# Selling a Business? Thoughtfully Consider Engaging an Investment Banker

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A business owner needs to make many extraordinary decisions when deciding whether or how to sell the business. One such decision is whether to hire an investment banker to manage the sale process. The most effective and efficient sale processes often are managed by investment bankers. Hiring an investment banker may not be the right decision in every instance. However, the fact that an owner successfully runs his or her business does not mean that he or she knows how to effectively market the business for sale. The skill sets are very different.

An owner who decides to hire an investment banker needs to consider many items when structuring the engagement, such as:

1. **Objective.** The most important item is to agree on the objective for the engagement. Is it to sell all of the business, or at least a majority stake? Do the circumstances indicate that it might be better to sell merely a minority stake, or to instead raise debt capital? Those are different objectives that often involve different types of investors. The owner and investment banker may have different thoughts about the appropriate objective. As a result, it is critical to have a candid discussion about objectives at the outset so that everyone is working together in the same direction. Objectives can evolve over the course of a sale process. However, the process generally will not run well if there is any confusion about the initial objective at the outset of the engagement.

2. **Fees.** Owners understandably tend to focus on the total dollar amount of fees that could be paid in the event a sale is closed. That of course is important, but many factors come into play when structuring fee arrangements. The focus should be on making sure that the arrangement is appropriately tailored to the objectives for the specific transaction in question. The percentages of the sales price for the success fee at the heart of the arrangement matter, but so do, for example, the associated valuation thresholds and timing requirements. One size does not fit all. With thoughtfulness, though, appropriate fee arrangements can be structured to provide a foundation for a mutually beneficial relationship.

3. **Transaction Participation.** From time to time, investment bankers have affiliates (or clients of affiliates) that could be interested in participating in the investment or acquisition side of a sale transaction, or the investment bankers themselves might have such an interest. Depending on the circumstances, that could be helpful or troublesome. Accordingly, it is important to address that possibility at the outset of an engagement so that there are no misunderstandings or disagreements down the road if indeed any such participation opportunities develop.

There are many other important considerations associated with structuring a good relationship with an investment banker. The starting point is to thoughtfully consider whether to engage one (which, in our anecdotal experience, almost always is the best decision). If the decision is made to go forward, the owner (with informed legal counsel) should then invest the time and effort to address all of the important considerations necessary to set an appropriate foundation for a successful relationship.

*Craig Bergez and Mandy Diaz are Partners in the Houston office of Porter Hedges LLP. Their practices emphasize counseling private companies and their owners regarding merger, acquisition, and joint venture transactions, including providing tax advice in connection with planning such transactions.*