

TEAM LIFTOUTS

Procedures to ensure compliance

Team lift out transactions are inherently complex and difficult to execute. They are also fraught with legal risks for the client, the candidates and to a lesser degree BuysideResources itself. BuysideResources has not previously consolidated our team execution experiences into a comprehensive “how to” manual. And to some extent each consultant will have their own distinctive style of doing these transactions. But as employers increasingly tie existing employees into **contracts**, and **legal procedures** grow as to what behavior the courts will tolerate, we should keep in mind certain basic rules about team lift out execution to ensure that a transaction will withstand legal challenge to be successfully completed.

GENERAL COMMENTS

Most employment agreements or other contractual arrangements between employers and employees in our industry have some kind of specific non-solicitation (of colleagues and/or current business) provisions. These will be found either in specific employment contracts or at terms in various types of deferred compensation schemes or equity plans. To the extent that a target team is covered by any contract, we must obtain from the team leader a copy of the relevant language as soon as possible so that we can modify our behavior to ensure he is not breaching specific terms. But even absent any contractual language, we must recognize that all employees have a legal “duty of loyalty” to their current employer. As such they are not supposed to participate in recruiting their colleagues and subordinates on behalf of any new employer. BuysideResources must execute a team search by actively soliciting each team member individually and independently from other members in the group.

The duty of loyalty also prohibits team members from disclosing confidential information about their employer to competitors even in the context of job discussions. Confidential information includes compensation schemes and strategic business plans. The legal counterpoint (obviously) is that no employer can prevent employees from seeking employment with competitors and earning a living in the manner that they have been trained. Most European countries, where the laws are friendlier to the employer the basic principle of “employment at will”, which means any individual can actively seek to change employment unhindered when they deem it necessary for their own careers and livelihood. As such employees may discuss their own compensation with a competitor,

but may not divulge the knowledge of any pertinent details that apply to their colleagues. BuysideResources must obtain all relevant information about each team member (including career history and current compensation) directly from each individual. This creates a paradox where our clients and team leaders will want to have some detailed conversations about the transaction before we “go public” to the rest of the team. At the initial stages of the deal BuysideResources will refrain from any individual specifics. Team leaders can discuss what they hypothetically believe would be required as an aggregate compensation for the group without breaking down it by person. Once the client decides to pursue a particular group BuysideResources then can begin interviewing the rest of the members and get the information required directly.

As the transaction progresses through the point when offers are made, BuysideResources will shepherd the transaction so team members can resign as soon as possible after their minds are made up to change employers. For once the decision is made, their loyalty has shifted and duty of loyalty requires a change of behavior such as candidates refusing to attend strategic meetings etc.

GUIDELINES FOR ALL TEAM MEMBERS

To ensure that the above general principles are attained, the following guidelines should be followed:

- 1) Request team leader, and then subsequent candidates, disclose all written employment agreements or other restrictions (such as the ones embedded in deferred compensation plans etc.)
- 2) Try to keep all communications with candidates oral. To the extent that projections are required, get information from the candidate orally and write a confidential memo to the client based on BuysideResources assessment of what the transaction looks like.
- 3) Try to keep all written communications with clients to a minimum.
- 4) Never meet any candidates on the property of current employer, even if they suggest
- 5) Remind candidate NOT to use office time, facilities or staff of existing employer to plan departure.
- 6) Candidate should NOT directly solicit departure of colleagues of subordinates. BuysideResources must solicit each member individually.
- 7) Tell each team member to refrain from discussion transactions with group members. BuysideResources should promise each individual to keep them informed as to the transactions progresses and encourage them to contact BuysideResources when they have any questions.
- 8) BuysideResources should never suggest to each candidate that their offer of employment with our client is conditioned on other team members joining. It ok for BuysideResources to tell team members that our client is seeking a group, it's also fine for candidates to confirm to BuysideResources that they desire to work with their current colleagues in the future. But it must be understood by all that our client will be making independent offers to team members, and bears the risk that some may decide not to join.
- 9) Tell each candidate to inform us at once if current employer finds out and threatens to impose any impediments and/or barriers.
- 10) NO candidate should terminate their relationship with current employer until the terms of new employment have been determined and preferably confirmed in writing.
- 11) Candidate should leave current employer as soon after announcing a decision to leave as is ethically, and/or contractually possible. BuysideResources will instruct candidates to avoid attending any meetings of current employer where strategy or similar topics are discussed, ideally once they have made a decision to leave.
- 12) Candidate must leave without any books, paper, software or other records of former employer. Candidate should also hand over any of the aforementioned back to the former employer that he/she has at home.
- 13) BuysideResources should tell candidates that when they terminate their current employer they should limit communications with fellow employees to farewells and good wishes.

GUIDELINE FOR TEAM LEADERS

The following instructions apply to our communication with team leaders

- 1) Leaders should not initiate any discussions with current team members about their leaving the current employer.
- 2) Once leader has decided to leave current employer (which could be before they finalize agreement with our client and before they notified their current employer) they may identify to BuysideResources (or to the client) those team members our client may wish to hire. Leader may give us any personal assessment of the other member's skills. Leader may give BuysideResources information appearing in public documents. Leader should not disclose sensitive or confidential information (such as compensation) that they may have as a result of current position with employer. Leader may discuss with BuysideResources and/or client, what it would to hypothetically take to get the entire team, as long as they limit the discussion to aggregate numbers.
- 3) Once leader has finalized his deal with client, they may tell other team members that they are leaving, where and when they are going, that they enjoyed working with other team members and would like to work with them again. Leaders should refrain from having these conversations in groups, especially on company time and property.
- 4) Leaders are permitted to tell colleagues that our client may be in a hiring mode and what his experience with our client has been. Leader should tell these individuals that he/she may not solicit them or encourage them to leave but if they are interested they may contact BuysideResources for more information.
- 5) If asked by a team member, leader may inform them what his recommendation to our client would be. But only if asked.
- 6) At any point leader may tell other team members to think very carefully before signing any new contracts, especially agreements that contain any non compete provisions or other restrictions and/or covenants on their ability to choose where they work.
- 7) It may be naïve of us to believe that all team members will follow the above to the letter. But that only emphasizes that we should instruct candidates in the above fashion and urge them to follow these guidelines strictly.

BuysideResources will strive to document all these steps as much as possible in places such as Encore (e.g. all communications with each candidate should be noted). BuysideResources recognizes that upon legal challenge our records might be subpoenaed and our personnel deposed. BuysideResources will strive to be in a place where we can testify under oath that to our knowledge the above procedures were followed, that we know of no violations and that our records confirm our assertions.