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Marlin & Associates and the Sale of Riverview Technologies

On the morning of September 1, 2005, Ken Marlin was preparing for an important conference call with his clients at Riverview Technologies.* Marlin was the CEO and founder of Marlin & Associates Holding LLC ("Marlin"), a mergers and acquisitions investment banking boutique focused on advising buyers and sellers of middle market companies that serve the global information economy. Riverview Technologies was a Stockholm, Sweden-based client of Marlin that had developed a suite of software products for alternative investment managers (hedge funds) and had asked Marlin to help organize a sale of the company. After spending more than a year in an organized sale process, the winning bidder had become increasingly difficult to work with and the closing had been substantially delayed. Despite the late stage of the process, the selling shareholders were considering walking away.

Marlin & Associates

Marlin & Associates, based in New York City, was founded in 2001 by Ken Marlin. Prior to founding the company, Marlin had spent over 25 years as a senior executive at several leading business information companies and as an investment banker serving the information sector (see **Exhibit 1**). Marlin's clients typically provided content, services, software, technology or transaction services, typically to other businesses. Most Marlin & Associates clients had revenues between $20 million and $50 million (see **Exhibit 2**).

There were hundreds of mergers and acquisitions advisors and Marlin's business was highly competitive. Marlin differentiated itself, in part, through its industry focus; the experience and expertise of its professional staff; its international execution capabilities; and its track record of successfully completed transactions. Marlin established a wide international network of relationships with company owners and operators in its sector. This assisted the firm in marketing its services to prospective clients. Marlin understood the principal business models in its sector and the likely valuations of firms in the sector. Marlin was also aware of the current acquisition interests of many of the major strategics and private equity firms.

* Please note that names of seller and bidder companies, their managers' names, and their locations have been changed.

Professor Richard S. Ruback and Entrepreneur-in-Residence Royce Yudkoff prepared this case. Certain details have been disguised. HBS cases are developed solely as the basis for class discussion. Cases are not intended to serve as endorsements, sources of primary data, or illustrations of effective or ineffective management.

Marlin was periodically approached with opportunities outside of the information technology sector and generally declined them, commenting: "We want to only do work that reinforces our brand." In addition, by focusing on this single sector, Marlin's 14 employees could function as one team that reinforced each other, and could be shifted around to support one another.

The firm generally completed seven to eight transactions per year. Its fee was 3%–4% of the sale value, with a $500,000 minimum. Marlin also charged clients a $10,000/month retainer (deductible against the ultimate fee) in part to vet clients for their commitment to completing a transaction.

The Transaction Cycle

Marlin executed a continual outreach program to generate clients. It also received inbound calls from existing relationships. The firm maintained a large database that it used in a regular emailing campaign to maintain its high visibility in the industry.

Marlin and his colleagues would typically work informally with about 25 companies that were contemplating a transaction in the next few years. Once the potential sellers became more focused on a sale, Marlin would work with the client to better assess their readiness to transact, valuation expectations and the likely sale process. Often, this stage took several months as the potential sellers and Marlin assessed each other. Marlin often received confidential client financial and business plan information during this stage and the discussions often included specific financial forecasts as well as a discussion of the seller's plans post transaction - including willingness/desires of management to continue working with the buyer.

Marlin also went through a selection process of its own. "We are asking ourselves six questions at this stage of the process," Marlin observed: "Is it in our vertical? Can we add value? Are there logical strategic and financial buyers? Do the Sellers have reasonable price expectations? Will the transaction size be at least $20 million? And, do we have a high degree of confidence in our ability to get the deal done?" Affirmative answers to these questions were key to maintaining Marlin's brand and its profitability.

Once Marlin had a representation agreement and a mandate to sell a company, it often took several months to prepare the company to go to market. Marlin would start each assignment by creating a team of professionals to work with the client. This team tried to gain an in-depth understanding of the client's operations, customers, markets and financial condition by meeting with management, its board and other relevant internal people and by reviewing the client's commercial and financial results, as well as its strategic plans, marketing plans, budgets and any other relevant documents. Marlin would then take what it had learned and work with the client to produce a "Confidential Information Memorandum" designed to answer questions that any prospective buyer was likely to have and, more importantly, to highlight what was unique and attractive about the business. As Marlin noted, "The Information Memorandum helps us to structure and control what people look at and what they say about the client company. Buyers buy the future and the documentation has to give potential buyers a good understanding of that future. We want them to see more than the past. We want them to see the potential of the business." During this time, Marlin also assembled a list of potential buyers which the potential seller reviewed and approved.

