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BUYER BEWARE: 5 BUYER BLUNDERS THAT CAN SINK A DEAL

By Laura Kevghas

WHY THIS MATTERS:

Most buyer mistakes are avoidable. Being aware of how things can go wrong will help you improve your chances of sealing the deal.

Many of the past Viewpoints we've published have advised sellers on how to secure a great deal in the M&A market. In this issue, we take a seat on the other side of the conference table to highlight five common and sometimes critical buyer mistakes that can be fatal to a transaction.

TOP FIVE BUYER BLUNDERS — AND HOW TO AVOID THEM

1. KNOW THE REAL DECISION-MAKER(S)

Things can get off track right from the start if you don't take the time up front to clarify key and hidden Decision-Makers in the seller's world.

John Kenny, Executive Vice President of Corporate Development for Iron Mountain, states that one of the most important factors that needs to be uncovered early on is whether the people that you're dealing with on the seller side are the people who can actually approve a transaction. "I've seen a lot of cycles wasted and deals just never get done," he said, "because you're talking to someone who isn't authorized to make a decision, or the board isn't aligned with the sale."

> Some of these mistakes or misunderstandings can cause a seller to mistrust a prospective buyer. Others lead a buyer to present an offer that doesn't meet the seller's needs or interests. In any case, they can result in a deal that's in serious jeopardy.

Although unfortunate, it is not unheard of for someone on the seller side to overstate how much authority they have to get a deal done. Mirus once had a principal of a seller represent himself as the sole decision-maker, only to have the partner committee turn down the letter of intent the principal had negotiated because his partners did not want to sell the company at any price!

Exaggeration of authority may be difficult to ascertain, and supports the idea of ASKING PROBING QUESTIONS UP FRONT. Confirming as many deal-related details as possible early in the relationship helps streamline the deal process and keep it from derailing.

2. DON"T FOCUS ON PRICE ALONE

Some buyers assume getting the best price possible is the only thing that matters to a seller. In reality, many sellers have other goals that are important to them. Not taking time to uncover these objectives can be a big mistake. John Kenny also advises learning as much as possible about the complete dynamics of a seller's situation in advance. "One of the first questions to ask is why the asset is for sale," he adds, "...and also understand whether it's a distress situation and whether it's been shopped for a while. Are they shooting for the whole market, or targeting you specifically?"

Mirus represented a client recently who wanted to ensure that his staff, many of whom had helped him grow the business for more than twenty years, had bright futures with the company post-acquisition. One finalist in the auction process, who didn't believe this was a real objective of the seller, was dropped from the process despite a high proposed purchase price, when they indicated that they planned to cut employees and close facilities after the close of the sale.

Similarly, many entrepreneurs want to know that the company brand and culture they've spent years building–and which they believe support their company's success–are going to be maintained. Factors like these are often especially important when a family owned business goes on the market.

"Seller motivations are important, because if the seller cares about their brand, or their people, or their staff's ongoing employment; and these factors don't match up with integration into the new company, then you might as well stop--because you won't be the preferred buyer," adds Kenny.

3. ROMANCE THE SELLER

Sellers want to believe a prospective buyer is really pursuing them and truly cares about the business the seller has built. This is especially true if the seller is planning to stay involved with the business, but it can also be true even if the seller is planning to exit.

"You need to distinguish the different situations," said attorney Les Fagen, a partner in the Venture Capital practice group at Cooley Godward Kronish's Boston office. "If it's a family-owned or founder-owned business, not spending time 'romancing' the seller can definitely be a problem."

Taking time to get to know the seller, and letting the seller get to know you, are essential to building the type of personal bond that will help move a deal forward. Making sure that there are enough face-to-face meetings, spending time getting to know sellers and their key players, listening closely and asking good questions, and helping the seller learn about you are examples of the types of things a buyer can do to help a seller feel "wooed" and special. At the end of the day, relationships buy companies.

4. BUILDING A WIN-WIN DEAL

Some buyers focus on winning during every negotiation with the seller, whether it's related to the purchase and sale agreement, employment agreements or post-closing integration. Every purchase and sale agreement has numerous points that involve a give and take between buyers and sellers. Sellers can get fed up and walk away, simply due to the perception that a buyer is trying to shift all possible risks to the seller's side.

"Being too aggressive in negotiating the indemnities in the purchase agreement is one of the more common problems," Les Fagen elaborate(s) . "The seller wants certain limitations on liability, and the buyer wants all these protections in the document. Not wanting to intelligently assume risk on a buyer's part is probably one of the most common reasons that deals fall apart."

5. ORGANIZATION

A seller can quickly lose confidence when a buyer doesn't appear competent or knowledgeable in terms of how they approach the sales process. "One of the key success factors for an acquisition is earning the seller's trust, that you will indeed be able to close the transaction," pointed out Fagen. "The seller wants to know that the buyer has the ability, the wherewithal, and the determination to close and close promptly. I've seen a number of deals fall apart because the buyer took too long and didn't keep the process moving forward."

The due diligence process is seen by many sellers as a proxy for how they will work with the buyer post-closing. A smooth due diligence process comforts the seller and his/her management team that the buyer's company is also well run, and that integration and post-closing activities will be smooth and well-managed.

PLANNING FOR SUCCESS

Buying and selling a business can be challenging for those on both sides of the table. If you're on the buyer's side, understanding as much as you can about your seller in advance will help you anticipate and avoid the common mistakes discussed here. Through good planning, excellent listening and communication skills, understanding your seller's motivations, and knowing your seller's key influencers; you can become a successful buyer, and complete profitable transactions.

Laura Kevghas *is a partner at Mirus Capital Advisors, Inc. , with a collective history of more than 150 buy-side transactions. 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/SIPC Member. For more information, visit www.merger.com.*