



YOUR BUSINESS

YOUR GUIDE TO A SUCCESSFUL EXIT

From planning to execution, all the strategies that can help you maximize the promise of today's resurgent deal market for privately owned companies.



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Private-equity funds have raised record amounts to buy small- to lower-middle-market companies—a large portion of which must be deployed this year.

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An estimated 9 million such businesses face key wealth transfer decisions around the retirement of their baby boomer owners.

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While the stage has been set for many owners to consider a sale, there are other factors that also make this a good time to hold on and grow, or for family business owners to plan for the transfer of control to the next generation.

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GOING TO MARKET

The current deal market is rife with potential pitfalls. Good advice is essential. That means having the right team, which may include a boutique investment banker and experienced accountant and lawyer.

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LAYING THE GROUNDWORK

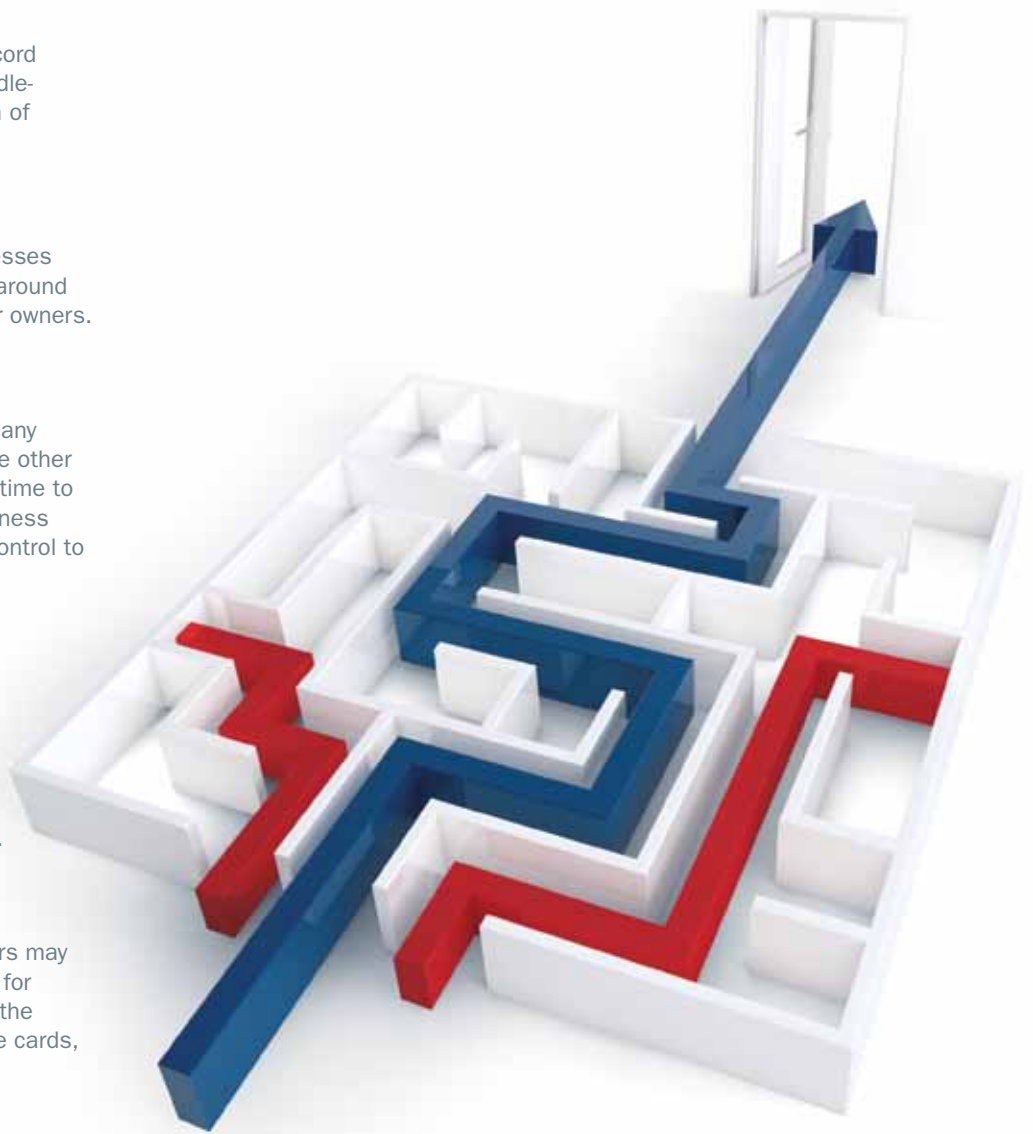
Even if a sale isn't imminent, owners may still want to prepare their business for an exit, since doing so only makes the business stronger. If a sale *is* in the cards, such steps are critical.

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THE PERSONAL TAKEAWAY

Whatever the ultimate goal for the company, owners should put the last step first and begin the process of wealth transfer planning now.

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YOUR GUIDE TO A SUCCESSFUL EXIT

As the largest cohort of entrepreneurs in U.S. history approaches retirement, record amounts of capital sit waiting to purchase well-run private companies. Here's the advice you'll need to make the most of what could be a once-in-a-generation opportunity.

