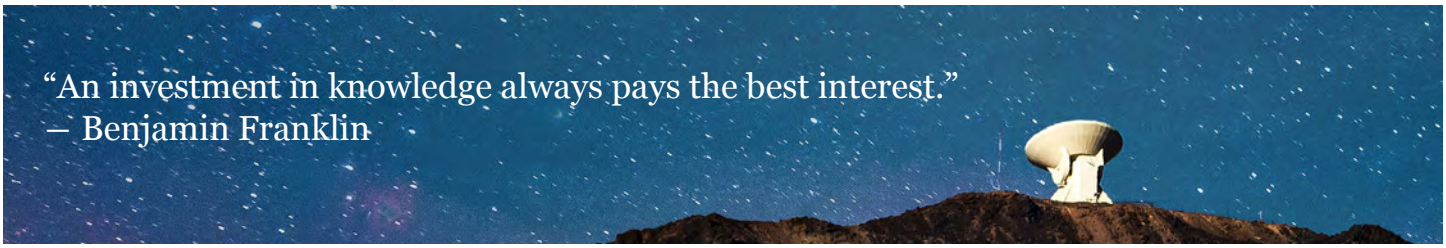
Spring 2019 | Volume 1.4

THE RISK MANAGEMENT ASSOCIATION
Long Island Chapter



A Word from Our Young Professionals

Navigating your chosen career path in an effort to ensure success is paramount for young professionals as they make the transition from academic life to the first several years in the corporate world. While it has become cliché to quip that our world is small since we "live on an island", the sentiment is entirely true. Getting to know the play makers is just as important as being known. As a young professional, you and your peers may very well be the next generation of Managers, Partners and Directors – making early, strong connections can only benefit us all. The goal of the RMA Young Professional committee is to create a framework for these future leaders. We collaborate to schedule educational, networking and charity events with a focus on what will provide the most benefit to those in the sophomore stage of their development.

With the incredible support of Michael Heller, the greater RMA board and prior YP Chairs before me, I'm proud to say that we have been quite successful in this mission. Last year our efforts earned us Sapphire status from the national RMA committee, and we are well on our way to earning Diamond status (highest level) in 2019. I kindly urge anyone looking to become more involved to reach out to me or any other member of the board – we'd love to meet you, and could certainly use your help.

Michael Kid
Chair of Young Professionals Committee

Recent Events

Our special event: Tax Reform Discussion was well attended!

Thank You to Our Panelists:

Lance Christensen, CPA - Margolin, Winer & Evens LLP

Jeffrey G. Cohen, CPA - Grassi & Co.

Robert J. Schaffer, CPA - Castellano, Korenberg & Co., CPAs

Coming up!

RMA Long Island Chapter

Annual Panel Discussion
May 10, 2019
Radisson Hotel, Hauppauge
Start: 8am
Register here
Reserve a table for 10

RMA Networking Mixer
June 4, 2019
Rare650, Syosset
Start: 6pm
Register here

RMA- Young Professionals

Cinco De Mayo
May 2, 2019
CaraCara, Farmingdale
Start: 6pm
Register here

Nine & Dine
May 16, 2019
Harbor Links, Port Washington
Start: 3pm
Register here

Educational Events

Structuring Commercial Loans II
May 8, 2019
Melville
Start: 8:30am - 5:00pm
Register here

RMA Scholarships

James T. McCarthy Scholarship - $2,500
Dr. Pearl Kamer Scholarship - $2,500
Patrick M. Demery Bankers' Lifetime Achievement Award - $1,500

Application deadline: April 1, 2019

The Awards will be presented at our
May 10, 2019 Panel Discussion Discussion Meeting

Eligibility:

Bankers and students interested in pursuing their education and career in the area of banking, comercial lending or credit risk management.

You must be enrolled at an accredited college, pursuing a pertinent degree program.

Application package must include the following:

- College transcript and evidence of current enrollment at an accredited college
- Essay from applicant stating:
  - Why you have chosen or are interested in a career in banking
  - Your career goals and how this scholarship will help you meet your goals
- Employment history and current job description, if applicable
- Extracurricular activities, community service
- List of leadership positions, honors and awards
- Letter of recommendation from your current employer or professor

Note: Incomplete application packages will be disqualified.

Applications will be reviewed by the
Scholarship Committee of the
Long Island Chapter of Risk Management Association.

