



Third in a series of four articles on the preparation for and steps involved in the sale of your business.

Expert advice from consultants and advisors can play a vital role in the sale of your business.

One of the great traits exhibited by entrepreneurs and business owners is the confidence that they can do just about anything. The building of a successful business that is sought after by one or more prospective buyers adds to that confidence. However, that confidence can be a hindrance when venturing into the uncharted waters of the business sale process.

In the first two articles of this series, we discussed the need to have your business structure and documentation up to date, as well as the benefits of having a solid understanding of the overall process and specifics about each step in the process. Aspects of the confidentiality agreement, realities of the due diligence process, understanding the buyer's perspective and expectations, and bridging the gap on valuation each represent an integral and unique step in the selling process. But in order to stay in control of the transaction, it is important to understand how these steps link together to form the complete process. Consultants and advisors with experience in *both* the acquisitions process *as well as* in their respective area of expertise will help you anticipate where the tension points will or can be, and provide insight into your various options in each phase and the effect each option has on future phases of the process.

These Are *Your* Consultants

When you engage a consultant remember just that—you are engaging a consultant. The final decisions are still yours to make. Good consultants and advisors recognize that they are to consult and advise—not take ownership of the process. There are many consultants who may try to take on the role of the owner of the process. However, the consultant ultimately doesn't live with the results of the process. He or she moves on to his next consulting role; you live with the results of his or her engagement.

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at a glance

- ❑ Confidence can be a hindrance when venturing into the sale of a business; thus, consider hiring a experts to help you make decisions throughout the process.
- ❑ Be wary of any consultants or advisors who take on too much ownership of the sale process.
- ❑ Investment bankers, certified public accountants and attorneys are examples of consultants you should consider during the sale of your business.

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Just as you have succeeded in your component manufacturing business because you paid attention to the right details, likely learned a few things from the school of hard knocks and have the war stories to back up your experience, good consultants know the details and have experienced enough transactions to be invaluable aides to you. Don't let your own self-confidence get in your way. There are aspects of your business where you have hired the employee with the right "stuff" or the advisor who knows how to get things done properly. Take the same view with your business sale advisors.

Another common reason for holding back on assembling the advisory team is to minimize expenses. However, *good* advisors with experience will more than make up for the expense. Very few transactions are all cash purchases—meaning that assuring that the commitment to make future payments is legally sound and that the tax implications are understood (and minimized in accordance with the law) are important to you. And when the purchase involves significant cash up front, the scope and detail of the representations asked of you and the implications for failing to assure that the representations are accurate, can be costly to you; much more costly than the expenses saved by not engaging experienced advisors.

common thread:

You will note that a common thread of advice through this series of articles on the business sales process is that you need to keep focused on the terms, conditions and structural points that are important to you. Good advisors will help you determine those points and will help you keep properly focused on them as you maneuver through the sales process.

The Roles of the Advisors

I have been asked to rank the importance of each type of advisor as compared to the others. In standard lawyer-like speak I respond that "it depends." The size, complexity and features of the transaction dictate the relative importance of each type of advisor. The following outlines the roles each takes and how each can facilitate the process and help you focus on the relevant tasks and avoid mistakes.

Investment Banker/Advisor. The Investment Banker/Advisor can provide you with a reasonable range of the value of your business. Clearly one with experience in your industry will be able to quickly provide a valuation range based on his knowledge of comparable transactions over a recent period of time. Remember that different industries have different valuation "rules of thumb" and that prospective purchasers can have different valuation views depending upon their expectations of the business going forward.

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Note that an investment banker/valuation advisor does not have to be with an investment banking firm. In addition to the traditional investment banker, valuation advisors with years of experience in one specific industry can provide you with industry knowledge that is not easily replicable.

The engagement of an investment banker/advisor early in the process can also help you understand valuation expectations. You may discover that your valuation needs or wants are not the same as the marketplace, and that now is not the time to

pursue the sales process. Even if this is true, the investment banker/advisor has performed two key functions for you: 1) Prevented you from a lot of wasted effort over the ensuing months and 2) Given you an idea of what you need to work on in order to get to your valuation range.

