with Deal
- Litigation



## Deal Killers (cont'd)

- Continuous Ultimatums During Negotiations
- Working Against Your Investors During Negotiations
- Inability to Secure Shareholder/Director Approvals
- Inability to Secure Third Party Consents
- Penalties in Government Grant Agreements

# Closing The Deal



# After the Deal Closes

- Integrating Your Employees Into the New Company
- Distributing the Purchase Price
- Payment of Deferred Portion of Price
- Post-closing integration is where many deals fail to generate ROI:
  - Need to mesh cultures of buyer and seller

# War Stories





# Thanks For Your Time!

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