



NAVIGATING THE COMPLEXITIES OF SECURITY COMPANY ACQUISITIONS

STAYING AFLOAT

BY ROBERT PERRY | PHOTOGRAPH BY TYLER LEACH

When negotiating the purchase of a security company, maintaining the momentum of the dialogue and flow of information is critical to both the buyer and seller. The intensity of the momentum indicates the commitment of each side in completing the transaction. A buyer who maintains momentum throughout the entire process, investing time, money and personnel resources towards completing the transaction, is sending the seller a message that the company is important. Keeping the momentum also allows the seller to express to the buyer that there's a genuine interest in selling the company. This demonstrates that the seller is motivated enough for the buyer to make these necessary investments. However, most buyers and sellers are more concerned about losing leverage during acquisition negotiations and are therefore cautious when communicating this eagerness.

Starting and maintaining good momentum comes from the commitment of both the buyer and the seller; it cannot be a one-sided effort. As previously stated, each side maintains the momentum in order to show the other side that the interest exists. However, preserving the momentum also helps both parties secure a quick timeline for closing the deal, allowing both sides to enjoy the benefits of the transaction.

MOMENTUM IS IMPORTANT TO BOTH SIDES

From the buyer's perspective, momentum ensures that the transaction closes, which is of particular importance if the company is a vital part of a strategic plan. For example, the buyer may need the company to enter a certain vertical account or geographic market, or it may provide a very attractive return on investment. In either case, the longer the transaction takes to close, the longer it takes the buyer to start benefiting from the acquisition.

In addition, a longer closing increases the likelihood of the seller deciding to back out. For this reason, the buyer needs to pay particular attention to the cumbersome process inherent in the complex organizational structures of large companies.

Typically, the buyer is a very large company involved in several simultaneous assignments. As a result, it can be a challenge to ensure that the due diligence team is ready when the seller has the information accumulated. The buyer may also require the approval of a board of directors that may not meet regularly or may ultimately delay the process. On the other hand, the seller usually doesn't require approval from others and is able to make important decisions on the spot. While the buyer's timeline and pace may be normal for their operations, to the seller who's used to making decisions quickly, the process may seem too long. If the buyer's process is further delayed or the seller is presented with unpleasant surprises, the seller may start to feel that the company is not important to the buyer and may reconsider the transaction.

If the seller is a privately held company, as is typical in the security guard industry, the transaction will likely involve the owners, who will want the sale to progress. While they will be patient with the expected timeline, the process must always be moving forward. The owners built the business by acting and reacting quickly to circumstances that affected the future of the company. This mindset may cause the seller to decide against the sale if the entrepreneur or owner sees the momentum slow down or stop entirely. A loss of momentum and ultimate loss of the opportunity to buy the company could then prove very costly to the buyer, specifically if the purchase was part of the buyer's strategic plan.

The loss of momentum could also prove to be even more costly to the seller, as the sale of the company has been made public and key employees involved in the transaction are nervous about their future with the company. Even if the seller returns to focusing on the business of growing the company, the employees will still know that the sale was considered.

Terminated negotiations may also taint the value of the company when selling to another buyer in the near future. Prospective buyers may be suspicious about the real reason the previous negotiations were terminated, which could be reflected in the new buyer's offering price.

The buyer's momentum in a transaction also enhances the buyer's appeal to potential future sellers. Experienced, successful buyers realize the importance of a good reputation in the acquisition marketplace. When the buyer maintains the momentum necessary to successfully conclude a deal, the buyer is sending a message to the marketplace that it is committed to the sale process and is looking after a seller's needs in a transaction. This momentum becomes very important to buyers that are considering a series of acquisitions. Although the security guard market represents thousands of companies, word about a buyer's performance in a particular transaction spreads quickly throughout the industry. Buyers that gain a reputation for concluding deals that benefit both the buyer and the seller greatly enhance the interest of other potential sellers when discussing sale of their companies.

From the seller's prospective, the momentum is vital to keeping the buyer interested in the deal. In today's marketplace, the prospective buyer is typically much larger than the seller, a scenario that usually creates a financially sound deal for the seller. However, large companies operate in a structured environment where key personnel must stay

productive and keep deals moving, especially for buyers that are proactive in the acquisition market. If the buyer's due diligence team must wait for information from the seller, or the seller's attorney does not respond promptly to the buyer's attorney on purchase agreement issues, the buyer's personnel may be assigned to other projects. As a result, the buyer's team may not be available when the seller is ready to resume the process. If this scenario goes on long enough, frustration starts to set in, the momentum is slowed down and the negotiations may stop completely.

ORGANIZING THE PROCESS TO MAINTAIN MOMENTUM

Some of the steps for negotiating the sale of a security guard company require the buyer and seller to be proactive or even aggressive when collecting information or making decisions on important issues from the other side.

