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ARTICLE

Negotiating Confidentiality Agreements in a Competitive Bid Scenario

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This article discusses issues a private equity buyer must consider when negotiating a non-disclosure agreement in a competitive bid process. The authors carefully review key issues such as 1) whether to insist on a mutual NDA, 2) how to potentially use the permitted purpose clause to build a case for reliance later, 3) avoiding liability for portfolio company actions, 4) the importance of the "dual role carve out," 5) ensuring the ability to continue to make ordinary course investments, including in the face of the non-use covenant, and 6) avoiding the "legend trap" arising in connection with common VDR disclaimers, etc.

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