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MIRUS CAPITAL ADVISORS

VIEWPOINT

ISSUE 37

FOR MORE INFORMATION ON SOME OF THESE TOPICS, PLEASE SEE:

VIEWPOINT #19: Seller Beware: Five Problems That Can Sink Your Deal

WHY THIS MATTERS:

- *Getting the buyer to the table is just the first of many steps in a long, complicated process that most business owners have not been through before. Trying to figure this out on your own is risky.*
- *Selling your business is generally the largest financial transaction you will ever undertake. You won't get a do-over if you don't get it right.*
- *Because they haven't been through a sale before, most business owners don't know what they don't know about the process. With so much at stake, this ignorance can be disastrous to negotiating the optimum deal.*

ALREADY HAVE A BUYER? WHY YOU STILL NEED AN INVESTMENT BANKER

By Laura Kevghas and David Hoffer

Congratulations! A buyer is expressing strong interest in your company. That big payday you've worked so hard to achieve is finally within sight.

What should your first step be? After all, this is likely to be the biggest financial transaction of your life. You need to get it right. You don't want to leave money on the table or structure a deal that isn't in the best interests of your company's shareholders, customers and employees. You've worked tirelessly to build this company; assuring a strong future for it is of keen concern.

Selling your business is not comparable to any other transaction of which you've been a part. It is not, for example, like having a buyer for your house already lined up and deciding to proceed without involving a real estate agent. This transaction will be complex, hugely time consuming and, for many sellers, the culmination of a lifetime of work. Not having the best advice available to you throughout the process is not an option. You know you'll need a lawyer, and probably an accountant, too. But you don't need an investment banker, right? Since you've already found the buyer, all an investment banker will do is charge you a fee and reduce the cash in your pocket. Read on to discover what other professionals believe are the top five benefits of having an investment banker guide you through the sale process, even when a buyer is already banging on your door.

Benefit #1: Expand your possibilities. Just because a buyer expresses intense interest in your company doesn't mean you should rush into a deal without scanning the marketplace for alternatives. An investment banker can quickly create a competitive field, if you desire, by bringing additional buyers to the table.

"Even if you have a buyer, the investment banker can get three or four other people waiting in the wings with offers that may push the interested buyer up a

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notch or two," says Bill Norman, an attorney with McLane, Graf, Raulerson & Middleton, P.A. "Even if they're not bringing a new deal to you, just the knowledge they have of the market is valuable."

"You want to create a situation where you might have multiple buyers and that could certainly affect your selling price," says Rudi Scheiber-Kurtz, CEO of Next Stage Solutions, which provides outsourced CFO services. "That's almost impossible to do on your own."

Scheiber-Kurtz also points out that investment bankers have valuable market knowledge. "How do you truly know what your business is worth based on the competition and market conditions?" she asks. "You could be leaving money on the table because of a lack of information, or because the timing is not optimal for a sale. These are things that an investment banker can help with."

Benefit #2: Take the heat off you during negotiations. Negotiating the sale of a business, especially if you've never been through this process before, is a daunting task with two levels of complexity. First, the actual terms of the transaction are intricate; this is definitely one of those areas where it's dangerous to be less than fully informed about what's customary and reasonable. An investment banker who has been through dozens, if not hundreds, of transactions can help you avoid disaster and get the best deal terms possible.

Second, in many cases, the seller will be working for the buyer post-sale – at least for some period of time – and if negotiations get disagreeable or difficult, the investment banker is there to take the heat. He or she will protect your relationship with the buyer by keeping you at arm's length from the negotiations.

"When there are difficult conversations surrounding due diligence or the terms of the agreement, being able to inject the investment banker into the situation takes the emotions away," says Norman. "It doesn't leave a residue of bad feelings for either party because this is being managed diplomatically by the investment banker."

"With an investment banker, there is someone experienced working directly with the buyer so the seller's emotions do not hinder the process and someone is there who understands the buyer's motives and negotiating techniques," says David Poulin, a wealth manager and exit planner with Morgan Stanley Smith Barney.