The buyer and seller are generally concerned that any eagerness they display could cause them to lose leverage when negotiating the transaction. This perception can be mitigated if an investment banker, transaction manager, or other specialized industry broker is representing either side. The transaction management firm will typically be fully compensated only when the transaction actually closes. With large time and financial investments throughout the negotiations, the transaction manager has a strong incentive to make sure the transaction reaches closing. Therefore, the transaction manager will make every effort to keep the negotiations moving at a pace as intense as the parties will allow.

Even though the transaction management firm represents only one side in the transaction, both sides perceive its aggression as self-serving, thereby preserving the leverage of either or both sides during the negotiations. When relying on a transaction manager, each party will need to determine which phases of the process are best handled by the management firm. While some parties prefer most or all of the steps to be handled by the transaction manager, others prefer to deal directly with each other for certain stages. Regardless of the decision, the following are important steps for organizing the process and continuing the momentum of the transaction:

- The buyer and seller should each assign a "point person" to manage the activities for their respective side. The point person or team may come from within the company or an outside organization, such as the investment banker or transaction manager, depending on the particular task. It is important that this person is not distracted by other commitments and can dedicate the time required to properly manage the activity of the deal and keep the momentum going. If this person has more urgent responsibilities, another person should be assigned to this role in the transaction. Throughout the process, the point person is responsible for meeting deadlines and maintaining communication with the decision makers, therefore avoiding any loss in momentum. The point person is aware of the importance of the acquisition for its employer or client and ensures that the process moves forward.

- At the start of the negotiations, every team member should receive contact information for all personnel from each side assigned to the transaction so members can obtain necessary information and have questions answered quickly. This list should include all the contact numbers and addresses, including cell phone numbers and home phone numbers of the contact personnel. The names and numbers for assistants who have access to the person when he or she is not taking calls from the general populations should also be included.
- At the beginning of the negotiations, each side should meet with their respective attorneys, tax advisors, point person and transaction manager to reinforce the reasons for the acquisition as well as the consequences should the deal not close. In other words, this meeting assigns responsibility should the transaction not take place. The team should also agree on the level of risk they're willing to take in the letter of intent and purchase agreement provisions. Agreeing on these potential issues beforehand prevents both parties from getting side-tracked on insignificant matters and saves time during negotiations in the later stages of the deal.
- Arrange frequent conference calls between all the team members to avoid delays in disseminating information needed before proceeding to the next step. These conference calls don't need to be lengthy and should not be delayed because some members aren't available. The transaction manager should distribute notes on the conference call immediately afterward so any members that were unable to participate are aware of current developments. Also, a professional transaction management firm with advanced technology will have leased conference call lines that allow people to call in, toll-free, from any location. This maximizes the probability that all the members will be able to participate in the call.
- The transaction manager should maintain frequent communication with the decision makers for its client and the opposing side to determine if there are any concerns that can't be managed in an open forum environment or that are stalling the process. As the neutral position in the transaction, the transaction manager is the most logical person to address these sensitive issues.
- Send status reports and "to do" items through group e-mails to everyone involved. This is a good way to communicate with each side's team members simultaneously, however, the transaction manager should not rely solely on e-mails to communicate messages. E-mails can be inadvertently deleted and are often lost in the myriad of junk mail received each day. If the transaction manager does not see the response being made to the "to do list" in the e-mail, the transaction manager should start contacting the parties by phone—quickly.
- The seller should begin collecting due diligence data before contacting any prospective buyers. This process usually takes several weeks, but it can take much longer if the seller has a limited number of people involved in acquiring the necessary materials. If the seller is a small company, the owner may try to accumulate all information independently in order to preserve the confidentiality

of the proposed transaction. In this instance, key personnel, who could help the owner collect the information, may not be informed until negotiations with a prospective buyer reach the point of almost certainty. By involving key personnel throughout this stage, all members are accurately informed from the onset of the negotiations.

- The seller should ask for a copy of the buyer's standard purchase contract. Most buyers who are proactive in acquisitions work from a standard contract that is modified to fit the unique circumstances of the deal at hand. However, knowing in advance what the buyer expects in terms of indemnifications and other provisions will help the parties prepare for the time-consuming purchase contract negotiations.

Regardless of the seller's or buyer's need or desire for a quick deal, momentum in the acquisition process should be about moving through each stage of the negotiations in an orderly fashion while still balancing the needs of both parties and avoiding mistakes that may later prove costly to either side. **SE**

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STEPS FOR NAVIGATING YOUR WAY THROUGH AN M&A TRANSACTION

1. **Appoint a point person** either from within the company or from an outside source to manage the transaction.
2. **Distribute contact information** for all relevant personnel.
3. **Schedule meetings** with attorneys, tax or financial advisors and transaction managers to outline potential issues.
4. **Plan regular conference calls** to disseminate information, answer questions and progress reports.
5. **Maintain communication** with the opposing side to manage concerns.
6. **Send status reports** and "to do" items via group e-mail to all parties involved.
7. **Collect due diligence data** for prospective buyers.
8. **Obtain a copy** of the buyer's standard purchase contract.