Forward questions or your completed application package to:

Bonnie Dougherty, Senior Vice President
Valley National Bank, 2 Jericho Plaza, Jericho, New York 11753
BDougherty@valley.com

Join. Engage. Lead

What Partnerships and Limited Liability Companies Must Consider Now

Partnership Return For 2018 Requires Listing Partnership Representative Information

Authored by Victoria Pellegrino, CPA

Tax legislation enacted in 2015 changed the rules for how partnerships (including limited liability companies and any other entity classified as partnerships) respond to audits by the Internal Revenue Service. The IRS was unhappy with the old rules (TEFRA partnership audits), particularly with "interference" by limited partners and nonmanaging members ("investors") in the audit process. The new law replaces the "tax matters partner" (the "TMP," the partner responsible for dealing with the IRS) with a "partnership representative" (PR). Under the new rules, absent a contrary provision in the partnership's agreement, the PR has the unilateral power to conduct the audit and settle with the IRS without first even notifying the investors, let alone getting their input.

Completing 2018 Partnership Return Information. The IRS is enforcing its PR audit power by requiring a partnership to identify the PR on page 3 of the 2018 partnership income tax return, Form 1065. (See www.irs.gov, click on "forms and instructions" and insert "1065"). Under "**Designation of Partnership Representative**" the partnership must state the name, U.S. address, U.S. telephone number and U.S. identification number of the PR. The PR rules require that where the PR is an entity (such as a limited liability company that is the general partner of a limited partnership) the PR must designate an individual (the "Designated Individual" or "DI"). Form 1065 must list the DI's name, U.S. address and phone number and U.S. taxpayer identification. Although the preparer of the 2018 Form 1065 is directed to "see instructions" on completing this part of Form 1065, instructions have not yet been issued for the 2018 Form 1065. We suggest, if you have not already done so, that you consult with counsel regarding the new audit regime, particularly whether the manager has the power under the limited partnership or operating/agreement, to designate the PR and DI, without seeking a vote of the investors. Further, a review of the extent of the power given to the PR/DI about conduct of an audit, particularly as to elections, may be appropriate.

The rest of this update reflects current thinking about how to approach the PR rules. First, there is an election out of the new regime, including PR designation, on a year-by-year basis, for partnerships issuing no more than 100 Schedule K-1s for the taxable year for which the election is relevant. Continued...

All partners that year must be individuals, corporations or estates of a deceased partner. Partners that are themselves partnerships or disregarded entities disqualify a partnership from electing out and certain trusts and S corporations as partners are also problematic. Thus, a partnership all of whose partners are individuals may find this election attractive. The election out must be made on the return (with extensions) for the year the election is made, with information supporting satisfaction of the election-out rules. Partnerships that can qualify for the election out should seriously consider it for several reasons: the rules for the opting-out partnership can be less onerous than the new rules and the complexities of the as-yet untried new regime can be daunting for a small partnership.

Duties of the PR/DI. Assuming no opt-out election applies, documenting compliance with the new regime is needed now. This is true even though the PR is not called upon to act until the partnership receives an audit notice from the IRS. Although statistically partnership audits have decreased in recent years and generally are a low probability for hedge funds, ignoring Form 1065 is unwise. From the manager's standpoint, the manager will want to comply with the PR section of the 2018 Form 1065. An IRS clerk reviewing the tax return could view not completing this section as an audit "red flag." Moreover, if the partnership were to file an amended return claiming a refund for the partners, not completing the PR section in the original Form 1065 could look odd. When in an audit a partnership is required to produce its documentation regarding its designation of a PR/DI, not having documentation contemporaneous with the filing of the partnership return may be seen as a "scofflaw" approach. Similarly, such failure may prove an issue if the case, unresolved, ends up in the U.S. Tax Court.

Because the PR need not be a partner, unlike the TMP rules, consideration can be given to selecting a third party as the PR. Thus, a third party services provider, such as an outside law firm not otherwise providing services to the partnership (and so not conflicted if it should come to audit representation), could be the PR. If a partner is designated as the PR (and, as needed, to provide the DI) then the partner must be advised about the duties of the PR. Although the PR rules do not per se require the PR or DI to notify the investors of the commencement of an IRS audit, best practices would indicate that the investors must be informed of the commencement of an audit and of developments. It is likely that the governing state law (usually Delaware) would require the PR to keep the investors advised on developments. How state law applies to the duties of the PR or DI, or counsel in an IRS audit, is a developing area of the law.

The PR is empowered to decide whether or not to make certain elections under the partnership audit regime. The most important election is the "push out election." Under the TMP rules the partners who were partners in the year(s) being audited ("reviewed year partners") are the parties liable for any increase in tax, interest and penalties that arises out of the settlement of the case. However, under the PR rules, the partnership is liable for the amount due. Thus, partners in the year the case is settled bear the economic burden, whether or not they were reviewed year partners. The PR can elect, within 45 days of conclusion of the case, to "push out" the tax liability from the audit onto the reviewed year partners.

