

THE M&A PROCESS



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M&A Process

Overview

The sale of a business is a complex process involving many different aspects. All parties involved must appreciate the complexity of this endeavor. Consequently, it is essential to have a qualified team in place that is working with company owners and managers to both develop appropriate objectives to be addressed in a sales process and then in turn, establish and execute a strategy for the actual sale. In managing the sales process it is useful to create a timeline. This timeline will include various milestones along the way to assure that objectives are met and to track the overall progress.

In general, the seller in conjunction with their advisors, should define the characteristics of a desirable buyer. Additionally, they should develop a selling plan to guide them in approaching potential buyers.

For larger companies which are publicly traded, and whose value is relatively well known, a one or two stage “auction” strategy may be appropriate. Here the strategy could dictate that the optimal course is for the selling public company is to announce that it is “exploring opportunities” with respect to the business. Interested companies are expected to step forward and express their interest in the form of “Letters of Intent” at a fixed point in time. These Letters of Intent would include non-binding proposals and indicate general financing sources gauged against some previously established minimum criteria.

The company and their advisors then evaluate all aspects of each of these Letters of Intent. Only selected parties from this group are permitted to move forward, continue their due diligence and formalize their proposals. The intent is to maximize the sales value by reducing the number of bidders to just legitimately interested and qualified parties and to be as efficient as possible with everyone’s resources. Once done, a final purchaser is chosen with whom definitive documentation is negotiated leading to a closing.

Summary of What Millburn Capital Will Do as Agent and Advisor

- Perform a strategic analysis of alternatives
- Evaluate marketplace
- Work with Company to set realistic expectations
- Create marketing materials
- Execute marketing plan
- Maintain an orderly and efficient sales process
- Drive the process, head off any problems and resolve conflicts
- Help with due diligence
- Create a competitive environment among potential buyers to maximize value
- Reduce buyer/seller friction: act as an intermediary and take all the “arrows”

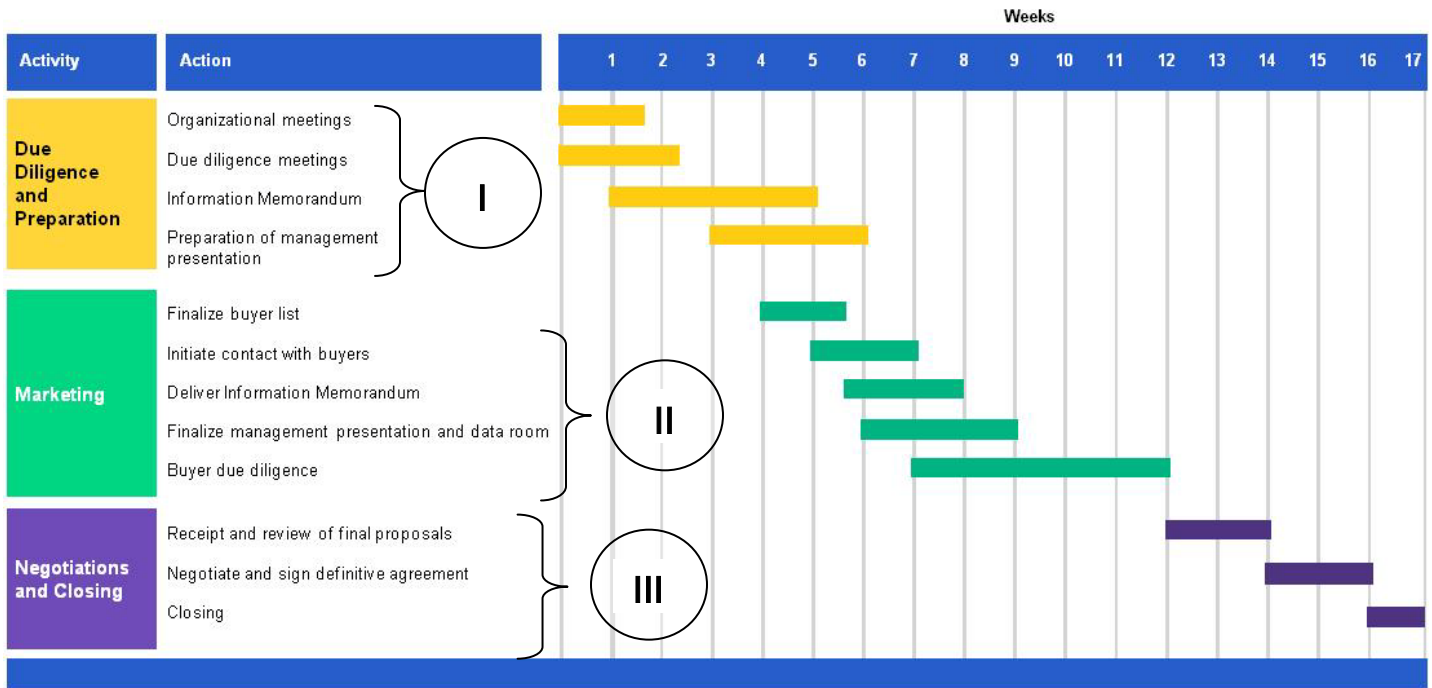
- Respond to all information requests and inquiries in an organized manner
- Execution, Negotiation, Close

