



# Unlock the Door

## WHY CHOOSING THE RIGHT MERGER AND ACQUISITION PROFESSIONAL IS KEY TO A SUCCESSFUL TRANSACTION

By Charles D. Bertrand

**W**hen selling your agency, you have many decisions to make. One of the most important decisions is whether to use an intermediary to arrange the transaction or sell the business yourself.

There is a three-tier hierarchy of business transaction intermediaries. The three categories are: business brokers, merger and acquisition (M&A) professionals, and investment bankers. Business brokers typically focus on smaller “mom and pop” businesses and usually have no industry focus. On the other side of the spectrum are investment bankers, who arrange transactions with larger companies (usually public). In the middle of this service-provider band are merger and acquisition professionals who arrange mid-market transactions and often have an industry focus. The M&A professional will typically have more training/education and experience in complex transactions than the

business broker. Most agency owners generally want to use the services of a M&A professional.

In picking a professional intermediary to help sell your business, I suggest you evaluate the candidates based on services provided, their qualifications and terms of the engagement. Let's examine each of these topics.

### Services Provided

**Opinion of Value:** Your M&A professional should be qualified to examine your financial data and give you knowledgeable guidance regarding the probable selling price your business will bring. This service may be rendered either before or after a formal engagement.

**Offering Memorandum:** This important document describes your company and its operating environment in detail. It should be attractive, easy to read, grammatically correct and accurate. The offering memorandum is

the primary basis on which buyers will make a judgment on whether to pursue your company or not. Be sure your representative is willing and able to produce a quality document.

**Maintain Confidentiality:** Your representative is the primary guardian of your confidentiality. He or she will help you decide which potential buyers to give information and which prospects not to disclose information. And, of course, he or she will see the execution of a confidentiality agreement by the buyer prospects prior to receiving data on your company. Obviously, a M&A professional must never disclose their knowledge of your interest in selling to any unauthorized person.

**Negotiations:** From the establishment of an asking price, to receipt of a letter of intent and finally to a definitive agreement, your M&A professional should be deeply involved in negotiating on your behalf. His

or her negotiating style should be compatible with yours. Also, the M&A professional should be competent to negotiate an agreement that will optimize your after-tax return.

**Proposal Mark-up:** Prospective buyer will propose price and terms to you first in a letter of intent and later memorialize them in a definitive agreement. One of the most important tasks your M&A professional will perform is to help identify elements in an offer on which you should make a counter-proposal. He or she will offer constructive input to you and your attorney regarding such counter-proposals. An experienced M&A person will work effectively with both your attorney and CPA.

**Inter-Personal Buffering:** Often, negotiations become emotional and, for a variety of reasons, a seller who has no representative may become estranged from a buyer during the negotiating process. A M&A intermediary should prevent direct clashes between seller and buyer so that after a deal is consummated, there are no hard feelings between these parties. This is particularly important if the seller (or family members) expects to continue working at the agency for a significant period after the sale.

**Stalemate Prevention:** It is not uncommon in advanced negotiations for a seller or buyer to say to the other, "You have my best offer. Take it or leave it." This situation can easily result in a stalemate, and the transaction could fail if an intermediary is not involved. But by taking the initiative and finding a way for the parties to resume talking without either of them losing face, your M&A professional can put the deal back on track to a successful conclusion.

**Travel:** When a prospective buyer visits your facility and at the closing of a transaction, it is usually best that your representative be present. Therefore, choosing someone who is willing to travel as needed is important.

## Qualifications

### Education and Professional Training:

The arena of mergers and acquisitions is complex, and buyers are typically far more sophisticated regarding such transactions than most sellers. So, the more time your representative has invested in formal training, the greater the chances you have of getting optimum results from that person. You should check on their college/university work and degrees obtained. In addition, check for advanced work, such as accreditation in business valuation/appraisal. Anyone can call themselves an M&A specialist, even without formal training. Therefore, it is prudent to inquire into the studies a person has completed to prepare to be an effective merger and acquisition professional.

**Industry Knowledge:** If your M&A professional understands the nuts and bolts of the collection business, he or she is positioned to serve you more effectively than someone who has only peripheral knowledge of the business. For example, the knowledgeable person could offer suggestions for restructuring your agency's operations to enhance its value (possibly up to several years before going on the market). Also, such a person would be best able to explain the strengths of your agency to prospective buyers as well as show them how any perceived weakness in your operation could be remedied. In short, having an industry-savvy professional on your side gives you an edge.