Continued...

In weighing the advantages and disadvantages of this election, the materiality of the settlement is important. If it is a nonmaterial amount the PR may decide it is best to settle the audit at the partnership level and not go through the complex procedural and computational rules surrounding a push out election.

Selecting a Third-Party PR/DI. The PR is exposed to risks in undertaking to serve as the PR, particularly if the PR or DI is an attorney. There is no statutory provision prohibiting an investor unhappy with the outcome of an IRS audit from suing the PR or DI for breach of fiduciary duties. The PR/DI can have conflicts of interests when the general partner/managing member's stake in the audit outcome conflicts with that of the investors. It is foreseeable that the return(s) being audited could reflect tax advantages to the general partner/managing member outweighing disadvantages to investors. The PR/DI is at risk of being sued for making, or failing to make, a particular tax election under the PR regime, or elsewhere in the tax law.

A person contemplating being named as the PR/DI in the 2018 Form 1065 may find it appropriate to request indemnification from the partnership with respect to all acts, except for gross misconduct. Such indemnification would include reimbursement for attorney's fees and other out-of-pocket costs. Further, the PR/DI not associated with a fund's manager (a third-party PR/DI) is not likely to be given the authority to select the counsel or other tax advisor, to represent the partnership in the audit. Thus, there may be disagreements between the PR and DI and counsel, or other tax advisor, which the PR/DI may be unable to resolve satisfactorily. It is apparent therefore, that a third-party PR/DI is undertaking significant risks and should request indemnification and appropriate compensation for its efforts and exposure to risks associated with the uncertainties in defending tax audits. A PR or DI selected from in-house personnel similarly faces risks, whose scope is uncertain at this time, so indemnification should be considered.

What Should Investors Look For. From the standpoint of investor relations, an investor may expect to see a fund's documents provide for notice of the commencement of any tax audit, federal, state or local, and updates on developments as needed. Investors may expect to receive notice of any proposed settlement of a tax audit and the right to comment, but not to vote on it. Because a decision to make a particular tax election will depend on future events, requiring that the PR make a particular election, such as the "push out election," or not, it may not be appropriate to bind the hands of the PR/DI far in advance.

The new partnership audit regime is complex and there are many uncertainties surrounding it. At this stage, completing the Form 1065 questions about the PR (and DI, if relevant) is an important decision that must be undertaken now. This is so even though the PR or DI may never be called upon to act because the IRS may never commence an audit. Disclosure of the PR's scope is now seen as an important partnership governance issue and fund managers must be prepared to field inquiries from investors about such items as notice, input and indemnification of the PR and DI.

For more information, contact

Victoria Pellegrino, CPA, at VPellegrino@grassicpas.com / (212) 223-5082 or Roger Lorence at RLorence@grassicpas.com / (212) 223-5087

Common Mistakes to Avoid when Selling your Business

Authored by Neil Seiden, Managing Director, Asset Enhancement Solutions, LLC

In life, learning from one's mistakes and the related trial and error develops good judgement and creates wisdom. However, when it comes to selling your business, you cannot afford to make mistakes as it could be a once in a lifetime event involving the majority of your net worth and you may not get a second chance. Selling a business is a specialized, complex and time consuming process. These mistakes can easily be avoided with the guidance of professionals who have significant experience in the process of selling companies.

The business is too dependent upon you

If you are the only person that works with and develops key customers and suppliers and the company is unable to operate without you, you will have a significant challenge selling your business. A prospective buyer is seeking to purchase a viable business, not you.

Your asking price is wrong

You do not want to ask for too much or too little. If you ask for too, much you may chase away prospective buyers. If you ask for too little, you may be leaving too much on the table. Alternatively, should you even have an asking price at all?

Your business has customer concentration issues

If your business is too dependent upon just a few customers it poses significant risks to a potential buyer. This may affect the purchase price or require you to hold a significant amount of Seller Notes or receive an Earn-Out over a very long period of time. It is to your advantage to diversify your customer base as much as possible.

Taking your eye off of running the business

The process of selling a business is extremely time consuming. If you are too focused on selling your business resulting in the deterioration of your financial results, this will have a negative impact on the price you sell your business for.

Continued...

Running the business as if you have one foot out the door

Some business owners revert to operating their business in a defensive mode when they are in the process of selling their business. They stop taking the risks that led to their success and stop investing in their company. The process of selling a company can take a long time and even the most encouraging offers can fall through.

