



IS IT APPROPRIATE TO ASK AN INVESTOR TO SIGN AN NDA?

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This article was created by [Scott Bleier](#) and [Elizabeth Resteghini](#) from [Morse](#) for [Scroobious](#) founders.

Scroobious is increasing diversity in the startup ecosystem by providing the education, tools, and community founders need to create investor-compelling pitch material and a platform to help investors easily find them through data-driven curation. For startup founders who have a story to tell but need help telling it, [The Pitch it Plan™](#), or PiP, is a virtual platform that helps you get your compelling story into an investor-ready format. Unlike googling for hours or paying thousands for a pitch coach, PiP is affordable and approachable through online education and personalized feedback from a human who understands the investor mindset. Our framework has [been published](#), vetted by investors, and has helped founders score meetings, raise rounds, and get into prestigious accelerators. Founders can [sign up here](#) or [book an intro call](#) to chat.

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Start-up founders may be inclined to ask venture capital investors to sign a non-disclosure agreement (“NDA”) before opening their data room or responding to investor due diligence document requests. However, venture capital investors (“VCs”) will often refuse to sign an NDA as a matter of course and VCs may view NDA requests as a sign that a founder is inexperienced and out of touch with market norms. This article provides an overview of the common reasons why VCs may decline to sign an NDA while also identifying certain situations where NDA requests might be appropriate and justified.

What is an NDA?

An NDA is a contract that sets forth what is considered confidential information of the disclosing party and prohibits the recipient from disclosing or using such information other than for agreed upon purposes. NDAs are common in a number of contexts such as employer/employee relationships, commercial contracts and merger/acquisition transactions. NDAs are an important tool used to protect a company’s intellectual property, client lists and other confidential information.

Reasons Why VCs Decline to Sign NDAs

Notwithstanding the value of NDAs to companies sharing confidential information, VCs typically refuse to enter into NDAs with startups for a variety of reasons.

First, VCs spend a great deal of time evaluating a large number of startups, often considering investment opportunities within the same industry or that may be competitive with companies within their portfolio. Executing NDAs with potentially hundreds of companies engaged in similar businesses can create administrative nightmares for VCs, opening them up to unintended liability and jeopardizing their ability to provide candid advice to existing portfolio companies. These issues become magnified for larger VCs with sizeable workforces since NDA restrictions typically extend to VCs’ employees and advisors. VCs will typically want to avoid these legal constraints and, if presented with an NDA, may ultimately choose to not evaluate or invest in the company.

In addition, drafting or reviewing an NDA will create additional legal expenses for the VC. For a VC considering hundreds of investment opportunities each year, the costs related to entering into an NDA with every company they evaluate become untenable.

Finally, a certain level of trust underpins any relationship between a startup company and a VC. Presenting a VC with an NDA arguably introduces a level of mistrust and trepidation that places that burgeoning relationship on shaky footing from the get-go. Startup founders who take a leap of faith and disclose confidential information without the benefit of NDA protection may take comfort from the fact that VCs are cognizant of - and highly sensitive about - their reputations in the entrepreneurial ecosystem with most VCs recognizing that they will have considerable difficulty working with startup founders if they become known for disclosing or misusing confidential information.

Exceptions to the General Rule

In certain situations, requesting a VC to sign an NDA might be appropriate. This is particularly true in the case of life sciences startups that have highly confidential

intellectual property, trade secrets or patentable works for which they have not yet sought patent protection. In these cases, a company should consider putting an NDA in place that is tailored to protect this specific information; often, VCs are receptive to entering into NDAs in these situations. Another approach to consider is to redact certain information from documents that the company shares with the VC until a later stage in the evaluation process.

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