It was not uncommon for Marlin to slow down its client at this stage of the process until the company was fully ready to go to market. Marlin said: "Once you start a process, momentum matters. You need to be three steps ahead. When you start calls, *you need a book ready.* When buyers say, 'Can I meet these guys,' *you need presentations ready*. As soon as you have presented, *you need a data room ready*. Before you can ask for bids, *you need to have already thought about tax consequences*. You need to be three steps ahead because the process moves at its own pace and you do not want to slow it down."

Finally, Marlin coordinated a process of receiving bids; managing due diligence reviews, and negotiating the purchase and sale agreement. This final stage often took several weeks or even months as the prospective buyer (often using outside lawyers, accountants, IT specialists and other experts) reviewed the client's commercial, financial, accounting, tax, operations, IT, and legal operations (including reviews of material contracts, leases, litigation), and sampled sentiment among material customers. At the same time Marlin would work with the client and its attorneys to negotiate the representations, warranties, covenants, indemnification and other provisions of a purchase agreement. Marlin tried to maintain a sense of competitive pressure during this final stage.

The elapsed time from the start of the sales process until its successful conclusion was at least six months, and often longer. It absorbed the attention of the senior managers of the selling firm and it was not uncommon for the performance of the selling firm itself to suffer. Marlin also devoted substantial amounts of time and resources to the sales process, and much of its fee was dependent on the successful completion of the sale. As a result, when Marlin took on an assignment, it wanted to do its best to make sure that a deal got done.

The Riverview Transaction

In January 2004, a Marlin executive called on Roger Nordquist, CEO of Riverview, as part of Marlin's ongoing outreach efforts. Over the next several months, discussions evolved into an agreement, signed in the summer of 2004, for Marlin to assist Riverview in a sale of the company.

Riverview had been founded in Stockholm in 1997 by Nordquist and his partner, Tim Swenson, who was the company's CIO. The company had developed a suite of software products to meet the unique reporting and management needs of hedge fund managers around the world. By 2004, the firm served over 115 clients (mostly in London, New York and Hong Kong) who in turn managed approximately $45 billion or slightly more than 5% of total hedge fund assets under management globally. The two men collectively owned 36% of Riverview with two institutional investors owning the remainder. By 2004, the company had built a well-regarded franchise and was increasing its revenues rapidly (see **Exhibit 3**). All four shareholders felt it was a good time to monetize their investment and, if possible, align the company with a larger strategic who could help Riverview grow to the next level.

By November 2004, the company was ready to go to market. Marlin contacted a carefully selected list of about twenty strategic buyers in the US and Europe and forwarded to each of them "teasers" on Riverview. Ten companies signed confidentiality agreements and reviewed Riverview's detailed information memorandum. Eight of the ten attended Management presentations in London, New York and Stockholm. Ultimately, four firms submitted bids (nonbinding indications of interest), two of which Keystone International and Xtra Information Systems, were at levels high enough to garner interest from Riverview's owners. Each of these two was a very large, publicly traded information services conglomerate. Keystone International (Keystone) based in Cincinnati, with a substantial European presence was a leading provider of information processing software and services for the traditional investment management industry. Xtra Information Systems (Xtra) based in London, but with a significant US presence, provided software and services primarily for the asset management, leasing and credit segments of the financial services sector. After seeking but not receiving higher bids from others, Marlin notified Keystone and Xtra that they each would be among the only two firms permitted to continue in a second phase of negotiations.

During February and March 2005, both bidders completed their business due diligence. However, both were reluctant to engage outside lawyers and accountants for confirmatory due diligence until and they had agreement from Riverview to negotiate exclusively with just the one bidder (an exclusive dealing agreement). The process moved slowly. In some instances, Riverview was slow to respond to very complex information requests that sometimes appeared to have little relevance. More often, the two bidders moved slowly: information requests were made serially; weeks would often pass before follow-up questions were received relating to data that had been provided earlier. Riverview's and Marlin's management discussed this problem regularly, but believed it was beyond their control. The potential buyers were large corporations whose procedures and pace would be difficult to alter.

On March 15, 2005, the two bidders were ready to re-submit bids. Keystone's bid of $20 million in cash at closing plus up to an additional $20 million over a three-year earn-out appeared financially superior to Xtra's offer. Further, Nordqust preferred the idea of selling to a US firm rather than a UK firm. Also, Nordquist had developed a respect for Keystone's Scandinavian regional manager, who was leading much of the negotiations for Keystone. Following a series of phone discussions with both bidders, Marlin and Nordquist flew to Keystone's Cincinnati headquarters on April 6th for what they hoped would be a productive face-to-face negotiation. While the meeting resulted in a further price increase to $22 million in cash and a potential $22 million earn-out, Nordquist was disturbed by what he characterized as the dictatorial, disrespectful manner of Keystone's CEO. He also was concerned because the Keystone Scandinavian manager seemed to have little influence at the meeting. Nordquist knew that both potential buyers required that he and Swenson commit to running Riverview for the acquirer after its sale. He knew that whoever acquired Riverview would have influence on its post-transaction growth and the likelihood of the Riverview shareholders receiving their earn-out.

