CASE STUDY

Divestiture Crisis Averted Using Risk-Based Approach

INDUSTRY
Energy

COUNTRY
USA

Organizations sell assets for a variety of reasons: to achieve operational synergies, fund other initiatives, narrow their business focus, and many others. Regardless of motivation, once the parties show mutual interest and decide to negotiate, divestitures typically take a well-defined path that can be divided into two sequential activities, which we will refer to as the negotiation and transition / close phases.

During the negotiation phase, the seller and buyer begin due diligence activities, negotiate price and contract terms, determine transaction announcement and close dates, and if successful, come to agreement. This phase is typically confidential, with a limited number of seller, buyer, and third party representatives involved. Confidentiality during the negotiation phase is important to protect the interests of both seller and buyer, sometimes to preserve exclusivity, and to avoid alarming essential employees who might become concerned about job security as a result of the transaction.

SERVICES DELIVERED:

- Box Inventory Analysis
- Content Analysis
- Content Classification
- Content Migration
- Due Diligence Support
- Ingestion/Imaging/ Classification
- Policy and Process Development

ISSUE

Divestiture jeopardized by a looming close date and 2.2M records to process

If negotiations complete successfully, the transaction (including the close date) is announced to the public and activities to complete the divestiture are started. This announcement begins the transition/close phase.

During this phase, all activities must be completed in order for the transaction to close. These include activities started (but not completed) during the negotiation phase and activities that can only be started once the transaction is announced. The transition/close phase's time-line is often compressed, typically just a few months, leaving little time to complete highly-complex transaction activities, all with the close date looming larger and larger. With so much at stake, missing this deadline is not an option.

During the transition/close phase, a significant amount of effort is placed on a transaction's impact on the people, physical assets, and the core business of the acquiring organization. But little effort is typically placed on treating information and records as an asset … until time runs short.

SOLUTION

☑ Using an innovative, risk-based approach, our team was able to mobilize and process 2.2MM documents while protecting our client from future litigation and not impacting the divestiture close date

TREATING INFORMATION AND RECORDS AS AN ASSET

During a recent pipeline sale, our client, a Global 100 integrated energy company, found itself in this situation. Two months into a seven month transition/close period and with over 2.2 million documents to process, they realized that the volume of records and information was far larger than the time available. Faced with a rapidly approaching close date and no apparent solution, they turned to their trusted advisor, Access Sciences, for assistance. What we discovered was daunting.

Compounding the volume-induced time crunch, our team found issues with document organization, identification, and condition. Records were housed in multiple offices and storage facilities along the 200+ mile pipeline with little organization. Document indexing and identification standards, when these existed at all, were primarily confined to an individual location. This resulted in difficulty in identifying individual documents and, when duplicates were (frequently) found, determining which version was the most recent. The physical condition of the records varied from site to site. While many were in reasonably good shape, some documents had been stored in facilities that lacked climate control, resulting in poor condition, including some that dated back over 100 years.

Our team was tasked with processing each document and directing it one of four categories. Some documents were to be retained by the seller, some had to be handed over to the buyer, some needed to be duplicated and shared with the buyer, and some had met retention requirements and needed to be destroyed.
Based on this analysis, our team determined that processing three of the four categories could be (barely) achieved in the remaining five months, but that duplication processing would require too much time.

BENEFITS

- ☑ Ability to meet divestiture close date without jeopardizing the transaction
- ☑ Minimized future litigation risk
- ☑ Adoption of Access Sciences' risk-based approach for subsequent divestitures

INNOVATIVE RISK MITIGATION

In response to the duplication processing constraint, our team developed an innovative, risk-based approach. Based on our understanding of the sales agreement, knowledge of the client's records retention schedule, and working with client stakeholders to make some reasonable assumptions, we developed an approach that would satisfy the conditions of the sales agreement and that would protect our client by ensuring that information handed off to the buyer would be available in the event of future litigation. Once we received approval from our client's legal and business development leadership, we were able to avoid the unnecessary expense of duplicating these records and met the transaction's close date.

With our approach in place, we were ready to tackle the, still daunting, task of processing 2.2M documents. To achieve this our team had to be systematic, efficient, and flexible. We first triaged the information to divide it into one of the, now three, categories. Annuitants reviewed, provided context, and categorized historical records based on their prior experience with the company. Our analysts followed a similar process for non-historical documents, replacing annuitant experience with original research.

Once the records were categorized, our analysts physically staged them in advance of category-specific processing. Documents to be retained were indexed, boxed, staged, and transported to our client's central records repository. Records to be handed over to the buyer (including those that would have otherwise been duplicated) were either retained in place or consolidated for transport to the buyer's headquarters. Records that had met retention requirements were provided to a third-party destruction vendor for disposition. Our team also managed the logistics of transporting retained records to our client's central records repository 2,000 miles away.

LESSONS LEARNED

Based on the seemingly insurmountable challenges and subsequent success of this effort, our team and our client came away with several learnings for use in MAD transactions:

- Including a records and information management SME in the contract development process can help ensure that information is divided between the seller and buyer appropriately, and that the seller's interests are protected both during the divestiture process and after the transaction closes.

- It is imperative to engage records and information management as early as possible during the negotiation phase (prior to the transaction's announcement) in order to maximize the time available for processing transaction-related documents.
- Due to normal job responsibilities and the added burden of other transaction-related due diligence activities, it is important to resist dependence on client resources to perform document triage.