It may seem improbable given some of today's financial headlines, but the deal market for private companies has come to life, and a generation of entrepreneurs that has spent decades building businesses has started to cash in. According to Standard & Poor's data and analytics service Capital IQ, 1,752 deals for small to midsize companies were completed in 2011, on par with the number of deals made in 2010, and 36% more than in 2009, after the credit markets collapsed.¹ Multiples have started to rebound as well. Companies with \$2 million to \$20 million in earnings before interest, taxes, depreciation and amortization—the ubiquitous EBITDA, the gold-standard metric for determining a company's value—fetched an average multiple of 10.1 times that figure in 2011, according to PitchBook, a research firm specializing in private equity.² That's up from a multiple of 8.5 in the depths of the recession.³

While a number of forces are contributing to this favorable environment—including demographics, a (slowly) recovering economy and the pressure to realize large liquidity events before tax rates may rise—the most important is demand from U.S.-based private-equity and hedge funds. During the run-up to 2008, investors in private-equity funds committed a record amount of capital—about \$1.9 trillion globally, by some estimates—for the purpose of acquiring com-

¹ Capital IQ, December 2011

² Based on data provided for Merrill Lynch by private-equity research firm PitchBook

³ Ibid. The figures 10.1 and 8.5 are averages for the years 2011 and 2009. Individual deal multiples will vary according to industry and the size of the company, with larger businesses generally commanding wider multiples.



U.S. PRIVATE-EQUITY FUNDS THAT FOCUS ON SMALL- TO LOWER-MIDDLE-MARKET COMPANIES HAVE \$257 BILLION IN “DRY POWDER” ON HAND—NEARLY ALL OF WHICH MUST BE DEPLOYED WITHIN THE NEXT FOUR YEARS.

panies of all kinds and sizes.⁴ When the recession hit and the deal market froze up, the fund managers had few places to put their freshly raised cash.

Today, the deadlines that the funds have in place for deploying their cash war chests are fast approaching, and funds across the board are seeking acquisitions. That’s especially the case for well-run private companies in the small-market (those with enterprise value of roughly \$10 million to \$20 million) and lower-middle-market categories (enterprise value of up to \$250 million). According to PitchBook, U.S. private-equity funds that have regularly purchased such companies in the past have about \$257 billion in so-called “dry powder” on hand—nearly all of it coming due within the next four years.⁵

At the same time, commercial banks, whose debt financing is often critical to making these deals work (see “How the Deals Are Put Together,” opposite), have recently shown more willingness to extend capital. The banks appear to understand the opportunity in financing acquisitions of those companies that are well run and have survived the recession with healthy cash flows.

Another category of buyer has also grown more acquisition-hungry since awakening from the credit bust. Corporate or “strategic” buyers have spent the past three years cutting costs and inventories, amassing well-documented piles of low-yielding cash on their balance sheets. Now, with the slow pace of the economic recovery still making organic growth difficult to achieve, bigger companies are looking at deals as a way to expand, especially with interest rates so low. Like commercial lenders, strategic buyers are intent on finding high-quality targets—those with stable revenue, predictable earnings and relatively diverse customer bases. If a company has what it takes, it can draw any number of suitors.

“We’re in the kind of market that business owners see only once in a long while,” says Brooks Gallagher, who heads the Private Sales Referral Network at Bank of America Merrill Lynch. The PSRN connects small- and lower-middle-market businesses (which generally are not large enough for Bank of America Merrill Lynch’s own investment banking services) with vetted boutique investment bankers who specialize in industry-specific M&A. (See “A Network Scaled for Your Needs,” page 12.) “We help our clients across every industry, and it is a rarity today if they haven’t already been approached by a private-equity group or a strategic buyer.”

THE TRANSITION WAVE

According to some estimates, more than 9 million companies remain in the hands of the baby boomer owners who founded them. Over the next decade and a half, every one of them will need to come to terms with the notion that the time has come to take money off the table or cash out entirely so that they can transition away from the companies they’ve spent their careers creating. According to Headwaters MB, a boutique investment bank based

⁴ 2011 *Global Private Equity Report*, Preqin Ltd. The \$1.9 trillion figure is the sum of global private-equity fund-raising in 2006 (\$541.3 billion), 2007 (\$657.4 billion) and 2008 (\$672.3 billion).

⁵ Based on data provided for Merrill Lynch by private-equity research firm PitchBook

HOW THE DEALS ARE PUT TOGETHER

A brief seller's—and buyer's—guide to the sources of funding for small- to lower-middle-market companies

Though many aging business owners are looking to sell their companies and retire, current market dynamics have sparked the ambitions of many other entrepreneurs around the country. As one business owner, a food distributor in his sixties, put it recently to his financial advisor: “I should probably take some money off

the table. But I know that a lot of my competitors are wounded because of the recession, and some of them don't run their businesses very well. I'd like to be able to acquire some of those guys.” He hopes that going on a growth spurt will enable him to cash out on a much larger scale some years ahead. Still, how would he pursue such a “roll-up” strategy without taking on an inor-

dinate amount of risk? Whenever possible, by finding a private-equity fund to put money into his company, providing some of the capital for future deals. The business owner thus becomes akin to a financial buyer, which makes it crucial to understand the structure of acquisition financing—details that are relevant not just to potential buyers but to sellers as well.

Most financial buyer deals consist of three parts:

SENIOR DEBT

Mezzanine or Sub Debt

EQUITY FINANCING

→ CALLED “SENIOR” BECAUSE the creditors that extend it (generally commercial banks) are first in line for recompense if the business fails. In today's market, according to bankers, senior lenders have been willing to extend leverage at multiples of 2.5 to 3.5 times EBITDA, depending on the size of the company and whether the debt is secured by assets (typically bringing a multiple at the higher end of the range) or cash flow. Broadly speaking, as a company approaches \$5 million in trailing 12-month EBITDA, at least some senior bank debt is likely to be available, but not enough to close the gap between the cash equity portion (see “Equity Financing,” below) and the top-line sale price.

