

Dissecting the Initial Stages of the M&A Process...A Checklist of Tips and Steps for Success. by Mark Radosevich

Sane business people from outside our industry would surely find the daily challenges of petroleum marketers unimaginable, bordering on total lunacy. Layered on top of generally low and inconsistent fuel margins are a litany of seemingly never ending hurdles, including ceaseless competitive pressure, Obamacare (say no more), unrelenting governmental interference and regulations, plus other daily surprises related to and just about everything we sell. What little love there was for the business probably began melting away ten years ago. Despite the pain, like tough skinned old mules used to a daily whipping, marketers seem programmed to put their back into it and press on. If this industry wasn't predominantly made up of multigenerational family businesses, one wonders who would be crazy enough to go into it today.

This challenging environment seems to have finally pushed many operators to do what a few years ago would seem unthinkable; put the business up for sale. "The business is just not as fun as it used to be" was the common theme at a recent industry event I attended over the summer. Whereupon another marketer told me that he never heard so many folks at his branded marketer association meeting seriously discuss the prospect of selling their businesses.

There is no disputing the fact that the petroleum business is in flux and mergers & acquisition activity is boiling. Active buyers have claimed that they've never had so many deals to assess. Banks are lending to qualified, well capitalized companies and purchase multiples are strong. This activity covers the gamut from direct store operations to dealer supply contracts to commercial fuels and lubes. There are numerous qualified buyers for virtually all deal configurations.

With this in mind, I thought it would be interesting to highlight some real world insights and tips taken from a couple of just concluded deals to help those who may be considering devoting more time to golf, fishing, world travel or to better position a business for future decisive action. I've focused on the early stages of the process to insure that the overall effort starts on the right track to save valuable time, energy and resources.

✓ **It is what it is**

Forget recent appraisal values or arbitrarily personal assessments, sophisticated buyers base everything on current financial performance supported by historical stability and consistency back two or three years. A valuation is then based upon multiples of current cash flow generated by various parts of the business depending upon whether the assets being conveyed include real estate or are simply ratable supply agreements.

✓ **Determine Your Future Needs and Requirements**

Knowing how buyers assess value, a pragmatic owner can gain a general understanding of the value range for the business. Using a conservative value, the proceeds from a sale can then be matched to specific seller circumstances and future requirements to begin determining an optimal divestiture plan. Key considerations include current debt, prepayment penalties that may affect timing or deal structure,

state and federal tax consequences, unamortized brand obligations, future living expenses and other personal considerations.

✓ **Create an Optimal Deal Structure**

Once an understanding is obtained of all of these factors, a preferred deal structure will emerge. This may reduce the desire for all cash at closing versus a short term lease-purchase arrangement to mitigate loan prepayment penalties and outstanding brand commitments, or arrange gradual timed closings to facilitate an IRS 1031 like-kind exchange strategy to shelter capital gains. It's important to weigh any decision to avoid taking the upfront cash against the strength and professional profile of the buyer. Before entering into any deal that postpones the big payday, be sure of the quality and long term relevance of the buyer. Many a seller has regretted not taking the cash when their seemingly well qualified buyer rolls over on the lease a few years into the deal and they are faced with taking back and reselling an impaired business.

✓ **Confidentiality and Avoiding Internal Red Flags**

Maintaining confidentiality throughout the entire divestiture process is critical for consistent operations, reduce distractions and prevent key employees from jumping ship. Keeping the undertaking confidential from the back office employees is hard when key information is needed to prepare the offering prospectus and input and cooperation from one or more people is needed. When inside assistance is needed, a couple of approaches have proved successful to insure confidentiality. Start with having the selected person sign a confidentiality agreement. Offering a success bonus paid out once the sale and closing has occurred also works. Make the success bonus meaningful if the trusted employee cannot be guaranteed continued employment after closing.

✓ **Assembling an External Divestiture Team**

Recruitment of the company's outside CPA to facilitate delivery of needed financial data is another method to preserve confidentiality and reduce the time involvement by inside personnel. When additional data is needed, the CPA can use the ruse that the information is needed for possible debt refinancing or questions surrounding business operations can be couched as information needed for insurance underwriting purposes.

It is also prudent to have a qualified advisor on the team to professionally package and coordinate the overall business marketing process. Quiet deals between two companies generally do not garner the best value and results for the seller. Having a firm experienced in recruitment of qualified buyer prospects better insures optimum value and an ultimate deal structure closer to the overall divestiture plan.

Depending upon the size and complexity of the deal, it may be prudent to enlist the support of the company's attorney or outside law firm later in the process when one or more buyer prospects have delivered a seemingly acceptable Purchase Letters of Intent. Bringing the law firm into the process too soon may result in needless legal fees, as initial deal considerations generally involve overall structure and business related matters.

✓ **Profiling and Recruiting Appropriate Buyer Prospects**

Once the preferred divestiture plan is formulated and the offering prospectus is completed, an analysis is made of the various potential buyer candidates. Supported by personal professional relationships, my company utilizes a comprehensive database that has defined and profiled the marketer universe by size, operational method, fuel brands handled and other factors to determine appropriate candidates to be invited to participate in the sales process. Candidates are selected based upon their ability to match the type of business being sold and the divestiture plan. This includes considerations related to geographic coverage and operational preferences like the desire to assess only direct store operations versus dealer supply opportunities. Other considerations include the size of the deal versus the prospect's capacity to ultimately close the transaction. There's no point inviting someone to assess a deal that is too big or does not fit their operational model.

✓ **Working the Process through Closing.**

Taking care in the beginning of the process to develop the divestiture plan, assemble the internal and external team, create the confidential offering prospectus and recruit qualified buyer prospects will help insure the rest of the sales process is both timely and targeted. Optimal time and effort can then be directed to guiding interested buyers toward a mutually acceptable deal structure, selecting the best buyer candidate, finalizing the various purchase agreements and working the resultant due diligence process to a mutually successful conclusion.

On behalf of the entire PetroActive Services team I hope all of our industry clients and friends enjoy an autumn of business certainty and success, and a new football season of cool game days, tailgaters filled with cold beer, great food and lots of laughs.

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