BNY MELLON
WEALTH MANAGEMENT

Designing the Right Sale Process for Your Business

Designing an appropriate sale process for your business is one of the most important decisions you will face as a business owner.

Although there are many ways to sell a business, three of the most common methods are a *broad auction*, a targeted auction and a *negotiated sale*. The method you choose can have a significant impact on the outcome of your sale, including how much negotiation leverage you will have throughout the process, the purchase price and deal terms you are able to achieve, the likelihood that the deal will close, and the reputation of your business among your employees and the public.

With so much on the line, it is important to ensure that you and your advisors design a sale process that sets you and your business up for a successful transaction.

Identify Potential Buyers

Developing a list of potential buyers is an important first step in determining the right sale process for your business.

Using your personal knowledge of the industry and the contacts you've cultivated during your career, you may be able to identify buyers who are interested in your company for strategic reasons (for example, your competitors) and financial reasons (for example, private equity firms). Publicly available or subscription-based online databases, trade magazines and associations, industry conferences, and SEC filings may also be helpful in finding potential buyers. If you are working with a business broker or investment bank, they will often take the lead in developing a comprehensive buyers list leveraging their own industry knowledge, contacts and deal experience.

Once you have created a list of potential buyers, you and your advisors may find it helpful to rank each buyer using specific criteria in order to further organize your deal process.

For strategic buyers, criteria may include:

- The size of the buyer's company, overall cultural fit
- Potential synergies
- The impact of the transaction on your employees
- The buyer's overall financial health
- The buyer's experience acquiring other companies

For financial buyers, you may choose to focus on:

- The firm's overall size, industry expertise, investment strategy, reputation and track record
- The firm's ability to obtain financing
- The strength of the firm's team
- How your business will fit into the firm's existing portfolio of operating companies

Determine Your Sale Objectives

Once you have developed an initial set of potential buyers, it is important to reflect on the personal and financial goals that you want to achieve with the sale of your business. Determining the best sale process for your business will depend upon a number of factors, including the relative importance you place on maximizing price, favorable deal terms and expediency, minimizing disruption, preserving confidentiality, and finding the "right" buyer for your business and its employees.

Canvass the Market via a Broad Auction

In a broad auction, you would typically work with an investment bank or business broker to organize a multistage sale process that involves marketing your business to a large number of potential buyers in an effort to obtain the best possible sale price and deal terms. The heightened competitive pressure created by a broad auction may motivate buyers to differentiate themselves from the pack by agreeing to an accelerated timeline, a less onerous diligence process, fewer internal approvals or a more favorable outcome for your employees. However, it is possible that some buyers may choose not to participate if they believe the chances of winning do not justify the time and resources they would need to devote to the process.

There are certain risks that sellers should be mindful of when selling their business via a broad auction. Inviting a large number of potential buyers into the sale process increases the risk that confidential information about your business and the transaction might leak to the public or your employees, which may lead to difficult questions, hamper morale or precipitate departures. Some competitors may participate in the auction primarily or solely in order to gain access to confidential information. If multiple bidders advance to the diligence stage of the transaction, the resources and work required of your management team may be disruptive to the business. Failure to close a deal could create a negative perception of your business among customers, competitors and other constituents.

If these possibilities concern you, you may want to consider a targeted auction. Structurally similar to a broad auction, a targeted auction typically involves a smaller number of potential buyers — perhaps no more than 10 to 25 names. Involving fewer buyers may reduce the risks associated with sharing confidential information and the effort required of your management team to manage the transaction, while still demonstrating to your constituents that the final deal you strike was the result of a well-planned market process.

Pursue a More Focused Process via a Negotiated Sale

A negotiated sale narrows the scope of the process even further. Typically, you would initiate preliminary conversations with several potential buyers and provide them with a high-level overview of your business in order to gauge their level of interest in a transaction. At some point during these initial discussions you may choose to proceed further with one of the parties by exchanging additional information, agreeing on a non-binding term sheet, granting exclusivity, commencing due diligence and eventually entering into contract negotiations.

The negotiated sale process may proceed faster than a broad auction, as the buyer and seller are permitted more flexibility in determining (or modifying) the transaction timeline. If negotiations ultimately fall through, you may have another "bite at the apple" and choose to pursue other potential buyers or undertake an auction process.

However, choosing to engage with a smaller group of buyers gives you less negotiating leverage than you would have in a broad or targeted auction and minimizes the competitive tension among buyers that might otherwise lead to a higher sale price and/or more favorable deal terms. Without surveying a greater number of potential buyers, you risk leaving money on the table. That may make it more difficult for your board of directors to defend its decision-making process.

Questions to Consider

In weighing the advantages and disadvantages of each type of sale process, it is critical that you consider and discuss a number of important questions with your advisors, such as:

- How important is achieving the highest sale price versus finding the best strategic fit for your business and its employees?
- How soon do you need to sell your business? Do you have the benefit of time, or do personal and/or business considerations demand an accelerated timeline?
- How confident are you in your management team's ability to coordinate a due diligence process with multiple potential buyers? How detrimental will this distraction be to day-to-day operations?
- How comfortable are you with sharing confidential information about your business with a broad group of potential buyers?
- What is the likelihood that family members or other constituents may question the decision to sell to the selected buyer?

Selling your business is a complex undertaking, and designing a sale process is just one of the many steps in a larger planning discussion that will help you and your advisors obtain the best outcome for your business and your family.

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