→ USUALLY EXTENDED BY a private-equity or hedge fund that specializes in filling the financing gap. Mezzanine funds charge more in interest than do commercial banks; they also take an equity piece of the business in the form of a coupon, or a regular return that the company must pay over a prearranged term. When the term is over, the company must buy out the fund's stake. The good news: Like straightforward private-equity funds, mezzanine players were able to raise record amounts before the crisis,⁶ and they too have a window to use the money. Growing competition among them for high-quality companies has thus tamped down the overall cost of mezzanine debt.

→ THE LEAST SECURED FORM of capital, usually provided by a private-equity fund that in turn receives a substantial equity stake in the roll-up alongside the acquiring entrepreneur. The relative size of the equity positions (which can also include a minority share for the owners of the target company) will, of course, depend on the amount of capital the private-equity fund is contributing to the deal, the amount of cash the acquiring owner wants to take off the table and the amount of leverage (see “Senior Debt,” above) that goes onto the books of the new combined entity.

⁶2011 Global Private Equity Report, Preqin Ltd. Mezzanine funds raised \$24 billion in 2006, \$13.5 billion in 2007 and \$33.1 billion in 2008 globally. Both 2006 and 2008 were record years, according to Preqin.

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in Denver, 83% of all middle-market private companies will be forced to make key strategic planning choices around the retirement of their baby boomer CEOs during the next 15 years.⁷ As a result, Headwaters estimates, some \$5 trillion in assets will change hands in the U.S. between 2011 and 2025, just from the transfer of privately held businesses.⁸

This nascent bull market for private companies will most likely create a major inflection point for millions of entrepreneurs. As baby boomer owners look back on 40 years of hard work, including an incredibly difficult end to the last decade, many are wondering if this could be their opportunity to exit the fray. Says Michael Sullivan, managing director of Enterprise Client Coverage at Bank of America Merrill Lynch: “Entrepreneurs are looking at their situations and saying, ‘I’ve just come through the recession, and I don’t know what the outlook is going to be from here. I don’t know if I can get back on that roller coaster again.’” One traditional exit strategy—the initial public offering—has been closed off to many smaller companies, largely because heightened regulatory requirements have made IPOs just too costly to pursue. For some business owners, meanwhile, uncertainty over tax policy has heightened the urgency of pursuing a private sale. They fear that Washington, mired in its fiscal morass, may eventually hike the top long-term capital gains tax rate—currently scheduled to rise from 15% to 23.8% at the end of this year⁹—to as high as 30%. If the rate is indeed doubled, it could potentially subtract millions of dollars from the proceeds an owner takes home from selling a business.

On the other hand, the current conditions may also encourage those business owners in a more expansionary frame of mind. “The same availability of capital that makes this a good time to sell may also make it a good time to build a new factory, add another product line or even buy a competitor,” says Lily Tapia, a director and enterprise business specialist at Bank of America Merrill Lynch. Indeed, some owners, particularly toward the upper end of the middle market, are becoming serial acquirers, working with private-equity funds to pursue so-called roll-ups¹⁰ of other businesses and creating the opportunity for an even more substantial exit plan down the road.

But the decision isn’t as simple as “grow or sell.” It’s about setting and meeting your goals. As Sullivan notes, “Companies have a certain life cycle, from the high-growth phases to more advanced stages of maturity. Depending on where yours is in that cycle, you’re going to approach this from a very different place. Fortunately, we have people who can help no matter what part of the curve you’re in.” If entrepreneurs aren’t yet ready to retire but want to take money off the table, they may choose to sell a chunk of equity to a third party through a recapitalization. Or they may decide to sell part of the company to employees through an employee stock ownership plan (ESOP).¹¹ Family businesses, with children in line to take over equity and management, have still more options to consider, some that come with their own pressing deadlines, as other potential changes loom in the wealth transfer portions of the tax code. (See “Act Now and Save,” opposite.)

⁷ Headwaters MB proprietary research

⁸ Ibid.

⁹ Jobs and Growth Tax Relief Reconciliation Act of 2003 introduced the capital gains tax cut, and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 extended its deadline to 2012. The 23.8% includes the highest rate of 20% plus a 3.8% Medicare tax on the highest earners.

¹⁰ A roll-up is the acquisition and merger of two or more smaller companies in the same sector to create a larger entity across geographies.

¹¹ In an ESOP, employees are issued (or are sold) shares in the company for which they work as a benefit of employment, usually under a qualified retirement plan. ESOPs receive some tax benefits.



ACT NOW AND SAVE

Companies looking to keep the business in the family have their own decisions to make in the current market. Here are several strategies for pursuing a potentially big windfall under a tight deadline.

While the market for selling private companies has recently opened, an unprecedented window of opportunity may be about to close for those family businesses that may want to transition ownership to the next generation. The amount that each U.S. citizen is able to give or bequeath without being taxed currently stands at \$5.12 million (or \$10.24 million per couple). In the absence of new legislation, that level of exemption will drop precipitously at the end of 2012—back to the historical standard of \$1 million. With the right trust and estate strategies, business owners can use the elevated exemptions to pass along huge portions of their companies tax-free—in some cases, in excess of \$100 million in company value. But if you want to take advantage, now is the time to act.

