

*August 2015 - In This Issue:*

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**WE BRING YOU BUYERS**

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## **INDUSTRY KNOWLEDGE & ACCESS TO BUYERS NATIONWIDE**

Our presence as a Professional Business Broker is extended nationally as a result of being an affiliate of [BHarmony, LLC](#).

We also bring decades of experience and functional expertise in all the popular market segments as a result. Nothing takes the place or value in that of experience.

We partner with our clients to deliver solutions that help solve their most complicated needs prior to, during, and at the conclusion of the selling process. Our services are designed specifically to help small/medium size



## **THE INTERMEDIARY'S ROLE**

**Besides finding deals, just what exactly does an intermediary do, anyway?**

It's a common question, because in the purchase and sale of middle market companies...those with annual revenues from \$2,000,000 to \$50,000,000...the primary role of most of the principal players is fairly clear. Buyers buy. Sellers sell. CPAs check the books, provide tax advice and assist with cash flow and financial analysis. Lawyers provide legal advice and draft or review the definitive documents of the transaction. But what role does a business intermediary play?

People generally know what real estate brokers, stock brokers and insurance brokers do, because there is a well developed market for real property, public stock and insurance. In addition, there are numerous excellent brokers of these products in every major city.

Unfortunately, the overall market for small, privately held companies is fragmented, obscure, disorganized and inefficient. In addition, there are only a few business intermediaries in any given metropolitan area who can assist with the purchase and sale of middle market companies. Consequently, many entrepreneurs and their advisors don't have much practice working with a mergers and acquisitions ("M&A") specialist. Therefore, this strategy letter is devoted to an overview of the various services a capable intermediary provides in guiding a transaction to a successful conclusion. As you evaluate M&A

businesses and at a small business price. We go beyond the norm to develop new insights, prepare, market and drive results in the sale, thus insuring you receive the most value at closing. [Learn More](#)

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## UNDERSTANDING ASSET VS. STOCK SALES

For business owners looking to divest their current interest in a company, there are two main ways to do this - pursue an asset sale or a stock sale.

Deciding what is most beneficial requires the evaluation of several factors. For starters, the tax implications and liabilities that come along with asset vs. stock sales could weigh more significantly on either buyer or seller. **This month we will discuss the Pros & Cons for Asset Sales. Next month we will feature Stock Sales.**

### Asset Sales:

In an asset sale, the seller retains ownership of the original legal entity and the buyer purchases the individual assets of the seller one by one. This can include equipment, inventory, lease agreements, licenses and trade secrets. After the closing, the buyer and seller retain separate corporate existence and structure, while the owner of the operating assets changes.

### Benefits:

In asset sales, buyers have the ability to pick and choose the specific items and or rights they want to own. In addition, asset sales provide tax advantages to the buyer, because acquiring assets in this manner allows the purchaser to step up the

firms to assist you in buying and selling a company, assess their capabilities in the following essential areas:

**Educating and Coaching.** Buying and selling a middle market company is a complex transaction. Usually, it is not a common occurrence for the shareholders and sometimes sizeable sale transactions may not be all that common for the buyer's and seller's current professional advisors. Even owners and professional advisors who are seasoned and experienced (including intermediaries!) are constantly learning new approaches and techniques. Consequently, one of the key functions of an intermediary is to assist the participants with education and coaching based on the experiences gained from being constantly in a variety of deals.

**Team Building.** Frequently, a buyer or seller will not have all the professional advisors necessary to help conclude a successful transaction, and many times the professionals have not worked together previously. An experienced intermediary can effectively pull a professional team together, keep everyone's focus on the overall transaction and help assure overlapping issues don't "fall through the cracks."

**Planning.** Setting objectives and planning for their attainment is crucial for buyers and sellers. In this process the M&A specialist can provide valuable assistance in the role of consultant, gad-fly, devil's advocate, voice of reason, and on occasion, drinking partner, when using the time-tested "cocktail napkin" approach to strategizing.

### Preparing. Think of the 5 "P's":

Prior Preparation Prevents Pitiful Performance. Both buyers and sellers must prepare for a successful deal. The intermediary provides guidance on important steps to take for buyers preparing to enter the market and sellers going to market.

**Finding.** One of the most significant and daunting challenges facing a buyer or seller of a small company is finding the other side of the transaction. As expected, this is an essential

company's depreciable basis in the assets. More or less, engaging in such transactions will grant the buyer a larger number of deductions they can use in the long run to offset the buying company's income.

