

During the acquisition process, you'll be able to go on Amazon.com and buy things like Gouda cheese and robotic balls. But you're not going to be able to shop your company to other companies. In this section, we'll explain.

Clint: What's a no shop and how does it play into the LOI?

Brad: Typically in the LOI, you'll have a line that says that you are not going to shop the company, hence, "no shop," to any other acquirer for some period of time. That period of time is usually 30-60 days. Sometimes it's 90. But during the period of time from the point at which the LOI is signed until the deal is either closed or the deal stops and the buyer walks away, the implication of the no shop is that you are not to talk to any potential acquirer during this period of time.

This includes not just people you would reach out proactively to but people who reach out to you, possibly because they have heard that you are in some kind of acquisition discussion. In some transactions, especially those where there is a lot of bidding activity going around them, the LOI marks the point at which you go from multiple conversations to a single conversation as you're trying to close a transaction. When you are really only interacting with one buyer, the no shop is the transition from the, "Okay, do we have a deal or not" to "Okay, now let's close the deal."

That no shop tends to be an important part of the deal and often is defined in such a way as to be legally enforceable although the damages are often quite questionable as to what they are if it's violated. If you violate a no shop, it's often a good reason for the buyer to just walk away and say, "I'm done."

Clint: I listened to your negotiation lectures before. I'm selling my company, I want to building up my [inaudible 0:02:02]. It's kind of hard to do that with a no shop. Is this negotiable?

Brad: The no shop is sometimes negotiable but really, you should work hard to get to the place where when you sign the LOI, you're committed to going through on the deal. The mistake I think some entrepreneurs make is that they sign a LOI without having real commitment that they want to follow through on the deal.

The other mistake is that you sign an LOI without really having an understanding of the level of conviction of the buyer. The risk of you not wanting to go through the deal is under your control but the risk of someone else not wanting to follow through is under their control.

Interestingly, that has a huge reputational impact as well. So companies that regularly acquire and do lots of deals are ones that as an entrepreneur, you should have a fair amount of confidence that they'll follow through on the transaction.

Companies that have never done a deal before, you don't know. In fact, most of the failure of deals closing is more from the inexperience or the lack of support on the buyer's side than it is on something that happens in that diligence process. So in some ways, the best thing to do as an entrepreneur in that case is to really make sure before you sign the LOI and sign the no shop that you have conviction that the buyer is going to buy your company.

Of course, the best [inaudible (batten?) 0:03:20] in this case is to not have your sell your company. So if for some reason the deal falls apart, you just keep running your business. If you are in a distress situation and the company is struggling, then the best driver is to try and close that deal as quickly as possible. Make the no shop be short in duration, and you can see deals get done in 15 or 30 days in those cases.

Clint: Questions?

Student: Are there places where you run into issues where you have a confidentiality agreement in place as well as a no shop and you are in an awkward spot having to turn away?

Brad: Yes, the awkwardness happens a lot and it happens at multiple levels so it's important, once you've signed an LOI, for the board to understand really clearly what needs to be kept confidential and what needs to happen if you're approached. This links back to the question earlier about how early you tell all the people in the company and the reason that most people wait until the very end is to try to control who knows so that those awkward situations don't come up.

As a board member of companies when they get acquired, I regularly have interactions after the LOI gets signed with people that are potentially interested in acquiring a company. When I say I have interactions, they are generally one-way interactions where the person asks me something about the company and I have to say that I am not in a position to be able to talk about it.

So understanding as a company, as a board and as investors with the entrepreneurs what that communication can be like is important so that if someone starts poking around at multiple people, they hear the same message.