Take a hypothetical husband-and-wife team of business owners who is looking ahead to retirement and the eventual possible transition of the company to their children. The couple wants to take advantage of their combined maximum tax exemption of \$10.24 million before it expires. Here are some strategies they might consider, both to make the most of the current wealth transfer environment and to keep their options open:

➡ The parents can set up an intentionally defective grantor trust (IDGT), which allows them to leverage the value of whatever shares they move out of their estate using their lifetime gift tax exemptions. Equally

as important, they can discount any shares they put into the trust for lack of marketability, thus increasing the amount of equity that can be transferred under the exemptions.

➡ After the parents have seeded the IDGT with a \$10.24 million interest in the company at the new discounted rate, the trust is then free to take out a note to purchase additional shares worth up to nine times more (or \$92.16 million) from the grantors, which it can do at any time during the life of the trust. If and when the trust purchases the additional shares, it will need to simply repay the grantors out of company earnings (or by paying back shares at whatever their appraised value is at the time they're paid back) at a rate of interest set by the IRS.¹² Because the trust is "intentionally defective," the sale of assets to the trust is not a taxable event for income tax purposes (it's essentially treated as if the parents sold the assets to themselves). And any income from the company or any future sale of assets inside the trust is treated as if the grantors had earned it. This maximizes the amount that can be retained in the trust and passed to heirs free of estate taxes.

➡ What if the parents wish to take advantage of the gift-tax exemptions but aren't yet ready to give up control of their business? Combined with the IDGT, they can set up a Delaware trust, which separates the trust's administrative and investment functions. The parents, in effect, become the "investment managers" of the assets

held by the trust, allowing them to maintain control when (and if) more company shares are borrowed by the IDGT, or sold by the IDGT to an outside party.

➡ Still, if the parents want to maintain day-to-day operational control over their company, a Delaware trust may not go far enough. In addition, the parents will need to set up a limited liability corporation (LLC) or a family limited partnership (FLP). With this structure, the parents can remain as managers of the LLC or FLP, ensuring their day-to-day authority over the company's operations, even though the trust may have economic ownership of a large portion of the business.¹³

➡ Once business owners have done some combination of the above, the rest depends on their ultimate goals and what opportunities come along. Over time, for instance, the parents could use these structures to gradually move more shares out of their estate without owing gift or estate taxes. Or, if they decide to sell the company, they can use the proceeds to pay off the loan balance in the trust, and the assets inside can still transfer to their kids tax-free.

➡ For more succession planning advice, see the recently updated Merrill Lynch whitepaper *The Secrets of Succession*, or ask your Financial Advisor to set up a meeting with one of Merrill Lynch's trust and estate planning specialists.

Even for a confirmed seller, the process of working through these decisions governs the type of buyer one eventually approaches. If you want to retire, a strategic buyer is likely to be best. That's because corporations tend to better grasp the nature of the business and pay more for assets than would private-equity funds or other financial buyers. Strategic acquirers also tend to welcome the departure of the management at the company being sold, because they often value the increased profitability that comes from creating their own business plans and efficiencies. Financial buyers, by contrast, often want management to stay in place, maintaining the operational expertise that will help the company grow, thus increasing its value for the day when the new owners make *their* exit through an eventual merger, an outright sale

¹²The mid-term applicable federal rate for March 2012 was 1.08%

¹³There are some rules within the tax code that try to limit parents' ability to retain day-to-day control of a company after a completed gift has been made. Those wishing to employ this strategy should carefully research the relevant tax rules and consult their tax advisors.

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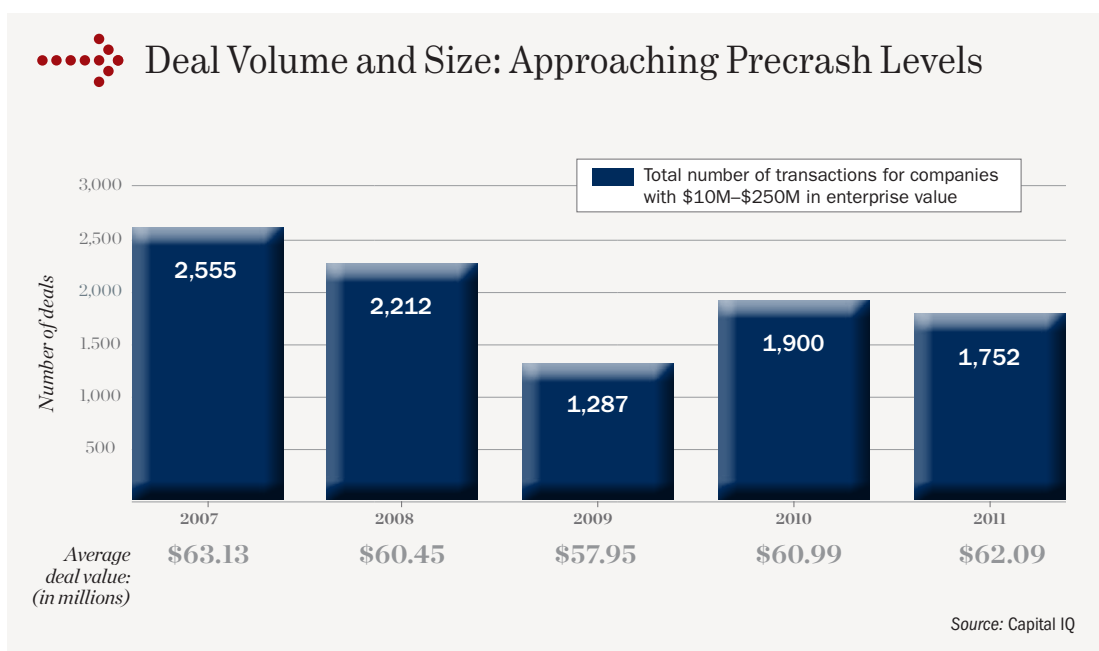
or an IPO. Indeed, there's a saying among private-equity funds: "We don't buy companies; we buy management." All in all, the choices entrepreneurs make along these lines will amount to some, if not the most, important moves in their careers. The stakes are high. In many cases, the companies boomer entrepreneurs have built represent their largest single assets by far. "These are their 401(k)s, the inheritances for their kids, the legacies they leave for their communities," says Gallagher. "They've got only one shot at this, and they've got to get it right."

