

Next up, in our interminably long list of things that don't really matter, is the one term that often takes three or four pages of the term sheet and that's registration rights.

Clint: What are registration rights?

Brad: Registration rights, which often consume huge amounts of words in the term sheet, essentially give a company the rules of engagement after you go public for how you would have to register the stock of the investors.

The situation where registration rights apply is only in an IPO or case where your company goes public. In those situations, they're often only the case not in the actual IPO itself, but in some future event where there's an additional sale of securities, called a secondary. You would register your shares at that point in time.

The dynamic here is, first, the likelihood and the scenario of dealing with registration rights is low, because most companies either go out of business or get acquired and a relatively small number go public.

We all aspire, many of us, to go public. Let's assume that that's a valid path and let's assume you go public. Even when you go public, the negotiation around the IPO doesn't really have anything to do with registration rights yet.

When you go public, you have a totally different negotiation with the underwriters, who are the investment banks that are helping take you public, for the shareholders who are going to be buying your shares about what you can do with your shares after the IPO.

Then there are often these events called secondaries, where instead of just the company selling shares, existing investors can sell shares. This is where the registration rights might have some impact, but generally this is a negotiation from scratch as well. If the investors can't agree on what they're doing, then there's no secondary offering.

Finally, in the context of registration rights, there's often language that says what rights the investors have to force a registration in these scenarios. However, I would put those in the category of fantasy versus reality.

For all practical purposes, it's very difficult for the investors to actually exercise those registration rights in the absence of cooperation from the company and the investment bankers.

It's just yet another case of a negotiation, but when it happens, it's way down stream, far far away from the early stage of your investment.

Clint: Why is it in the term sheet?

Brad: These have been in term sheets forever. They've probably gotten longer over time, to incorporate all of the side effects that people see and that they're trying to compensate for, so piggy-back registration rights and how many S3 registrations you can do and what actually happens on a pro-rata basis. It's just an effort of the investor to capture all of the edge cases.

The reason why it's just not that important to struggle with is that the actual validity and circumstance in which the edge cases come up is miniscule. There are so many other things to worry more about.

If you want to have some fun, have your lawyer push back on some of the registration rights. However, by having that fun, you're just going to look goofy and you actually undermine your ability in the overall negotiation. So I say it jokingly. The actual need for you to push back on these registration rights in the context of the deal is extremely low.

The flip side of it is every now and then an investor will try and bury something in the registration rights section that might have some impact on you at some point in the future. It's worth making sure that your lawyer at least reads through them. However, spending time negotiating them is pretty pointless.