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Win-Win: Keys to a Successful M&A Negotiation in Tough Times

The term “Win-Win” like many business terms has become so over used to describe the “ideal conclusion” to negotiating that we feel the need to provide two caveats before dispensing these pearls of wisdom:

The size matters caveat: the larger the deal the more resources both parties have available for influencing the outcome. Therefore, our focus today is for successful negotiations in transaction sizes in the \$10 to \$100 million range.

The time matters caveat: the two most common phrases in the transaction world are; “time is of the essence” and “deals that drag out don’t happen”, so recognize the impact of timeliness. Our experience here is that when both parties prioritize getting a deal done then it’s easy to recognize when either side delays the process. It’s a red flag indicating a ploy or a lack of original motivation (more on this later).

We are living in one of the most difficult times to be in the M&A transaction business for the following reasons: the number of deals has decreased, traditional valuations seldom apply and it is a buyer’s market. Buyers still need to put themselves in the Seller’s shoes, so here is what we ask Sellers prior to accepting an engagement.

- Can you answer the questions: “Why are you selling” and “What will you do after you sell” with little or no hesitation.
- Do you have a team of advisors experienced in selling businesses and will you include them in the planning process?
- Do you understand the importance of a fair market valuation to establish a benchmark for a minimally acceptable deal?
- Are you focused on “Cash at Closing” or can you understand the value of “Deal Structure” and its impact on negotiations?
- Is this the best time for you to Sell to leverage the tax benefits, market conditions and buyer’s financing challenges?

Buyers today must follow a process that will allow them to find the right business, meet their financial objectives, be a fundable deal and achieve the goals of the business as forecasted.

Both buyer and seller should follow a process that prepares them for a Win-Win transaction:

1. **Place A Reasonable Price on the Business**
This is not related to how its marketed (with or without an established price) but to what a seller minimally expects to receive.
2. **Allow the Seller to carry on "Business As Usual"**
Help them from being so engaged with the transaction that their attention wavers from day-to-day demands, affecting sales, costs, and profits.
3. **Engage An Expert Intermediary**
Their focus on confidentiality and an effective process becomes the platform for maximizing the success of a transaction.
4. **Prepare For The Sale Well In Advance**
Preparation is the most effective negotiating tool for minimizing wasted time, maintaining credibility and shortening due diligence.
5. **Anticipate Information the Sellers May Require**
This is the first stage of putting yourself in the Sellers shoes.
6. **Achieve Leverage through Competitive Analysis**
Knowledge of the target seller's competitors, alternative acquisitions and industry conditions can significantly improve your position.
7. **Be Flexible**
An intermediary should inform you of the areas where flexibility will impact both price and time to close.
8. **Negotiate; Don't Dominate**
The negotiating process you have used for acquiring businesses or products in the past is an asset in understanding the give and take of deals, but the stakes (and emotions) are higher and require a team effort from your advisors.
9. **Keep Time from Dragging down the Deal**
To keep the momentum up, work with your advisors to be sure that target seller stays on a time schedule and that offers and counter-offers move in a timely fashion.
10. **Recognize that Terms are just as valuable as Price**
Employ the proper use of Earn-outs to bridge value differences and be open to methods of calculation that minimize the seller's ability to meet your terms.

So, it's important to understand the process and to candidly share your motivation with your advisors. Motivation is the non-negotiable element for both sides of a transaction and too frequently becomes the deal killer. Most deals do NOT have both buyers and sellers walking away from the closing feeling like they have won. That feeling usually occurs some months later. What is important at the closing table is to feel that a fair process was employed and that both parties' needs were satisfied. Finally, it's important to recognize the

most powerful tool in successful negotiations is the tool of quality preparation.