THE RIGHT DEAL TEAM

Some have equated a business owner going to the deal market alone to representing oneself at trial. That might be an exaggeration, but not by much. Building the right deal team—when appropriate for your goals, one that includes an investment banker, an M&A specialist attorney and an accountant, who can all work with your financial advisor to fit the plan within the larger context of your wealth management strategy—is often the key to realizing the full potential of an exit. Best practices suggest that a deal team should be put in place as early as 18 months before going to market.

Gallagher knows that many entrepreneurs consider investment bankers, especially, as an anathema. "I love entrepreneurs," he says. "They're the backbone of this country. Every day they get up and fight for their businesses. And maybe they think, 'I don't need anybody. Why would I spend so much in fees for an investment banker when I can do this myself?'"

There are several answers to that question. A good investment banker can help screen out unqualified buyers and identify sources of demand that might not occur to owners. The right banker can also help even the playing field, defending the value of a business and driving a premium. Consider the battery of seasoned private-equity dealmakers or corporate negotiators



you're up against as a seller—if you're not careful, they won't just eat your lunch; they'll go to dinner and put the tab on your credit card. "Financial and strategic buyers don't want to compete for a business; they want the best deal they can get in order to maximize their returns," says Karl Bovee, senior vice president, Enterprise Client Coverage at Bank of America Merrill Lynch. If you represent yourself, adds San Francisco-based Merrill Lynch Private Wealth Advisor David Waitrovich, "you're basically going up against someone with a Ph.D. in negotiation."

There doesn't appear to be any objective, hard-data study that has quantified what the right investment banker can be worth to a middle-market company, but the Private Sales Referral Network thinks it has a good idea. Often enough, clients will come to the Referral Network after representing their own companies in the market for several months. Frequently a deal is even on the table. Across the Network's client base, there will almost always be sales that closed for similar companies—same industry, size, type of geographic region—and "nine times out of 10," says Gallagher, the previously unrepresented seller "was giving up a full turn," industry parlance for an entire point on the EBITDA multiple, compared with the companies that have good investment bankers on their side.


What makes for a good investment bank? First and foremost, the firm's deal team must click with the owner and his or her management staff. Once a company goes to market, the sale process can be time-consuming; it can last as long as 18 months or more. "You're going to be spending nights and weekends with your bankers," Michael Sullivan warns, "so you'd better like them." Perhaps most important, though, the bank should have deep experience advising companies in the same industry and the same geography, with a long record of successfully shepherding those clients through completed deals. The world is full of independent business brokers who simply hang up shingles with little experience outside the local country club.

To find the right banker, business owners should evaluate several firms. Known in the business as a "bake-off," it's the process in which bankers from each firm give presentations, highlighting their capabilities and their specific strategic plans for marketing the company. Several boutiques competing for an assignment not only helps bring fees down but also allows for business owners to compare and contrast, assessing chemistry.

PREPARING A BUSINESS FOR SALE

Even the finest homes need sprucing up before going on the market. The same goes for companies. Because of the complexities of product lines, employees, physical equipment, real estate, suppliers and more, preparations should begin before you even hire an investment banker, and ideally as much as three years in advance of a sale, says John Stewart, a director of the Private Sales Referral Network.

That may seem like overkill, especially if an owner remains unsure about pursuing a sale at all. But because the process amounts to a stringent, thorough quality review, it can only make a company stronger, whether a sale ends up happening or not. "What you're saying is, 'Let's create value, let's build an organization that other people want,'" says Ted Clark, director of Northeastern University's Center for Family Business. Laying this kind of groundwork, in



THE BUSINESS OWNER WHO REPRESENTS HIM OR HERSELF IN A DEAL WITH A FINANCIAL OR STRATEGIC BUYER IS BASICALLY GOING UP AGAINST SOMEONE WITH A PH.D. IN NEGOTIATION.



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other words, is something a business owner should be doing all the time. As Sue Lonergan, enterprise business executive at Bank of America Merrill Lynch, notes, “It’s just good business for a CEO to always have a realistic sense of what his or her company is worth and have the processes in place to be maximizing it.”

Some advisors, including David Waitrovich, suggest that companies big enough to make the extra expense feasible (typically greater than \$20 million in enterprise value) hire an outside board of directors to introduce some fresh perspective on their business. “Of course, the owner has the ultimate veto,” says Waitrovich, “but at least you’re going to find out about some issues that you may not have found on your own.”

