



# Understanding the Unsolicited Sell Side M&A Process



# Process.



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## Introductory Call



### Questions

- Who are iMerge's buy-side clients?
- Background of your business?
- What objectives wish to accomplish?
- What role would you like to play post acquisition?
- Most important factors?
- Biggest Concerns?



### Discuss

- Learn if your business & our client are a fit?
- Timing of the sale.
- High level overview of this process and what to expect as outlined in this presentation.
- Answer any additional questions you may have.
- Are you ready to sell if the price is right?

### Do I Need an Advisor/Banker/Broker?

It is a matter of personal preference. When considering the retainer fee, a big percentage of that fee is in building a presentation package to show a pool of solicited buyers. In this case you already have the interested buyer, leaving the balance of the process detailed in this presentation to you, your accountant and a good M&A attorney.

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## Determine a Valuation Range for the Company



### iMerge

under an NDA will request financials

- Profit & Loss Statements
- Cash Flow Statements
- Year End Balance Sheet
- Proforma statements (if available \*)

\* iMerge will help you build proforma statements



### iMerge

- will ask about potential adjustments (add backs, capital expenditures) to arrive at an adjusted EBITDA number
- will input financials and proforma statements into financial modeling spreadsheets.
- will ask about customers, churn, concentration, etc



### Discuss

- The potential valuation range results
- whether to proceed at this time  
OR
- Wait and work with **iMerge** to enhance the company's value

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## Behind the Scenes



### Approaches Taken:

1

#### iMerge

is reviewing with its client the data as made available.

2

#### Our Buyer

- is analyzing the financials and other ancillary data provided.
- Scheduling and conducting an investment committee meeting to determine if there is continued interest.

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#### iMerge

will keep you updated and seek answers to additional questions our buyer or the committee have.

## Preparing for Introductory Call with iMerge's Buyer



### The Arsenal

Although our client has continued interested in your business, be prepared to explain why our buyer should acquire your business.

- How much “juice is still left to squeeze” and how can our buyer extract it?
- With additional capital what additional growth could be achieved.
- Management team bios and expectations
- Detail your KPIs (key performance indicators).



### The Tips List:

- It is important to be honest and transparent. Throughout this process the good, bad and ugly will get discovered. Our buyers review 100s of deals and have seen it all. Get out in front of the warts.
- Be realistic and not excessive with future projections.

## Obtaining IOIs or LOIs



### Buyer

will submit an IOI (Indication of Interest) or LOI (Letter of Intent) which depicts a range of valuation our client is exploring. If the range is acceptable then further discussions will continue.



### iMerge

may arrange Q&A conference calls with the buyer's team and with key management personnel of your company.

## Structure & Terms

### 1. The purchase price is one component of the offer

#### • Type of Transaction:

- Stock vs Asset Sale
- If stock sale, will it be recognized as an asset sale, called a 338 (h)(10) election
- Working Capital Amount (amount of cash left behind)
- Promissory note terms
- Non-compete terms
- Equity in Buyer Co or "NewCo"
- Earn Out terms
- Tax allocation terms
- Escrow hold back terms
- Salaries/Consulting Fees for founders/owner management team remaining with the company
- Employee severance or retention bonuses, equity options, relocation packages (if applicable)
- Transition structure and terms

### 2. Timing

- **Exclusivity period to conduct due diligence.**
- **Length of time to complete the transaction.**

## How Should You Negotiate

Having witnessed nearly 75 years, combined, of negotiations iMerge believes the most effective style is the "what's it worth to you" approach in which the buyer starts by submitting an IOI or LOI. Sellers should respond with gratitude for the offer but the seller is not sure how the offer could work because of (list of reasons). This approach continues for a few rounds until a deal is reached. This tactic is best exemplified by Chris Voss in his book "[Never Split the Difference](#)"

## Use an M&A Attorney

Undoubtedly you have a long term relationship with an attorney for business and family matters. It is tempting to use this person in an M&A transaction. Unless he or she has years of experience with acquisitions we highly recommend, insist in fact, that you retain an experienced M&A attorney. They will work in your best interest but with an eye on getting a transaction closed as to a blown deal. iMerge is happy to refer qualified M&A attorneys to you.

## Due Diligence



### Often times

the seller and buyer teams meet over video conference or if possible, face to face during the due diligence phase.



### Access

will be provided to a secure data room that contains buyer questions, requests for documents, supporting documents and more in the following areas:

- Business
- Finance
- Human Resources
- Legal
- Technical



### Expectations

As an “off market” transaction our buyers understand you need time to assemble the due diligence requests.

\*See Side Bar



### Side Bar

The majority of sellers are often shocked at the amount of data that is requested during due diligence. We advise taking the amount you think it could be and double it. As previously mentioned, get out in front of the warts early in the process. This phase can be frustrating and tiring. Its important to note that our buyer does not know the business nearly as well as you do, and they are trying to get all that data out of you into a tangible format. Additionally, our clients have a fiduciary responsibility to its shareholders and investors.

If the data requested is not available and cannot be obtained let our buyer know. If you feel the buyer is asking for too much irrelevant data, feel free to push back with an explanation.

## Definitive Documents



Our client's attorney will deliver and work with your M&A attorney to finalize the closing documentation.

### Your M&A attorney will

- Make sure the negotiated components of the deal are reflected properly in the definitive documents
- Negotiate the terms and conditions of the reps and warranties and indemnification listed in the definitive documents
- Negotiate any remaining items such as a "true up period"
- Tidy up loose ends right up until the closing



### Side Bar

Reps and warranties (and indemnification) are what the seller represents, and "guarantees" about the future health of the company over the next 12 to 36 months. The buyer's legal counsel will often use broad terms for the reps and warranties section as an opportunity to further mitigate risk. Furthermore, the buyer's legal counsel will seek high levels of indemnification. Your attorney will negotiate the language to be more narrowly tailored to the deal while bringing the terms back into a reasonable and fair range. The use of an experienced attorney here could result in the transaction blowing up.

## Closing

- ✓ Activity continues right up to and through closing.
- ✓ Although not necessary, most closings occur face to face in either the seller or buyer's law firm.
- ✓ All documents are executed, and money is transferred.
- ✓ As is customary in the industry, all parties are invited to celebratory dinner. (Returning post Covid)



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