Assuming you are moving forward, the investment banker can help prepare the description of your business and the opportunities for a prospective purchaser in your market. He or she is used to the effective ways in which your business is to be presented and understands how to concisely get that information captured and communicated to the prospective purchaser. While the process of preparing a description is not always required or even appropriate (you may already be in negotiations since the purchaser showed up without any effort on your part) it is an invaluable tool even during the negotiation process of a scaled down effort to keep your focus on the aspects of the transaction that are important to you.

In the event you have taken the initiative to market and sell your business, in addition to the description of your business, the investment banker will identify a list of potential advisors and formulate a strategy for contacting the buyers. The various ways of marketing your business and conducting the sale (including holding an auction when more than one buyer is in the running) will be evaluated. Confirmation that each buyer has the financial capability of completing the purchase will also be carried out.

The investment advisor should also work with the tax and legal advisors on the structure of the transaction to assure that the business terms are not overshadowed by

legal and tax structuring and posturing that can occur during the process.

Accountant. Your certified public accountant (CPA) will assist you in preparing the tax returns, financial statements and related reports that the potential buyers will need to review. This point applies to both the CPA and the attorney (which I discuss below): don't just rely on the advice of your current CPA if he or she is not experienced in business sales transactions. Unlike the investment banker/valuation advisor, the CPA and attorney may have little or no experience in business sales transactions.

Advisors experienced in business sale transactions can be instrumental in helping you keep focused by properly performing their roles.

The CPA will help you understand how the accounting practices you have applied compare with the practices of the prospective purchaser. Often the privately held business has applied accounting principles designed to minimize taxes rather than maximize earnings. The CPA can identify these differences. The CPA will also advise on the tax implications of the proposed transaction.

The sale of your business will hopefully result in a significant amount of money coming under your control. The use of trusts, family partnerships or other ownership entities should be in place prior to the closing of the sale. The CPA can advise on the estate planning vehicles and choices you have based on your needs.

Attorney. The transaction-experienced attorney can help you prepare for the sale. This includes housekeeping matters such as corporate records, updating previously expired contracts, and assembling information on the structure of the ownership of your business. The preparation activities where the attorney can be helpful also include evaluation of the merits of any disputes or lawsuits you have in process or threatened, and assurance that you have the proper up-to-date licenses and qualifications.

If the investment banker has prepared a description of your business, the attorney will review it to assure it is accurate and in compliance with the law—in particular, the securities laws.

An experienced attorney will also help guide you during the various steps of the process to assure that you don't do something in one step that has unintended consequences. An example is failing to limit the authorized employees with whom the purchaser can contact in the confidentiality agreement. As a result, during the due diligence investigation you find the purchaser's representatives talking to employees that you have reasons not to be contacted. While the purchaser will probably honor your request to pull back on the number of employees contacted, the damage may be done in that the water cooler rumor mill is rampant—and productivity could suffer as a consequence.

The attorney will also advise on the implications of the structure of the transaction. As addressed in the first article (June/July 2006), one example is the difference between the purchase of assets and the purchase of stock. The attorney will also advise on the possible effects of the closing conditions that the purchaser is insisting upon such as regulatory approvals, satisfactory financing arrangements, or some other third party approvals.

The attorney will also advise on the implications of the scope of the representations and warranties (i.e., these are your "guarantees" that the business is as you represent it to be) and the rights the purchaser may enforce against you in the event there are misrepresentations. (Recall from the first article that this is when the purchaser has you indemnifying him from the damages he incurs as a result of any misrepresentations.) The attorney will help assemble the documents that are in the information packet that becomes the basis for the representations and warranties, commonly known as the schedules to the purchase agreement. A note of caution here: engaging the attorney to do the full preparation and assembly is usually an unnecessary expense. The initial assembly and preparation of the schedule information should be conducted by someone who knows your business in detail—often the CFO or controller. The attorney will be one of several people who

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will help assure the materials are complete and support the descriptions contained in the representations and warranties.

The attorney can also aid the CPA in the estate planning and transaction structuring for tax purposes. As mentioned above, there are entities or vehicles to structure prior to closing that are part of the estate planning process.

Conclusion

You have built a successful component manufacturing business that is viewed as valuable to one or more prospective purchasers. Your success came from making decisions based on your knowledge of the industry. The successful and *satisfying* sale of your business will come from knowing where you are going and how you want to get there.

Advisors experienced in business sale transactions can be instrumental in helping you keep focused by properly performing their roles. By working for you and together they will also be worth their monetary cost to you. **SBC**

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