If you’re planning to sell to a strategic buyer, or even if you’re targeting a financial buyer and looking to retire with the sale, you’ll need to assure the new owners that your business can seamlessly survive your departure. If yours is one of those companies where the CEO, CFO and COO jobs are all rolled into one, you may want to consider shifting into more of a chairmanship role and grooming your best employees to assume daily management, hiring outside leadership as needed. Again, an early start is strongly advised. Installing a new masthead too close to going to market can communicate disarray.

Other presale steps are perhaps common sense but worth highlighting nonetheless. Owners need to thoroughly understand how their companies are valued within their specific industries and then strive to position their businesses as closely as possible to enhance those key metrics. Sales per employee, sales per square foot, utilization ratio, customer lifetime value, circulation—“whatever the business,” Gallagher says, “the seller will have to provide confidence that the company is executing profitably in that particular arena.”

Similarly, owners will need to make sure that their accounting methods, financial statements and tax records will be able to withstand the exhaustive review that prospective buyers will give them. David Vorhoff, an investment banker with the boutique firm McColl Partners in Charlotte, N.C., tells of one company whose deliberately laid-back management style had crept into its record-keeping. Despite deep interest in the company, a prospective buyer balked on a deal after reviewing the incoherent numbers. Restatements and multiple versions only tend to compound the problem. It’s essential therefore to hire an outside audit firm (one with extensive experience in delving into the books of corporate entities) to bullet-proof a company’s financial reporting well in advance of a sale (more than three years again being the ideal).

One common stumbling block on the accounting front involves non-business-related matters that may appear on the income statements of family-owned and -operated companies. It’s true that buyers generally view family businesses favorably. “They figure these companies are probably operated conservatively, so there should be opportunities to grow,” says Vorhoff. But if prospective buyers find it difficult to gain a clear picture of actual financial performance, it may be viewed as a sign of overall sloppiness, or worse. Anytime owners have mingled the two—using business proceeds to finance family vehicles or school tuition, for example—they

need to start drawing clear delineations, advises Andrew Tanner of the U.S. Trust Private Business Group. “The transactions on the books should be purely business transactions.”

If there were a mantra for these presale preparations, it would be: Buyers hate surprises. “What you don’t explain up front will be seen as violating trust,” says Tom Spillane, an attorney who partners with Merrill Lynch advisors to help clients with their business sales. Any discovery that raises questions about financials, equipment quality or labor issues—even if the omission is an innocent oversight—could cause the prospective buyer to cut the offer price or walk away entirely.

GOING TO MARKET

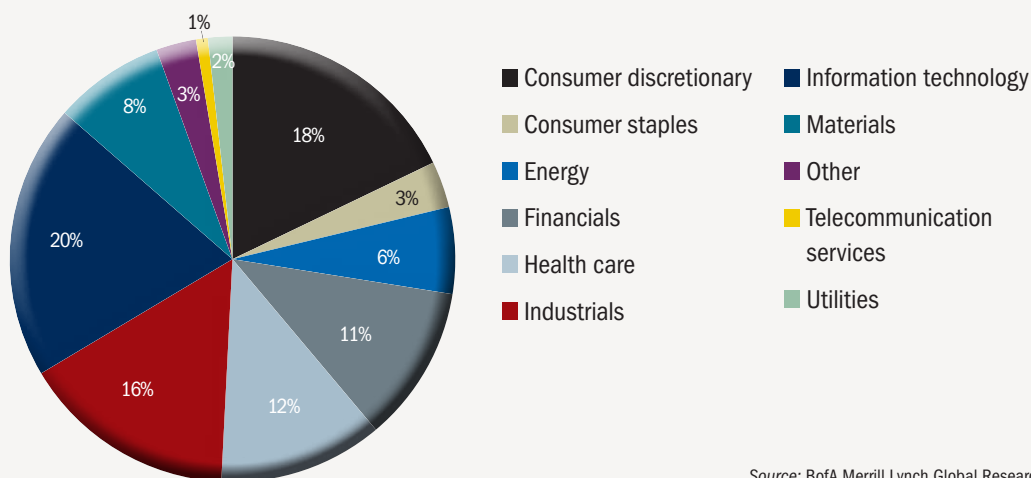
The process usually goes like this: Your newly engaged banker makes a study of your company, delving into its books and gaining a strong understanding of its strengths and weaknesses. Eventually, the first inquiries are discreetly made and it comes time for the auction. Arguably this is the most important service the investment banker provides: rounding up enough real, prospective buyers in order to best position the company and maximize its price.

The banker will, of course, screen potential buyers for capability and seriousness. Extensive due diligence must go both ways, the buyer scrutinizing the seller and vice versa—yet another

SALE PROCESSES
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Where the Deals Are: An Industry Breakdown

Statistics show that private sale activity is occurring across much of the industry spectrum. Here, the distribution of all the transactions for small- to lower-middle-market companies in 2011.



Source: BofA Merrill Lynch Global Research

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reason to have an experienced banker on the sell side. In some cases, companies won't sell to the highest bidder. If the slightly lower offer price comes from a private-equity group that has a vision for the company more in line with the vision of the entrepreneur, it could make for a better deal. In the end, that kind of "fit" could increase the company's odds of reaching its financial performance goals after a sale.

Once the process begins in earnest, owners need to learn patience. Sale processes fail for many reasons, but one of the most common is *impatience* on the part of the seller, says Gallagher. That's especially true after negotiations begin. A prospective buyer might offer \$35 million, say, and then stridently caution the seller and her banker that this is the upper limit of what he can do or even afford. The seller and her banker, meanwhile, have long agreed that \$50 million is what the company is legitimately worth. Gallagher has seen owners lose patience at this key juncture, throwing up their hands and pleading with the banker to just accept a deal or let the buyer walk. But this is part of the process. Often enough, the buyer does have room to raise.

