

2015

Transactional Due Diligence

The Art, the Science and the Process of Conducting a
Transactional Due Diligence Review

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The Due Diligence Inquiry Begins...

NOISE TO SIGNAL
Rob Cottingham



What are you doing...? Omigod! You're checking out my LinkedIn profile, aren't you?!

*In this age of information, the first stop on any due diligence exploratory expedition should be the target company's website, social media pages and profiles, public securities filings and any other materials readily accessible via the Internet.

Pre-Assessment (Self-Test)

1. Fatima has just started working at Acquisition Co. Her background is in Human Resources, but she has been asked to be part of the due diligence team for a major acquisition. She has been delivered a box of Target Co's due diligence documents but it only contains several years of Target Co.'s audited financial statements. Fatima should:
 - a. Call her Accounting department and explain that the documents must have been delivered to her by accident
 - b. Take a look at the documents because she has lots of free time
 - c. **Take a look at the documents because they will be relevant to her consideration of HR issues**
 - d. Put the box in the corner and go back to surfing the Internet

***There are a number of documents that could be considered “universal” when it comes to due diligence. Such documents include the target company’s • charter documents (e.g. articles/by laws), • corporate minutes, • material contracts, • audit letters, • business plans and • legal opinions. Such “universal” documents also include the target’s audited financial statements, as the notes to such statements contain invaluable information concerning, amongst other things, related party transactions, capitalization, headcount, etc. Thus, “c” is the correct answer. No one on the deal/diligence team should be afraid to delve into the target company’s financial statements.**

Pre-Assessment (Self-Test)

2. Ali is a lawyer on the deal team representing the buyer in an M&A deal. The parties to the transaction agreed on a very strict schedule & deadlines for the due diligence part of the deal. Keeping with the transaction schedule, Ali sent his DD Report to his client yesterday. However, today a big box of documents arrived from the seller's lawyers. Ali should:
 - a. Consider whether the documents in the box have any impact on the findings in his DD Report
 - b. Since the materials were not delivered on time, he should ignore the box and go back to surfing the internet
 - c. Call the seller's lawyers and yell at them for not being able to follow directions
 - d. **Contact his client for further instructions**
 - e. All of the above

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**Although it is likely that Ali will be instructed by his client to consider the impact of the new materials on the findings in his DD Report, because the materials arrived late, the first order of business would be for him to inform his client and obtain further direction. It is possible that the client will not want to incur any further expense related to the materials or will want to have a discussion with the principles on the other side of the deal before continuing the diligence exercise. Thus, “d” is the most correct answer under the circumstances.*

Thank you

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