Marlin continued to urge both Keystone and Xtra to increase their offers. Xtra raised its earlier offer to $25 million in cash and a $24 million earn-out if Riverview met its plan. Keystone, however, submitted a revised offer on May 10 of $25 million with a four-year earn-out potentially worth $41 million if Riverview met its plan (see **Exhibit 4**). If Riverview exceeded its plan, the earn-out from Keystone would pay even more. While the offers were not perfectly comparable, Keystone had clearly differentiated itself in the total potential value Riverview's owners could receive from the transaction.

The earn-out terms were an important feature of the proposed deals. . For the sellers, the earn-out potentially represented 50% or more of total consideration. Both of the earn-out proposals were tied to Riverview's future performance against a projection which the company had provided to the buyers (see **Exhibit 5**). However, the two earn-out proposals differed in a number of ways. For example, the offers varied in the length of their measurement periods; in one offer payout was based on hitting certain future EBITDA numbers while the other measured performance against revenue targets as long as the company maintained its pre-transaction EBITDA margin. Xtra's earn-out payment was capped at the target level while Keystone's paid more for performance beyond target.

After its acquisition, Riverview would be a subsidiary of one of these two buyers and synergies with the buyer might make it easier to grow Riverview's business. Nordquist still preferred the idea of a US buyer. However, he and Swenson observed that Xtra, although based in the UK had a robust US sales force that called on many hedge funds; Riverview had a relatively insignificant sales force presence in the US. Even though Keystone was a US firm with a presence in Scandinavia, London and New York, the firm called on a different customer set and did not have any obvious revenue synergies with Riverview's activities.

The comparison was complicated and Nordquist, Swenson, and Marlin had many detailed discussions about the merits of each firm as a potential partner as well as the financial aspects of each proposal. They tried to carefully weigh the financial rewards and risks of each of these two structures as well as their sense of who would be best to work with. In the end, the sellers were optimistic about the future prospects of Riverview and appreciated to opportunity provided by Keystone's larger earn-out to participate in that upside. After giving XTRA one more opportunity to improve their offer, which they declined, on May 17, Keystone and Riverview agreed to enter into an exclusive dealing agreement. Marlin informed Xtra that Riverview had "decided to enter into exclusivity with another bidder."

The summer months were spent in a slow process of responding to Keystone's legal, tax, accounting, financial and other confirmatory due diligence reviews and contract negotiation. Keystone's information requests and responses again were numerous and the process moved slowly. The contract negotiation was particularly painstaking. Riverview, with Marlin's close assistance, negotiated with Keystone's Scandinavian regional manager, who would be responsible for Riverview after the acquisition, and Keystones' many lawyers. But, at several junctures, they would reach a tentative agreement on a particular point only to later find out that "Corporate" turned down their agreement - sometimes with an unacceptable counterproposal; sometimes without making any counterproposal.

Unfortunately, during this period, Riverview missed its quarterly budgeted numbers. While the company was budgeted to increase from 2004 EBITDA of ($1.1) million to EBITDA of $3.4 million in 2005, the current quarter produced a loss of ($0.6) million. Riverview's managers continued to feel confident about their financial plan for the full year as well as Riverview's growth prospects for the following three-and-a-half years which were included in the earn-out period. However, Keystone was troubled by the shortfall and in late August notified Marlin that they were lowering the upfront payment from $25 million to $20 million, shifting the $5 million difference to the back end of the earn-out. This angered Nordquist, Swenson and the other share owners, who believed that Keystone was already fully protected by a large earn-out. The two founders realized that Keystone's Scandinavian regional manager had little power with "Corporate", and they lost confidence in Keystone's ability to help them after the acquisition. They became were concerned about what other surprises might come from Keystone during the four-year commitment.

As they contemplated their options, they realized that, complicating matters further was their exclusive dealing agreement. Riverview had agreed not to have any discussion with or provide any information relating to a potential transaction to any other party while in the exclusive dealing period with Keystone. A decision to end the exclusive dealing period required Riverview to proactively notify Keystone. If they were to do so, Nordquist, Swenson and Marlin all believed that there was a very high probability that Keystone would leave the negotiating table – and probably not return. It had been months since they had spoken with XTRA, which also had yet to conduct confirmatory due diligence reviews or negotiate a definitive purchase and sale agreement.