"We tell owners to continue to run your business. Let the bankers handle the bids," says Gallagher. Indeed, another potential obstacle to a successful sale process is that, as negotiations drag on, the company's business begins to slide as the owner pays too much attention to the nitty-gritty of the deal-making and not enough to operations.

Still, once negotiations enter their final phases, the owner will be called upon to consider a host of details. For example, the prospective buyer may not show interest in acquiring certain company assets—assets that may nonetheless have considerable value. Tossing these into the deal essentially means giving them away. There can be a good payoff elsewhere for almost any asset that buyers don't want. Real estate is a prime example, as is proprietary in-house software or other technology. Vorhoff recalls one glass-installation company that had developed a glass cleaner for its own use. When the buyer showed no interest, the owner removed it from the

A NETWORK SCALED FOR YOUR NEEDS

Generally speaking, the world's largest, or "bulge-bracket," investment banking firms don't take on companies with an enterprise value of less than about \$200 million; smaller deals simply aren't large enough to justify the fees. Filling that recognized gap is the role of the Private Sales Referral Network. Founded in 2000, the group helps Bank of America Merrill Lynch's small and lower-middle-market business-owner clients find the right investment banking advisors with particular expertise in navigating the M&A deal market for companies with up to about \$20 million

in 12-month trailing EBITDA. "Our ceiling is our own investment bank's floor," explains the Network's managing director, Brooks Gallagher.

Precisely 43 boutique investment banks based in every region of the country and covering every industry are part of the network, which Gallagher and his team manage out of New York. If you consider that more than a thousand boutique advisory firms ply their trade in the U.S., you will start to understand how selective the Referral Network is in choosing its membership. "We've done an extraordinary amount of due diligence on

these bankers," Gallagher says. "To get into our network today, you have to bring something special to the table. We're really only looking to add folks with a robust Rolodex of buyers and a long track record of success in their industry." Even more than that, Gallagher adds, "you have to show us you have the ability to service the privately owned side. This isn't the Fortune 500. These are entrepreneurs. Before you even take them to market, you have to convince them that they need you." If you think you might be convinced, ask a Merrill Lynch financial advisor to arrange an initial consultation with a member of Gallagher's team.



deal and gave the license to one of his children, who built the cleaner into a successful business. Other significant issues will likely require attention as final terms are being discussed. Buyers, for example, almost invariably insist on keeping funds in escrow and releasing them over time. That's their way of trying to ensure that the warranted claims the seller has made about historical performance, productivity, assets and other factors pan out in reality.

If those claims don't hold up post-purchase, the seller could lose out on a substantial portion of the agreed-upon price. That's another reason for having an experienced investment banker and attorney partnering with your advisor in negotiations. "Your team's job is to remove teeth from the terms of the sale," says John Stewart. These "teeth" could include the number of warranted performance metrics, the size of the escrows and the length of the escrow period. Generally speaking, the more the company's performance depends on its existing management and employees, the more the buyer will want to hold in escrow until it's clear that he or she will get the same high level of productivity. Each item, though, is up for negotiation. With so much on the line, it's vital that the seller feels comfortable with every item warranted in the contract.

THE DEAL FOR THE REST OF YOUR LIFE

Entrepreneurs are often better at growing their businesses and building wealth than they are at making sure they and their families reap the full measure of those rewards when the time comes to sell. A 2008 Bank of America U.S. Trust study of wealthy business owners found that, while 93% of owners think tax mitigation is a vital part of selling a business, nearly three-quarters of them had yet to consider tax strategies when it came to selling their own companies.¹⁴ This suggests that owners caught up in the day-to-day pressures of running a business often put off thinking about the personal side of selling until a sale is actually in the works.

While understandable, such neglect can result in missed opportunities and a huge reduction in what owners and their families actually take home. Adding to the fallout is the fact that many owners have most of their personal and family wealth tied up in the business. "I've got clients with businesses valued above \$100 million, whose investment portfolios are \$1 million or even less—that is not rare," says Scott Cooper, managing director of the Merrill Lynch Wealth Structuring Group. With so much at stake, adds Anthony Olmo, director of Tax Services for Merrill Lynch Family Office Services, "if you wait until the deal closes, you're far too late."

In the average deal, taxes and paying off the company's pre-existing debt end up consuming about 40% of the full sale price, says Gallagher. The rest will accrue to the sellers—but only if they plan well and work with their advisor to think through how they want to use the sale to meet their long-term family and other personal goals.

According to many advisors, one of the first things a prospective seller should contemplate is the mechanics of wealth transfer. Simply selling the business and then divvying up the

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¹⁴ *Protecting the Family Fortune*, U.S. Trust, Bank of America Private Wealth Management, June 2008

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proceeds isn't realistic, given the potential tax costs. First, the owner would pay tax on gain from the sale; then, as he or she distributes what's left, any amount greater than the gift- and estate-tax exemption (\$5.12 million per individual, \$10.24 million per couple, through 2012) would be taxed a second time (currently at a rate of 35%, due to reset at 55% in 2013).¹⁵

Fortunately, there are plenty of alternatives. Say an owner has two heirs. She could choose to give nonvoting shares in the company to each heir (this should be done well before a deal is in the works, because it may invite all manner of negative scrutiny from the IRS). Because those shares are nonvoting, their market value is less than what it might be when the company is eventually sold. That means the owner can give away a larger share of the company while still keeping the value of that equity below the \$5.12 million gift-tax exemption. And because the value of a company often peaks when it's sold, those shares could be worth much more when a sale goes through—and the proceeds would be taxed only once, rather than twice.

