Due Diligence

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Hemenway & Barnes partner Fred Marx was back in the hot seat recently. Mr. Marx co-hosted two broadcasts of Radio Entrepreneurs, June 19 and June 20, 2012, when he and Jeffrey Davis spoke with several Boston-area entrepreneurs.

In addition, Mr. Marx offered specific pointers about the due diligence process of buying or selling a business – including, especially, family businesses. This was the third installment of his recommended best practices following up on Mr. Marx's the Letter of Intent and how to select a broker.

Here's a brief overview of the due diligence process, the step after the Letter of Intent, along with Mr. Marx's suggested do's and don'ts:

1. Be prepared. Despite the stress and demands of running your business, it's vitally important to devote the additional time it takes to conduct thorough due diligence. That's when "the buyer wants to know what's really going on in your company," Marx says. Sellers want to instill confidence, save on professional fees and get the best price, so it's in your best interest to have everything in good order for the seller.

   For example, buyers ought towill provide sellers with due diligence checklists, asking about all aspects of the business. It's a good idea to have get these even during the Letter of Intent negotiation process. Have your team well-prepared, ready and in place. A solid team can facilitate the process.

2. Start the integration process. The due diligence phase is the perfect time for the seller and the buyer to plant the seeds to integrate the buyer's and seller's businesses. Start the conversation and build a plan about what needs to happen on Day One while you have your management teams around the table.

3. Keep running the business. Too many businesses, according to Mr. Marx, take their eye off the ball during due diligence. Sellers too often forget that they need to stay focused on maintaining – or, better yet, on increasing – the company's value. Mr. Marx suggests that sellers consider that the deal might fall through and to continue putting the business first.

   Don't let your buyer – or anything else – distract you. Buyers want to acquire a healthy business that's on the uptick. Stay organized. Doing so will allow the process to go smoothly.

4. Control the message. The word will get out that you're buying or selling. So, be ready with a strategic message for both internal and external audiences, including employees, customers and your bankerlenders. Get ahead of

problems before they become problems, especially during the due diligence process.

Sellers, don't hold back if there's bad news or any weakness in the business. Transparency is of critical importance.

Mr. Marx cautioned buyers against hiring the seller-recommended attorney. The sellers "aren't always educated consumers," he said. So, it is important to interview several attorneys.

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