"A wrinkle will invariably come up during the deal and you're going to need someone to step in and act as a mediator to iron out that wrinkle," adds Norman. "Because the investment banker has been involved in so many transactions, they have at their fingertips many solutions that you may not know of. They can provide alternatives for issues between the buyer and the seller that at first seem insurmountable."

Benefit #3: Manage the due diligence process. An investment banker insulates the business owner's staff, to the degree possible, from the numerous day-to-day distractions that are involved with due diligence. S/he knows what information is reasonable or unreasonable for the buyer to request and what information to provide at what times. This will avoid situations where buyers have sellers jumping through hoops for no justifiable reason.

"An investment banker provides a benchmark that gives the seller an understanding of the appropriate extent of due diligence and what are the terms and at what point they can go back to the buyer and say this due diligence really isn't necessary because of this or that," says Norman. "If due diligence is thorough enough, the warranties can be fewer in number. It's important to have someone who can work with your personnel and dig up what's necessary and give that to the potential buyer."

Benefit #4: Quarterback your outside advisors to keep the deal on track and headed to a rapid closing. Any sale of a business involves a lot of people and a lot of moving pieces, especially when due diligence is underway. Having someone to ride herd on everyone involved is invaluable.

"One of the functions that the investment banker does well and that is useful is coordinating the efforts of the other advisors," says Norman. "They're able to make sure everyone is on the same page, to coordinate phone calls and meetings and keep track of e-mails so everyone knows the transaction is moving along as expeditiously as possible."

"Miscommunication can occur at all levels," says Mary Beth Kerrigan, an attorney with Morse, Barnes-Brown & Pendleton. "It's good to have someone acting as your advocate and running the deal who has direct access to everyone and who is dealing with the decision makers."

Benefit #5: Protect your time so you remained focused on running and continuing to grow the business. "Selling a business is a full-time job," says Norman, "and a lot of sellers don't realize that until they get involved in it – and then they begin to realize that doing anything other than attending to the sale becomes difficult. They really need someone who can attend to the deal while they do what they're good at, which is managing and running their business."

"The CEO is responsible for continuing to make the numbers and run the business," says Kerrigan, "and what happens if he's dealing with all these calls and he's dealing with the other side in the negotiations? What happens if the deal doesn't go through and he hasn't focused on running the company for two months?"

"During this process, you need to keep your eye on the ball, meaning that you really have to focus on the internal aspects of this transaction," says Scheiber-Kurtz. "The investment banker can help you with the external aspects. I don't think it works when you want to do both. You're going to have to focus on the external and you're going to neglect the every day things that you have to do to keep the company on track."

ADVANCE PLANNING

Ideally, of course, you will have done some advance planning for your exit from your business that will help you in knowing whether this is the right buyer and the right deal for your company and for you. As John Leonetti, CEO of Pinnacle Equity Solutions, a national firm that provides exit strategies training and solutions, points out, "People say about M&A that every deal dies three times. That is because the existing owner is not certain where they're heading. If you have the opportunity to plan in advance for this hugely important and emotional and personal transaction, all things being equal, you will get a better result from the sales process."

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— Rudi Scheiber-Kurtz, Next Stage Solutions

Leonetti, who is author of Exiting Your Business: Protecting Your Wealth, points out that there are financial, business and personal reasons why an owner might not want to jump at the first offer received. "On the financial side, unless you've done advance planning, you simply don't know if what is being offered is enough money for you to meet your goals. And by the way, taxes are a big part of these transactions; owners are often quite surprised at the amount they will have to pay in taxes and that can often times lead them towards a very different net result. It's not what you get; it's what you keep that matters."

CASE STUDY

Mirus was retained by a founder-managed software company that also had two professional investors. The Company was approached by a buyer that was also one of its strategic partners. The relationship was critical to the Company, since it utilized some of the buyer's software in its products, and the buyer resold the Company's software. The buyer desired to acquire the Company because it provided an entre into an adjacent market with an established brand. Because of the strategic nature of the Company's partnership with the buyer, there was limited marketability for the Company with other buyers.