Exhibit 1 Ken Marlin Biography

Ken Marlin is Managing Partner and Founder of Marlin & Associates, a boutique investment banking and strategic consulting firm focused on providing transaction-related services to U.S. and international middle market firms engaged in technology, information, and business services. The firm is based in New York City with offices in Washington, D.C. and Toronto.

Mr. Marlin has spent over the past 25 years leading and advising international middle-market firms. He has been CEO of global firms and has bought, sold and raised growth capital for his own companies along with advising dozens of others. Immediately before founding M&A, Mr. Marlin led the Business Information and Internet practice at the media merchant bank and private equity fund Veronis Suhler Stevenson.

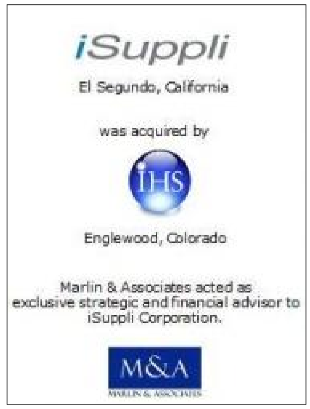
Earlier in his business career, Mr. Marlin was Senior Vice President for Strategy, Mergers and Acquisitions at Dun & Bradstreet, which then owned such companies as Moody's Investors Service, Interactive Data Corporation, Datastream International, Reuben H. Donnelley, IMS Health, ACNielsen, Nielsen Media Research, D&B Software, D&B Plan Services, D&B Credit Services and a majority stake in Gartner Group. At D&B, Mr. Marlin led over 60 transactions involving US and non-U.S. firms, including transactions in 13 countries.

Mr. Marlin then took the position of President and CEO of Telekurs (NA) a global information technology and data firm owned by a consortium of Swiss banks. Four years later, with venture backing, Mr. Marlin and his partners acquired a large portion of Telekurs NA and used that base to form Telesphere Corporation, where he was President and CEO. Mr. Marlin grew Telesphere, in part, by raising growth capital and acquiring complementary businesses in Europe and Asia and by joint venturing with Japan's Nomura Research Institute. Three years later, Mr. Marlin and his partners sold Telesphere to Bridge Information Systems, where he took the position of Executive Vice President with responsibility for global marketing as well as global infrastructure products.

Mr. Marlin earned a BA from the University of California (Irvine), an MBA from UCLA, and a post-MBA Advanced Professional Certificate in Corporate Strategy from New York University. He is a former Captain and infantry company commander in the US Marine Corps. Mr. Marlin is a member of the Board of Directors of the Phoenix House Foundation as well as a Board Member of the Madison Square Boys and Girls Club.

Source: Company information.

Exhibit 2 Selected Marlin & Associates Transactions



Source: Company information.

Exhibit 3 Riverview Consolidated Financial Profit & Loss ($ in millions)

	2002	2003	2004	2005E
Revenue	$4.9	$6.1	$9.6	$18.8
Cost of Sales	(3.3)	(0.8)	(1.4)	(3.5)
Gross Margin	$1.6	$5.3	$8.2	$15.3
S,G & A	(2.8)	(10.1)	(9.3)	(11.9)
EBITDA	($1.2)	($4.8)	($1.1)	$3.4

Source: Casewriter estimates.

Exhibit 4 Comparison of Indications of Interest (May 2005)

	Xtra	Keystone
Initial payment at closing:	$25.0M	$25.0M
Targeted earn-out payment if company achieves management projection:	$24.0M	$41.0M
Total purchase price at target earn-out:	$49M	$66M
Earn-out measurement period:	2 years	4 years
Timing of earn-out payment:	At end of Year 2	At end of Year 4
Earn-out methodology:	Cumulative revenue target (so long as EBITDA margin didn't fall below current level)	Cumulative EBITDA target
Cap on earn-out:	Yes: $24M cap on earn-out	No cap
Impact on earn-out of exceeding plan:	No impact. Capped at $24.0M	Each 1% of cumulative EBITDA over-performance increases earn-out by 1%
Impact of earn-out of shortfall to plan:	Each 1% of cumulative shortfall decreases earn-out by 5%	Each 1% of cumulative shortfall decreases earn-out by 5%
Employment requirement:	2 years	4 years
Balance sheet test:	"no adverse change"	Positive working capital at closing
Expected close date:	July 31, 2005	June 30, 2005
Exclusive dealing period:	Yes	Yes

Source: Casewriter estimates.

Exhibit 5 Riverview: Projected Revenue and EBITDA ($ in millions)

	2006	2007	2008	2009
Revenue	$27.0	$40.0	$50.0	$60.0
EBITDA	$7.5	$12.0	$18.0	$24.0

Source: Casewriter estimates.