The structure of a deal will also play a big role in helping the owner achieve his or her wealth management goals. In essence, there are two basic ways to structure deals: as a sale of stock or as a sale of assets. The difference is far more than a technicality.

A stock sale, also known as a share or entity sale, means the seller is turning over the entire company to the buyer as one package, including everything from equipment and receivables to goodwill and office furniture. In addition to being straightforward, this approach generally has the advantage of allowing the seller to pay tax on the sale's proceeds at the long-term capital gains tax rate (currently 15% but, as noted earlier, possibly on the rise). Hence, most sellers hope for a stock sale.

In an asset sale, by contrast, the business entity sells its assets to the buyer. Although this process may be more complex, buyers usually prefer an asset sale because it can help them avoid any potential liabilities belonging to the company that owns the target assets. It also could come with certain tax benefits for the buyer—for example, the ability to claim increased depreciation deductions as a result of the stepped-up basis in the acquired assets. Unfortunately, the seller can suffer, because gain on the sale of many assets typically ends up being taxed not at the lower long-term capital gains rate, but at the ordinary corporate income tax rate, and then the after-tax sales proceeds generally are subject to a shareholder-level tax upon distribution to the owner. The issue arises for any business classified as a C corporation, or for certain S corporations that formerly were C corporations. The gain recognized by these companies can, in effect, be taxed *three* times: first, at the 35% corporate rate; second, when the after-corporate-tax proceeds are distributed to the owner as dividends; and third, when the wealth is transferred to the heirs.¹⁶

Because of these conflicting benefits, the choice between an asset sale and a stock sale is a crucial negotiating point. While buyers may insist on an asset sale, Olmo says, that's not

¹⁵ The provisions of the 2010 Tax Relief Act sunset Dec. 31, 2012. Under current law, the applicable exclusion amount will thereafter return to \$1 million and the maximum tax rate will return to 55%.


¹⁶ Income and gains generated by C corporations, including gain recognized from an asset sale, are taxed at the corporate tax rate, and amounts that corporations distribute to their owners as dividends generally are taxed again at the individual shareholder level. Income and gain generated by S corporations (a classification sometimes used by small businesses) are "passed through" to the tax returns of their owners, and thus generally taxed only at the individual shareholder level. However, for certain S corporations that previously were characterized as C corporations, the C corporation rules could apply to all or part of the corporation's gain on the sale of its assets.



necessarily an automatic disadvantage for the seller. In exchange, the business owner may be able to exact concessions on other sticking points or obtain a higher sale price. Likewise, “if you can negotiate a stock sale, the buyer will usually insist on paying less,” Olmo adds.

These detailed negotiations are where your expert deal team comes to the fore. For example, a seller might choose to accept part or all of the payment in the form of shares of the buyer’s company, to be sold later and taxed as capital gains. This will raise the investment risks associated with any concentrated stock position, but, using sophisticated hedging strategies, such as options or exchange funds,¹⁷ your advisor can then help you offset that risk until you’re free to diversify your holdings. Says investment banker Vorhoff: “In any transaction, you should have unique opportunities to structure a transaction that’s tailored specifically for you.”

As with most aspects of engineering the successful exit, it all starts with keeping an open mind and trusting the process. Not long ago, an entrepreneur who’d just turned 81 was seeking to transition away from his namesake Midwestern manufacturing company, which he’d built from scratch over 40 years. “I hope you’re not here to talk to me about investment bankers or hedge funds,” he’d told his financial advisor almost as soon as he’d walked through the door. “Because if there’s two kinds of people I can’t stand, it’s investment bankers and hedge fund managers.”

The advisor, of course, took this under consideration, and then began helping the entrepreneur sort through the options to determine which would best allow him to meet his goals. Two of his primary objectives, it turns out, were rewarding his employees for their years of service and seeing that his company lived on in something approximating its current form, while still providing financial security for himself and his family. The entrepreneur ultimately rejected the idea of an ESOP (too complicated) and a sale to a strategic buyer (his loyal management team would probably be fired). In the end, realizing he needed help getting the price he wanted, the entrepreneur retained, from a boutique firm that specialized in his industry, an investment banker. He also realized that if he relaxed another of his conditions, he might structure a deal that could allow his employees, many of whom had vested stock options, to maximize their future payout and might even someday lead to his beloved business becoming a publicly owned company. And so, as of this writing, he is about to close on the sale of his company to a group of financial buyers—including a hedge fund—and working with his advisor on the investment strategies that can help him protect and grow his legacy. 

¹⁷ A call option, or call, gives an investor the right, but not the obligation, to purchase a stock at a set “strike price” within a specified time period. The strike price remains the same even if the market price rises above it. Exchange funds let investors with concentrated positions diversify without triggering capital gains tax by exchanging a large block of their stock for units in the fund’s portfolio.

THE CHOICE BETWEEN AN ASSET SALE AND A STOCK SALE IS A BIG NEGOTIATING POINT. WHILE BUYERS MAY INSIST ON THE FORMER, SELLERS CAN USE THAT TO EXACT OTHER CONCESSIONS.



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