

ACQUISITION PROCESS WHETHER BUYING/SELLING/MERGING PORTFOLIO CONTRACTS/ATMS

Jack Milford Ford, JMFord Law Office

Overview

- Basic 12 Step Acquisition-Sell Process for Buyer-Seller Portfolio of ATMS/Location Agreements/Contracts
- Buy-Sell Entity, typically the minority of closed Transactions
- Buy-Sell ATM Assets (ATM Portfolio), typically the majority of consummated Transactions
- Seller, be prepared to be thoroughly scrubbed & analyzed by Buyer of all aspects of a Seller's business operations & contracts documentation
 - (audited, unaudited financials & tax filings, all contracts, etc.)

Asset Acquisition

- If you are considering getting dressed for the “**Dance**”, which Dance is it going to be? Are you going to be a Seller or Buyer?
 - **Asset/Portfolio Sale...**
 - Typically, a Buyer is only buying ATM processing contracts & related service contracts (such as processing, maybe service, maybe armored carrier, maybe advertising), all signed, complete, & to be produced during due diligence.
 - What contracts can be assigned & which cannot? Are there assignment term restrictions?
 - What other liabilities are attached to ATM contracts, i.e. continuing sales commission?
 - Seller will need to produce during due diligence financial reports, documents & records (but fewer than an Entity Acquisition) & they all need to be updated & complete.

Entity Acquisition

- Significantly more detailed due diligence than an Asset Acquisition, due to higher level of potential liability exposure being acquired/assumed by a Buyer
- Additional reports, additional documents & records to be produced (vs. an Asset Acquisition) all need to be signed, updated, complete, when produced
- Typically much longer process & additional agreements to be prepared & signed to consummate the transaction

Due Diligence

- As I stated earlier, a potential Buyer of an ATM business or assets (through due diligence) will analyze all aspects of a Seller's assets & liabilities.
- Depth & length of due diligence typically will be determined by **(i)** type of acquisition due to significant differences between an Entity Acquisition vs. an Asset acquisition, **(ii)** how well organized the Seller is & **(iii)** how up to date are the Seller's contract files, financial reports & corporate records.
- Sellers need to be prepared to be scrubbed, Buyers need to be prepared do it.

Due Diligence Cont.

- Need to have current, complete list & files for all contracts (including employment).
- Need to have current, complete list & files of all debt obligations & liabilities, lawsuits (filed & pending).
- Need to have current financial reports, outside accounting & auditor reports, tax filings.
- Need to have all documents signed, readily available, complete, to be viewed & copied.
- Need to have all corporate documents signed, readily available to be reviewed & copied (all state/federal filings) (IT, Patents, IP, Tradename).

Due Diligence Summary

- Depth & length of due diligence typically will be determined by, among other factors....
 - type of sale (due to significant differences between an **Entity** acquisition vs. a **Asset** acquisition)
 - how well organized, up to date & complete are Seller's **Corporate** records & business files
 - how well organized up to date, & complete are Seller's **Contract** files (all such files)
 - how well organized, up to date & complete are Seller's **Financial** records & reports

Asset Acquisition Process

- **TYPICALLY, THE FOLLOWING LEGAL DOCUMENTS, IN ORDER, ARE PREPARED & SIGNED OFF FOR AN “ASSET ACQUISITION” :**
 - Binding Bi-Lateral Non-Disclosure Agreement (**NDA**)
 - Non-Binding Letter of Intent (**LOI**) or non-Binding Memorandum of Understanding (**MOU**)
 - A Definitive, Binding Purchase Agreement (**PA**) & various exhibits to it (which will include extensive terms, warrants & representations, non-compete, non-solicitation, possible holdback)
 - Assignment/Bill of Sale (**BOS**)
 - Escrow Agreement (if part of purchase price is held for a short term to cover attrition & breach of warrants & representations by Seller)
 - Assignment/consent documents for agreements, corporate authorization forms
 - Separate Non-Compete, employment, and/or independent contractor agreements

Entity Acquisition Process

- If it is an “Entity Acquisition”, there will typically be significantly more legal documents in addition to the documents for an Asset Acquisition

Closing

- The more knowledgeable a Seller is about *all* aspects of the Seller's Company/Portfolio (which will be a reflection on how well the Seller manages the Company) will typically result in a higher Valuation of a Seller's ATM Asset Portfolio or Company & an easier negotiated process with a Buyer to finalize & close a Transaction.

Further Information

Two Documents available on my website
with further information regarding
acquisitions

- **TWELVE STEP ACQUISITION PROCESS**
- **ACQUISITION DUE DILIGENCE QUESTIONS**

ACQUISITION PROCESS



Jack Ford

503.880.0788 (m)