The Company's objectives in hiring Mirus were to get the deal done at a good price and on reasonable terms, while enabling the managers to continue to spend most of their time managing the business. At the time Mirus was engaged, the Company had a vague indication of interest from the buyer, but no price or other terms. Mirus:

1) Facilitated discussions among the various shareholders, including the management team and the professional investors, who had conflicting views on what represented acceptable price and terms.
2) Helped build out financial projections to support the highest possible valuation.
3) Prepared a management presentation to be delivered to the buyer, and coached the management team (all of whom were first time sellers) for all interactions with the buyer.
4) Negotiated a detailed Letter of Intent that could be executed by the parties.
5) Built an online data room, and managed the due diligence process to enable the management team to focus on running the business.
6) When the buyer came back after due diligence with some significant concerns, Mirus structured creative solutions and succeeded in resisting a reduction in the purchase price.

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"There's an old saying that a lawyer who represents himself in court has a fool for a client," adds Leonetti. "And a doctor wouldn't perform surgery on himself. The idea that a business owner is going to go through a complex and delicate transaction without the assistance that an investment banker brings leaves a tremendous amount of risk on the table."

AVOID SELLER'S REMORSE

What do the people we interviewed tell a client who is reluctant to hire an investment banker? "I usually tell them in every world there are people that provide certain services and people pay for that because there is value to it," says Bill Norman. "It's always worth the money that is paid if you're getting good value. The trick is getting the right person in there. As with every transaction, you need a professional who is familiar with the transaction and who understands every aspect of it because they've dealt with so many transactions. I've had a number of situations where people have had seller's remorse. They've come into my office and said, 'I should have used someone and I didn't and I have since learned that I could have had a much better deal.'"

"The business owner needs to understand the risk if they do not have representation," says Poulin. "We encourage them to look at this in some ways like a level of insurance initially. Experienced strategic buyers are professional and look for companies that have no representation because the strategic buyer feels he will get a better price for the company if the seller is not represented. We encourage them to consider representation by an investment banker to even the odds, protect against blind spots and because of the increased potential for a better price."

"Usually the banker is able to negotiate higher consideration and they're paying for themselves," says Mary Beth Kerrigan. "This is particularly true when you have inexperienced sellers who haven't gone through an M&A process. They may not know how to position themselves in a way that shows the real value of the company. Say, for example, that you're trying to get a valuation that is tied to future potential projects and you're looking at a company in July 2011 that had reasonable 2010 numbers, but the expectations for this year's third and fourth quarter are blowing the numbers off the charts. To be able to convince a buyer to look at projected numbers versus historical, that's where the investment bankers can add value. The business people, although they may feel passionate about their company, may not have the experience to confidently relay the information that convinces the buyer that the valuation should be significantly higher."

CONCLUSION

Given the current M&A environment, in which business owners are increasingly finding themselves the object of unsolicited offers for their business, it is critical to be prepared. While a buyer will frequently discourage a seller from engaging an investment bank, the reason is that it is to their benefit to deal with an inexperienced business owner who will not have the most sophisticated advice and who will not market the company to a broader buyer universe. The business owner needs to ensure that he or she gets the best advice and makes the best deal possible in what is frequently a once-in-a-lifetime opportunity.

Laura Kevghas and David Hoffer are partners at Mirus Capital Advisors, Inc. Founded in 1987, Mirus is a middle-market investment bank that specializes in advising companies on strategic mergers and acquisitions. By combining a proven process, industry and transactional expertise, creative thought, and personalized service, Mirus has completed hundreds of transactions for both public and private companies. Mirus is a registered broker-dealer and FINRA Member. Additional information about the firm is available on our website, **www.merger.com***. We also invite you to visit our blog at* **findcapital.org***.*