

## Special Edition

### How to Sell Your Company in a Down Market – Part 4

**A LOI is intended to establish the basis for working toward a definitive purchase agreement.** It is an agreement that both parties will work diligently towards a transaction and should not get too complicated.

**The letter's purpose is to establish only the agreement "in principle" between the two parties and it does not bind them to a definitive agreement.** It does create an obligation to work diligently and openly toward a transaction exclusive in negotiations by the Seller with 3<sup>rd</sup> parties. **In other words:**

- The LOI should include the purchase price subject to due diligence.
- It should include a "stand still" agreement in the content of the letter, which states that you can't negotiate with another party while the Buyer is completing his due diligence, and;
- It normally provides a closing date, in which a definitive agreement will be drafted and approved.

**In reference to a LOI; it should be a simple 1 – 3 page format outlining:**

1. **A brief description of the deal structure proposed.**
2. **Closing of a final transaction subject to:**
  - a) Negotiating a satisfactory definitive agreement.
  - b) Board of directors, and/or stockholder approval.
  - c) Reach an agreement to transfer customer contracts, etc.
  - d) Resolving significant open issues as identified by the acquisition team and preliminary evaluation of company information such as:
    1. Environmental concerns.
    2. Pending litigation.
    3. An agreement on a target date to close a transaction with a definitive agreement and a closing date.
    4. How transaction expenses are to be shared between Buyer and Seller.
    5. An agreement to provide necessary information to the buyer to evaluate the selling company, and;
    6. Signatures of both Seller and Buyer indicating an agreement in principle.

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**In preparing the LOI, a Buyer has established an “offer” price and a deal structure that appears to make financial sense to both parties.** The LOI also provides an estimate of the Seller’s expectations and it outlines who will be negotiating on behalf of the Seller. **When you’re attempting to negotiate the sale of your company;**

- As an owner of the business, you should deal directly with the Buyer.
- **You need accountants and attorneys to advise you, but they should not deal with the Buyer, you should!**
- It’s your business, you know it better than anyone else;
- You want to interact as much, as you can with the Buyer, to make sure that you have the same values – both on a business and personal level, and;
- The more you interact, with the Buyer, the better the possibilities of closing a transaction.

**Never let third parties negotiate the sale of your company!** That does not mean that you should not obtain competent legal, consulting and financial advice, but;

- Your advisors should not negotiate with the Buyer. Their job is to provide you advice based upon experience.
- They should not take control.
- You should negotiate directly with the Buyer, and;
- Your team should only get involved when reviewing the LOI and drafting and negotiating the purchase agreement.

**Next week, I will focus on a definitive agreement and employment contracts.**

**QUOTE OF THE WEEK: “He, who smiles rather than rages, is always stronger”.**