### **Costs:**

While asset sales provide numerous benefits for buyers, the case may not be the same for sellers, which often end up with less favorable tax treatment by selling individual assets instead of stock.

While divesting intangible assets - such as goodwill - generates capital gains tax liability, selling more tangible assets can incur higher ordinary income tax rates.

In addition, if a business owner divests his stake in a C corporation through an asset sale, he will face double taxation, as selling the assets will incur tax liability and then transferring the assets outside the legal entity will once again produce taxes.

Business owners should also keep in mind that selling certain assets - such as licenses and contracts that hold notable value - may require obtaining third party consents to assign such licenses and contracts. Acquiring such agreements can take significant effort and time. **NEXT MONTH STOCK SALES**

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## **WHY THERE ARE NO DINOSAURS...**

Two dinosaurs are standing on an island watching Noah's Ark float away in the distance, filled with animals two-by-two. One asks "Oh crap - was that today?"

function of an intermediary, and a substantial portion of a M&A specialist's time is spent identifying potential buyers and sellers and "making a match."

**Presenting.** Obviously, sellers need to present their companies properly to prospective buyers. However, we consistently see buyers underestimating the importance of how they present themselves to sellers. In a merger or acquisition, buyers find themselves "selling" every bit as much as the nominal seller. A skilled intermediary can help both parties position and present themselves clearly, legally, thoroughly and professionally.

**Valuing.** How much is a company worth? It's often a tough question. The answer has to be connected to what reasonable buyers and sellers will do. Deal structure is often as important as price. This is an area in which an M&A specialist often interface closely with the buyer's and seller's CPAs and attorneys to develop a balanced, tax-efficient deal. Working with reasonable, realistic, empathetic and fair minded principals, the intermediary can help design a transaction valued and structured in ways that can work for both parties.

**Structuring an Offer.** Designing an effective offer to sell or an offer to buy is critical. It's fascinating how often the owner of a company will invest more time and money designing the offer for a new product than they will in designing the offer to sell the entire company. Likewise, it's all too common that buyers think they can just show up with a checkbook, make a sloppy offer and somehow everything will work out. A competent intermediary should invest great care in the design of offers, because frequently, the quality of the offer makes all the difference between success and failure.

**Negotiating.** Clearly, this is an important role for the intermediary. However, if the educating, team building, planning, preparing, finding, presenting, valuing and offering has been well done, negotiating is dramatically simplified. In fact, negotiating is not a set of manipulative tactics or hard-nosed, hip-shooting techniques at the closing table, but actually the cumulative

***Opportunities have no value unless they are explored and taken advantage of.***

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effect of all the other steps. Even when an experienced intermediary has to take what looks like a hip-shot, it usually isn't. Hip-shots can be planned, too.

"Negotiating" is one of those words that unfortunately has often come to be construed as meaning "figuring out how to get my way, no matter the cost." I prefer to think of negotiating like navigating a whitewater rapid. There are waves, rocks, trees, and a lot of pressure and stress that can flip your boat and keep you from safely passing through the rapid successfully (which I consider to be "upright, dry and breathing"). But you don't "beat" the river, you don't "beat" big rocks and trees and you don't "beat" deals. You "negotiate" them. A good intermediary is like an experienced river guide...and having a good guide can make all the difference in your navigating results.

**Cushioning.** Sometimes hard things need to be said to make a deal. Often intermediaries are the best ones to cushion the impact, so that the other participants to the transaction can maintain effective relationships.

**Assisting.** Business intermediaries are not attorneys, accountants, insurance agents, environmental consultants, or personnel experts. However, of necessity, M&A specialists have to know something about a lot of things, and a lot about some things. While the principals can't rely on an intermediary for tax and legal advice, a capable intermediary can help them ask good questions and help them understand some of the business implications of the professional advice they receive. Intermediaries can and should also help reconcile the some-times divergent concerns of the various advisors and suggest approaches that can satisfy all concerned.

**Controlling.** This is one of the most important functions intermediaries perform. Deals don't stand still. They either move forward or die. Someone has to drive the train and maintain positive momentum. Once a deal starts, the key job of the intermediary is to try to move it to a successful and satisfactory closure.

If you would like more information on preparing, packaging and positioning your company for sale, [Contact us](#) and request "Cashing Out."



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