

**Buying Or Selling
An
Investment Advisory Firm
A Lawyer's Perspective**

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Anatomy Of A Deal

- Pre-sale self-audit
- Interest
- Letter of intent - confidentiality agreement
- Initial due diligence
- Agreement to go forward
- Negotiate and structure formal contract
- Due diligence (by both sides)
- Closing

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Sale To Insider

- Shareholders/owners agreement
 - Creates a market for ownership interest
 - Sets price
 - May provide funding mechanism
- Sale to successor
 - Estate planning techniques- GRAT, GRUT, private annuity, SCIN, installment sale to a DGT

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Self-audit Of Legal Risks

- Compliance
- Protection of key information and relationships
- Effects of litigation

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Compliance

- General business- minutes, resolutions, shareholder agreements, shareholder loans, employment agreements, etc.
- Employee benefit plans
 - Retirement, including nonqualified
 - Health and other
- Tax returns
- Withholding and unemployment taxes
- Regulatory

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Investment Advisory Contracts

- Must contain provision prohibiting assignment, without client's written consent, pursuant to Section 205(a)(2)
- So, obtain written consents

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Protection Of Key Information And Relationships

- Written contracts with key employees
 - Appropriate incentives to stay
 - Containing enforceable restrictions
 - Covenants not to compete
 - Covenants not to solicit
 - Covenants not to disclose confidential information

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Litigation

- Pending or threatened
- Disclosure requirement on financial statements
- Negative effect on business
 - If large, may shut down business
 - May require hold back or indemnification
 - Can it be resolved before sale?

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Structure Of The Deal

- Assets or ownership interest
- Client list only
 - C-Corporation problem
- Seller financing
- Consulting agreement

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Off-site Due Diligence

- Form ADV, parts 1 and 2
 - Info re. business
 - Other business activities
 - Financial industry affiliations
 - Participation or interest in client transactions

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Off-site Due Diligence

- Forms U-4 disclosures
 - Criminal matters
 - Regulatory actions
 - Civil judicial matters
 - Customer complaints / arbitrations / civil litigation complaints
 - Termination disclosures
 - Financial disclosures

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On-site Due Diligence

- Interview chief compliance officer
- Third-party or merely internal annual reviews?

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On-site Due Diligence

- Conduct “mock audit”
 - Examine:
 - Prior deficiencies and whether corrected
 - Compliance policies and procedures
 - Compliance with record-keeping requirements
 - Soft-dollar and referral fee arrangements
 - Regulatory and client disclosures

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On-site Due Diligence

- Custody issues
- Performance reporting
- Advertising practices
- Trade errors
- Conflicts of interest
- Best execution practices

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Closing

- Where?
- What?
- What if issues arise?
 - Resolve and close
 - Delay closing until resolution
 - Close with agreement to resolve
- How long?

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Questions ?

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Thank You

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