The Sales Process (In General)

There are several stages involved in preparing for, negotiating and closing a sales transaction. The following outline briefly summarizes the more important stages followed by a more detailed timeline on the next page.

- Business evaluation analysis
 - ◆ Full due diligence
 - ◆ Valuation analysis
 - ◆ Financial strategic alternatives
- Marketing strategy
 - ◆ Proper positioning . . . Value creation
 - ◆ Marketing materials
 - ◆ Identify & screen buyers
- Execution
 - ◆ Market, coordinate, negotiate, close
 - ◆ Create sense of urgency/scarcity

M&A Timeline



PHASE I

1. Engage Investment Banker - in process
2. Prepare Memo and other materials
3. Notify existing buyers that Company has engaged an Agent

PHASE II

4. Buyer List – Identify potential buyers
5. Communicate guidelines, procedures and timelines to prospective buyers
6. Distribute memorandum and other marketing materials to these buyers
7. Respond to additional requests for information
8. Establish a data room if necessary. Data room could be physical or electronic
9. Facilitate a limited initial due diligence process to ensure buyers have enough information to prepare a letter of intent (“LOI”)
10. Receive initial LOI’s from buyers containing:
 - a. Price
 - b. Form of payment (i.e. cash, stock, debt, etc.)
 - c. Terms, conditions, contingencies
 - d. Source of financing
 - e. Timing
 - f. Critical employees
 - g. Consulting and Employment Agreements, if any
11. Prepare counterproposals and negotiate with each buyer
12. Set deadline for final proposals

PHASE III

13. Review final proposals and choose the best option
14. Negotiate final LOI which will include the guidelines and framework to negotiate final Definitive Agreements. Need to also consider: breakup fees, exclusivity and exclusivity periods, stalking horse provisions, etc.
15. Establish further due diligence procedures for buyer and make additional information available: operational, legal and financial
16. Initiate the final documentation process
17. Once management is comfortable with the basic business terms, seek key shareholder pre-approval in the form of an affiliate agreement (or similar) to ensure shareholder majority in favor of transaction (if the company is public)
18. Engage firm to prepare fairness opinion and forward initial draft of Purchase Agreement, the Memo and other information requested
19. Prepare Proxy Statement for shareholder approval (if the company is public)
20. Choose a Paying Agent to handle the transfer of shares and cash at closing (if the company is public)
21. Finalize definitive agreements and fairness opinion (if the company is public)
22. Conduct shareholder vote (if the company is public)
23. Close transaction
24. Deal with any post closing issues such as escrows, post-closing adjustments, dissenting shareholder issues, etc.