

In this section we'll talk about some things not to do during the negotiation process, as well as what to do to make a bad deal better.

Clint: What are some common mistakes entrepreneurs make in negotiation, things they really shouldn't do?

Brad: I think the biggest mistake an entrepreneur does during a negotiation is often trying to negotiate term by term, line by line. You see this in all kinds of negotiations. It's a situation where you have something that you're presented with, especially if you're an engineer and your engineer brain kicks in and you just want to solve it. You want to go through it systematically and just get everything taken care of.

In fact, that's not a particularly effective negotiating strategy. Really, what you want to do is you want to take things out of order. You don't want the other person to control it. You don't want to try to solve each thing in series. Instead, you want to think about the things that matter to you and make as much progress on those things up front.

You also want to be clear that some things that matter and some things that don't. You have to be willing to give on the things that don't and interspersing them with the things that do matter to you is important. You controlling the order in which you discuss something is much more valuable than the classic mistake of literally going through top to bottom the issues list.

Clint: How about an entrepreneur's ability to use market conditions as an influence in their negotiation?

Brad: This is another big mistake in negotiation. It's a mistake on the part of the entrepreneur and a mistake on the part of investors. You'll often hear from investors, "That's a market term." There is no such thing as a market term. The market terms change over time, they evolve, and they're situation specific.

When someone tries to use the justification, "That's market." to get something to a certain point, it's hollow. It's hollow both directions. When an entrepreneur believes that they know market based on what they're friends are getting and they say that to an entrepreneur, it's really not a compelling negotiating strategy.

What it does is it puts you in a position where if you lead with that you don't really have a good back up. Any rational VC on the other side will say, "That's

not market. Let me give you five examples of why we didn't do that in these other cases." and then you have no response.

Clint: How about ethics? How does that show up in the negotiation?

Brad: I said it earlier in one of the other segments not to ever lie. Don't ever lie. Your ethics and the way you comport yourself is critically important, especially in the context of a multiplayer game, but recognize that that ethic is not necessarily the ethic of the person you're negotiating with.

It would be nice if everyone followed that same ethical code. People will assert that they do, but as with so many other things, if someone says, "I'm ethical and I'm honest." there's probably a reason they're trying to assert that because they're trying to cover up for something they did that wasn't ethical or wasn't honest.

Whenever you say that action that you are rather than just acting in a way that that becomes your reputation, it's usually hollow. Be thoughtful about that as an entrepreneur. Recognize that you should be behaving in a way that's very true to your own internal code, but don't assume that the person you're negotiating with is as well.

It also comes back to doing your diligence in advance and understanding who you're negotiating with. It's often easy to find out who is direct, honest and straight forward versus who is always sort of stretching things, re-trading things, saying one thing and meaning another.

Clint: So, let's take a scenario here. Suppose I read your book, I took the class and somehow I ended up with a bad deal. Am I stuck for life? Is there anything that I can do?

Brad: There are a couple of very specific things you can do and it depends on your relationship with the investor. First and foremost is, if you have a clean, clear relationship with the investor you can always revisit the terms. You can always revisit specific things that are bothering you or demotivating you as you realize them over time.

For starters, if you develop a constructive relationship with your VC, it's always okay to bring up something. You shouldn't expect anything will change at that moment in time, but the idea that you're surfacing it gets it into the discussion.

Next is that whenever there's a new financing, you always have a chance to clean things up that were done in a previous financing better, uncomfortable or unsatisfying. Sometimes the investors will do this. I'll use myself as an example.

I really don't like participating preferred in early stage rounds. I don't like participating preferred in general, but I especially don't like it in early stage rounds. I think it misaligns the entrepreneur and investors in lots and lots of cases and it's actually bad for the early stage investor unless that investor is participating in all the rounds in the big upside case.

All often in my next round of financing ask for the participating in the first round to go away. Sometimes the early investors are not all that happy with it until they understand why I'm doing it versus layering another layer of participation on top of it which actually makes their economics worse.

As an entrepreneur, if you realize that you've ended up in a position where participating preferred in the early round and you have an investor who is really willing to play for the upside versus try to use that as an economic point in the context of the negotiation, you can clean up terms like that.

The last in of an acquisition. If you have a really good relationship with your investors and your board, and acquisition dynamics are such where the consideration isn't flowing right because of all of the capitalization up to that point, there's a negotiation to be had and a constructive conversation around that at the point of the exit.

There are often multiple times when you can revisit terms, the key in all of them is a constructive relationship as the entrepreneur with your VCs and with your board. In the absence of that it's very difficult to renegotiate anything, but in the presence of it, if you have clarity about what you want to change it's often easy to change it.