**Experience:** There is no doubt that experience working with clients and closing transactions can be an excellent teacher for a M&A practitioner. However, different people have different capacities to learn from their experience. Some people easily accept feedback from their environment and grow quickly to higher levels of effectiveness. Others seem to hit a plateau and learn little from their continuing experience. But all

other things being equal, the person with the most experience and training is likely to deliver the best results—especially in difficult or complex situations.

**Buyer Database:** The M&A professional you choose needs to have a current, in-depth roster of qualified collection agency buyers. He or she also should have a personal rapport with as many of these buyers as possible. A relationship of trust and understanding facilitates easy exchange of information between parties.

**Integrity and Ethics:** High personal standards in these two areas are vital to the long term success of a M&A professional. As a seller, you will want to deal with someone whose actions match their words—someone



In picking a professional intermediary to help sell your business, I suggest you evaluate the candidates based on services provided, their qualifications and terms of the engagement.

who will always tell you the truth. In addition, you will want to choose someone whose sense of ethics will motivate them to treat you fairly when a situation arises that is not clearly covered by your written agreement. Likewise, buyers much prefer to deal with a representative whose word can be trusted—someone who will not knowingly mislead them about any aspect of a pending transaction. A good way to evaluate a person in regard to integrity and ethics is to talk to sellers and buyers who have dealt with that individual.

**Legal and Tax Knowledge:** If your representative has a good working knowledge of legal and tax matters, this is a big plus. You will most likely describe your personal tax situation to your M&A professional and then have your CPA give input to negotiate a purchase agreement that minimizes taxes. Also, you will expect your representative to identify adverse legal issues in a proposed purchase agreement and work with your attorney and the buyer to resolve them as favorably as possible for you.

## Terms of engagement

Under this broad heading, we will look at how M&A professionals are compensated. We will consider two of the most important terms of an engagement: duration of the engagement and continuing interest in prospects.

■ **Success Fee**—The success fee will be based on the transaction value and will include all forms of compensation, such as cash at closing, notes, assumption of debt, non-compete agreements, consulting and employment agreements, etc. The actual fee quoted by a proposed representative will likely be based on his or her estimate of your agency's selling price and the difficulty of finding a buyer. Generally, a big



You must judge which characteristics are most important and who best fits your profile of the ideal professional to help sell your business.

agency in a large metropolitan area will command a higher price and will be easier to sell than a small agency in a non-metropolitan town. One should expect the commission rate quoted to the small agency to be higher than is quoted to the large one. The success fee on a smaller agency could easily range from 8 percent to 10 percent of the transaction value.

■ **Non-Contingent Payments**—There are several ways M&A firms structure this type of compensation. Some expect a substantial amount of cash at the time they are engaged. Others may have an activity charge that is paid monthly during the engagement. Still others may bill an hourly rate for time expended on your behalf. This non-contingent element of compensation is expected by most M&A professionals because the volume of transactions closed each year is relatively small (compared to the real estate business, for example) and each client requires considerable professional time.

■ **Expense Reimbursement**—Most M&A professionals expect to be reimbursed for the cost of travel which you authorize. Other costs incurred in selling your business are usually borne by the professional. Just be sure the engagement agreement is clear on this point.

It is not uncommon for M&A professionals to ask to be your exclusive representative for a period of a year or longer. During this period, if your business is sold to anyone (even to a buyer not procured by the representative), a success fee is owed. This is an element of a contract which merits your careful consideration.

If your M&A specialist brings a prospective buyer to your attention, he or she will expect to have an interest in that prospect for a defined period of time. During this reserved period, if you consummate a transaction with that prospect, a success fee will be owed. Typically, a reservation of interest in a prospect will run up to two years after the prospect was procured.

## Conclusion

Every person engaged as a mergers and acquisitions intermediary offers a blend of the characteristics described in this article. Therefore, you must judge which characteristics are most important and who best fits your profile of the ideal professional to help sell your business. CM

---

*Charles D. "Chuck" Bertrand was president of ACA from 1992-93 and is now a principal of Marion Financial Corp. of Houston. Marion Financial Corp. is a merger and acquisition firm specializing in agency transactions and valuations.*