

Choosing an M&A Advisor



Categories of Advisor

Category

Bulge Bracket firm



Mid-Market Full Service Firm



Specialist Boutique



Generalist Business Broker

Business broker

Consultant

Retired Executive

Client

IPO Candidate

IPO / Mezz Debt / Series C+

M&A/Growth Equity; aligned market niche

Small business

Small business, or experienced client



Role of Board Members in Selecting an Advisor

The board governs (management manages)

- Decision to sell the company
- Liability for not meeting "Revlon" standard of care
- Protected by business judgment rule
- No protection if self-dealing, putting personal head of company interests
- No obligation to hire advisors, but hiring appropriate advisors helps meet Revlon, reduces potential for real and perceived conflicts, and protects the interests of the shareholders
- Oversee process through an M&A committee (to monitor, not micro-manage)



Ice Breakers - Opening the Dialog

- Should the board prioritize growth or profitability?
- What are the implications of recent acquisitions in my space?
- Pursue an expensive SaaS pivot, or maximize EBITDA?
- What are our most critical hires?
- Market Timing; prerequisites for going to market
- Audit? Shift year end? Change in corporate structure? Major licensing deal?

**"Your time is valuable.
How frequently should we consult you regarding market trends, and
strategic corporate decision?"**



Selection Criteria

Experience

- In your market
- In your target EV range
- In the Geo of your partner candidates
- With your likely partner candidates
- With companies at your stage of growth

Individual Advisor

- Deal maker? Tuned in to WII.FM?
- Familiar with legal, financial and strategic nuances?
- Personal experience in your market?
- Personal relationships with your partner candidates?
- Leader? CEO of the process?

Beware the bait and switch



Ability to engage and Sell

- Are they persuasive, compelling and accurate in their interactions with you?
- How do you feel after each encounter? "Right"? "Lingering Doubts"?
- Persistence, cadence of interaction as they try to win your mandate?
- Is their approach academic? (they learned the script)
- or active? (they wrote the script)



Is Broker-Dealer Registration Required?

No, unless:

- client is a public company
- client is private, with revenue or EBITDA over \$250 million, or
- (arguably) advisor's duties include establishing custody over third party funds



A brief history of the broker-dealer registration rules:

1985: US Supreme Court rules that acting as an intermediary in a transaction involving a sale of target company's stock requires registration. Many firms register, but are highly selective in which transactions they run through their BD license (simple asset deals were often not reported).

2014: SEC No-Action Letter: BD reg not required for intermediary in a stock deal unless taking custody of funds, providing financing, or organizing groups of buyers.

2017: Financial Choice Act (HOR): Broad exemption from BD registration for intermediaries working with privately held clients under \$250 million in revenue or EBITDA. The Act has moved on to the Senate.



How effective is their process?

- Positioning
- Crisp, compelling, data-dense CIM
- Alignment of board, shareholders, management on process steps and valuation
- Appropriate contacts
- Thoughtful and appropriate partner candidate last
- Realistic schedule
- Data room
- Rehearsals, anticipating FAQs



Reaching a decision

Preemptive Selection

Pluses:

- High confidentiality
- Mutual commitment
- Flexible timeline

Minuses:

- Limited calibration of options
- Lose the benefit of access to intelligence from multiple presentations
- Risk of a runaway train (process takes on life of its own)

Bake-Off

Pluses:

- Access to multiple perspectives
- Head to head (to head) comparison
- Sometimes easier to create alignment

Minuses:

- Time consuming
- Broad disclosure
- Formal setting, scripted presentation



A successful bake-off

- Limit to 2 or 3 advisors
- Check (random) references first
- 90 minute window
- Same agenda to all
- Provide guidelines and questions to participants on your side
- Understand and address the differing agendas of management, board and shareholders



What you should learn from the bake-off presentation

- Overview of the firm
- How they would position you?
- Who should buy you, and why?
- What valuation range do you anticipate, and why?
- Who will lead the transaction?



What do we learn from the Pitch Book?

If the pitchbook consists of boilerplate, high-level, generic comments on the M&A process: This firm will deliver generic, high-level, undifferentiated messaging to your buyers. **PASS.**

If the pitchbook includes new insights on how best to position your company, research on specific buyers, and detailed valuation work: This firm will present you thoughtfully and impactfully to buyers.



Questions: Approach, Relationship with Clients

- Have you ever sued or threatened to sue a client, buyer or investor for a fee?
- What portion of your firm's revenues come from sell-side engagements vs. buy-side engagements or capital raising services?
- What percentage of your efforts go into marketing your own services, vs. marketing your clients?
- How do you manage conflicts between buy side and sell side engagements?
- What is your unique differentiator that will give us an advantage over other alternatives by going with you?
- Are you aware of any roll-ups going on in our segment?
- Tell us about your most recent cross-border deal
- What percentage of your sell side engagements sell in the within 12 months of engagement?
- Give us an example of a successful transaction, and how your unique approach made success possible
- Describe an engagement where you failed to sell the company, or the price fell way short



Questions: Process

- What is your target valuation? How do you support it?
- Describe your process, and overall project plan
- What is the proposed timeline for the engagement?
- How do you manage confidentiality internally and externally?
- How and when do you propose contacting direct competitors?



Questions: "Market" Terms

- What level of personal indemnifications are being requested of CEOs in today's market?
- Are buyers demanding escrows or holdbacks? Which? What percent, how long, typically?
- Are buyers paying cash or stock? Are you seeing a valuation difference?
- Are you seeing a valuation difference between Asset and Stock purchases?
- What is a likely deal structure for our firm? Structure, earnouts, holdbacks, etc.?



Questions: M&A / Investment Market

- How is the market for companies like ours?
- What are the trends driving deals (name any interesting transactions that are relevant to us)?
- How are buyers determining the valuation of companies like ours?
- What is your outlook for M&A over the next two years?
- Should we be in a hurry, or will the market improve?
- What is our company's key differentiator?
- How will you make us relevant to buyers?



Questions: Deal Team

- Who will lead the engagement?
- Highlight recent engagements similar to ours
- Have you done buy side work for any of the potential buyers of our company?
- What other deals will the team be working on during our engagement?
- What percent of their time will be dedicated to us?
- Who do you predict will be the top 5 bidders?
- Who will draft the CIM?
- Who on the management team do they need access to?
- What VDR do you use? If it isn't Securedocs, pack your bags and fly home to loserville
- How frequently do you provide updates to your clients?
- Describe the required time commitment by the CEO over the course of the engagement



Questions: Compensation

- Explain your fee structure, including success fees, work fees, expenses. Do you have minimums?
- What is your tail period?
- Are your fees paid 100% at closing, or as escrows are released
- Do you render fairness opinions? If so at what cost? If not, who do you recommend?



Ensuring Success

- Alignment and clarity on milestones and responsibilities
- Clear and impactful positioning; clear understanding of buyer synergies
- Regular, comprehensive communications (task status, feedback, calibration, questions from buyers/investors, objections, opportunities, follow-up)
- Pragmatic, open-minded assessment of market feedback, aggressive course-correction when necessary



Closing Thoughts - Things end badly when:

- Advisor goals are aspirational or naive
- M&A or fresh capital are a lifeline, not an accelerator
- Management is thrown into presentations with insufficient preparation
- Company and advisor simply broadcast the existing corporate message, rather than transforming the message to create relevance to buyers

About the Author

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