

WHAT'S IT WORTH?

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For Business Owners, Corporate Officers, & Their Advisors

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View From the Sell Side

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"The seller may also feel a sense of loyalty to his or her employees and customers."

Which factors help determine a deal's structure?

A business owner has decided to sell his or her business. A buyer wants to acquire the business. That scenario seems straightforward enough. In reality, however, the dynamics of a deal — regardless of which side of the table you're on — are exceedingly complex. Numerous alternatives exist for structuring a deal.

Sellers' concerns

Volumes have been written on this subject — certainly more information than we can impart here. So we'll hone in on sellers' most common concerns, which weigh heavily into the deal structure your M&A advisors will recommend. Sellers' concerns include:

- The amount they'll be paid for the business,
- The payment medium (for example, cash or stock in the buyer's company),
- The timing and certainty of the payments,
- The tax implications of the chosen structure, and
- The risks affecting the ultimate amounts of the various payments.

In addition, a seller may have an interest in how the company will be run after the acquisition, perhaps because a portion of the payment depends on the company's ongoing performance. In addition, the seller may also feel a sense of loyalty to his or her employees and customers.

Buyers have their worries as well. Their concerns include the sources of

capital for the acquisition, and risks that may affect business performance after the acquisition.

As the seller, you must clarify what is being sold. It could be the entire company with all of its assets and liabilities in the form of a stock purchase, or just specific assets and liabilities.

You'll be asked to provide financial or other guarantees, representations, and warranties (whose size and duration are negotiable) that certain things are as stated. For example, a seller is typically required to identify all litigation against the company and to guarantee that there are no other lawsuits besides those listed. Many of the terms of a merger or acquisition relate to issues such as these.

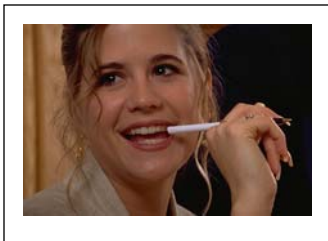
"Your company's financial statements are where due diligence will start."

Your company's financial statements are where due diligence will start. If they are clear, accurate and reliable, further information can be gathered around them. If there are doubts about their completeness or accuracy, the deal will grind to a halt.

Due diligence hotspots

Once the buyer understands the financials, the due diligence process can begin. Major due diligence areas include:

- **Inventory.** What does the seller really have and what is it worth?
- **Property, plant and equipment.** What is the condition of the company's long-term assets?
- **Intellectual property.** Does the company hold patents and copyrights? How defensible are they?
- **Contracts.** What agreements exist (or don't exist) that could affect the company in the future?
- **Customers.** Are they happy with the seller's goods and services? Are they likely to continue doing business? To what extent will the volume of that business likely increase or decrease?
- **Employees.** Are they satisfied with their position and compensation? Are any key employees planning to leave after the acquisition?
- **Litigation.** Are there any present or pending legal actions against the company? These could include product liability, employee issues, customer issues and environmental problems.



- **Government regulations.** Is the company complying with the law? If not, what will be the likely effect of possible compensatory or remedial actions?
- **Environmental issues.** Are there current or potential issues which the company will be responsible for?

Before due diligence is performed, the buyer will have indicated an intention to acquire the company at a given price and set of terms. This offer would assume that no additional negatives will arise during due diligence. Because issues can and do arise, however, you and the buyer must debate the extent to which potential negatives may affect the deal's original price and terms.

Deals can be further complicated when the ownership of the selling company is made up of different entities with different interests. Typically, a majority decision is not enough. Often, the needs of each owner of the selling company must be addressed.

Completing the deal

This is only a snapshot of factors that can potentially complicate M&A transactions. The M&A process requires that professionals find ways to address sellers' and buyers' myriad intricate — and often conflicting — interests. A thorough understanding of deal options and parameters is a must to get the results you want.

Sidebar: Bridging a price gap

A seller and buyer often disagree about the company's future performance and its effect on price. The seller may argue that the company is poised for dramatic growth in the next several years; therefore, it's worth more. The buyer is unlikely to pay more based on promises of a brighter future. This seemingly irresolvable debate over price can kill a deal.

Fortunately, these differences can often be resolved through negotiating appropriate terms and conditions. For example, the buyer could offer to make part of the purchase price contingent on earnings growth in subsequent years.

This solution is called an earnout. With an earnout, the seller will ultimately get more for the business and the buyer will not be paying for something that might not happen.



Buy side or sell side M&A assistance needed? Contact Dave Moser to arrange a free consultation

“The M&A process requires that professionals find ways to address sellers' and buyer's...often conflicting...interests”

Meet the Valuation and Transaction Services Group

By: Dave Moser, Director Valuation & Transaction Services

I hope you have enjoyed our complimentary newsletter. **If you would like to add a client or friend to the distribution list, or join our monthly e-mail newsletter, please e-mail: dmoser@coulterjustus.com** with "Subscribe" as the subject.

Our Valuation and Transaction Services team has over 60 years of combined experience involving more than 1,000 projects, and continues to be the largest and most experienced full time valuation group in East Tennessee. We understand the significant financial and emotional impact our services play in client's lives, and are excited to offer a full range of transactions services.

In addition to business valuations throughout North America and Internationally, we provide M&A advisory services for substantial private firms, as well as a host of real estate advisory services including: cost segregation studies, real property tax appeals, lease audit and negotiation, and feasibility analysis.

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David is a certified member of the American Society of Appraisers (ASA) and has over 34 years experience in the valuation profession. Before joining Coulter & Justus in 1996, he served as partner and director in charge of valuation with Ernst and Young and in management positions with two other international valuation firms. He has considerable experience in valuations, cost segregation studies, and as an expert witness.

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Renee joined Coulter & Justus in 1999 and has over ten years of business valuation experience. She has valued businesses for purposes including mergers, estate tax and gifting, litigation, bankruptcy reorganization, and in performing cost segregation analysis. Renee also has troubled business turnaround and controllership experience in addition to tax and audit experience.

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Having closed several hundred thousand feet of real estate deals, Chris specializes in commercial real estate consulting, appealing real property tax assessments, and business valuation. Chris holds an MBA from the University of Notre Dame Mendoza School of Business, as well as the CCIM (Certified Commercial Investment Member) designation.

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Sven has over 14 years experience in investment banking and business valuation, including mergers and acquisitions. He joined Coulter & Justus in 2003 and has an MBA with an emphasis in Finance from New York University's Stern School of Business and also holds the CM&AA (Certified Merger & Acquisition Advisor) designation.

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Cindy has over 14 years client service experience in the areas of auditing, budgeting, and finance as well as general business consulting. She joined Coulter & Justus in 1997 as a Business Valuation Consultant.

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