Failing to properly "Recast" operating results

As a privately held company is typically oriented toward minimizing taxes, the financial statements often do not reflect the true profitability and cash flow of the company. A Seller that does not properly Recast their financials is leaving money on the table.

Failing to present "Pro-forma" financial statements

Sellers that fail to prepare Pro-forma financial statements that make their business look more favorable and valuable are ignoring an important practice in the M & A process.

Lack of a strong management team

Some Buyers are seeking businesses with strong management teams that can operate effectively once the owner of the business departs. Lack of a strong management team can reduce the number of Buyers that may have interest in purchasing your business as well as reduce the price a Buyer is willing to pay for your company.

Working with only one potential Buyer

Buyers do not limit themselves to looking at only one potential company to purchase. They look any many different companies at the same time. By focusing on only one Buyer, you significantly weaken your negotiating position.

Selling the business at the wrong time

If you end up selling your business when you "have to sell", you are doing yourself a great injustice. Some business owners end up selling when revenue is declining, when they are completely burned out, have a health issue or have to split with a partner. Selling your business under duress typically leads to a lower selling price.

Failing to provide information on a timely basis

Potential Buyers will request historical financial information regarding profitability, customer and product line sales, obsolete inventory, past due receivables, detail of fixed assets as well as other detailed information. Inability to supply this information on a timely basis will spook the potential Buyer.

Continued...

Failure to control the flow of information to a prospective Buyer

Some Sellers provide too much data information too soon. Data should be released in a controlled fashion, making sure the Buyer's requests are satisfied without providing sensitive material that may be harmful to your business.

Handling the sale of the business yourself

Successful people know their strengths and weaknesses and that they should surround themselves with people that are smarter than themselves. Selling a business is a specialized, complex and time consuming process. Taking your eye off the ball and putting too much time into trying to sell your own business often results in the deterioration of your financial results which will have a negative impact on the price your business sells for.

Failing to address transition issues

Some Buyers do not want the Seller to continue on after the closing of a transaction while others require the Seller to stay on to ensure a smooth transition. An unsatisfactory understanding with respect to transition can cause discontent and ultimately lower revenue which can result in a reduced Earn-Out to the Seller.

Failure to prequalify prospective Buyers

Sellers are often fearful of qualifying prospective Buyers too early in the sales process as they are afraid this will dissuade potential Buyers. Early qualification may scare away those fishing for sensitive information and safeguard this information from getting into the wrong hands.

Failure to put the appropriate "Deal Team" together

A top tennis player like Roger Federer doesn't prepare for a tennis tournament alone; he has a coach, trainer, agent and a nutritionist on his team. Likewise, a Seller should not go about selling their business without the proper "Deal Team" in place. If you are considering selling to a Private Equity Group, remember that this is what they do for a living. If you are looking to sell to a Strategic Buyer, chances are that you will be dealing with seasoned executives that have acquired other companies before. Thus, most Buyers are sophisticated professionals who have significant experience buying companies. To transact at this level you need the proper "Deal Team" in place. You need an Investment Banker with the skill and resources to manage the sales process, identify suitable buyers and negotiate in your best interest. While an Investment Banker can be expensive, they most often will pay for themselves by negotiating a higher price that will more than offset their fee. Investment Bankers not only anticipate problems before they arise, they also successfully resolve issues and make sure the transaction gets closed. You should have an attorney that specializes in mergers and acquisitions as they will have expertise in the legal issues involved with M & A transactions and best protect your interests. Your Deal Team should also include a CPA that has the tax expertise to advise you on the tax implications of the transaction structure. Be like Roger Federer, assemble the best Deal Team possible to ensure optimal results in the sale of your company. Continued...

Consideration of only "All-Cash" offers

Unwillingness to entertain deal structures other than "all-cash" can adversely affect the total "net" consideration you receive. Depending upon who the Buyer is, Seller Notes, Buyer Stock, Earn-Outs and other deferred payment structures should be considered.

There are many mistakes that can be made during the process of selling your business. In life we are encouraged to learn from our mistakes. However, when it comes to selling your business, it is best to have a Deal Team who has both seen and learned from these mistakes before. With the proper assistance from skilled professionals you will avoid these mistakes and maximize the transaction value from a well-coordinated sales process.

Asset Enhancement Solutions, LLC ("AES"), is a financial advisory firm that provides both Investment Banking and Consulting Services to companies considering important transactions such as selling a company, acquiring a company and raising capital. AES with its strategic partners consult with business owners on various types of transactions and throughout all phases of the M & A process.

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