



Avoiding Deal Fatigue

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*Kyle Larson, Financial Analyst
BCC Advisers*

Anyone that tells you an M&A process is quick, simple and/or pain free either knows something the rest of us don't, or is failing to be truthful. Even a successfully run M&A process typically takes six-plus months to complete from beginning to end, allowing for appropriate time committed to preparing marketing materials (for the sellers), contacting and negotiating with multiple prospective buyers or sellers, completing responsible due diligence, and finalizing purchase agreement documents. While the severity differs among transactions, nearly all M&A processes encounter some level of "deal fatigue," or the frustrated feeling that arises when negotiations with a buyer or seller drag on for

an extended period of time. What causes deal fatigue, what are its effects on a deal, and how can it be avoided, minimized or dealt with when it does occur?

Causes

Despite best efforts by both sides to avoid it, deal fatigue can arise for any number of reasons including:

- Complex deal structures requiring significant due diligence and time spent with advisors
- Prolonged negotiations due to inexperienced buyers or sellers
- Result of negotiating tactics used by the buyer or seller to get concessions from the other side
- Continued renegotiations of price or other terms
- Too many parties involved · Lack of availability of complete and accurate information, particularly as it relates to the due diligence process
- Changing business conditions during negotiations, including gaining or losing new customers, having key employees leave, or missing (high or low) forecasts
- Indecisive parties
- Either party getting tied up in day-to-day obligations of their own business

As you can see, the causes can be intentional by either party, or circumstances that cannot easily be controlled, such as the inexperience of buyers or sellers.

Effects

There are two primary effects deal fatigue can have on a transaction. First, the buyer or the seller, in the interest of moving the process along, might agree to less attractive terms than originally planned. For example, this could mean a lower price or less cash upon closing for the seller, or a lower indemnification cap for the buyer. Second, the deal could end up falling apart entirely if the two sides can't come to agreement on any sticking points. Deal fatigue can cause either side to "dig in" on minor issues that would otherwise be points of compromise.

How to Avoid

Nobody wants deal fatigue to set in, so how can you avoid or at least minimize it? To start, both sides should in good faith work towards specific deadlines, but be prepared for the process to take longer than expected. In many cases there are hiccups along the way that are difficult to avoid, leading to missed deadlines. It is important to establish what is most important to everyone involved when negotiating the transaction. This will prevent getting hung up on negotiating minor details as well as set expectations for specific terms each party deems more negotiable than others. Proactively meet with your advisors about anticipated issues. Understand who will be a part of your deal team and ensure they are committed to the task at hand. Taking these steps will greatly reduce or eliminate the chances of deal fatigue setting in.

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