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Selling Yourself and Your Strategy to Merger / Acquisition Candidates

By Thomas S. Clay

The managing partner of a large firm asked me to investigate why his firm had lost out on acquisition of another law firm they had pursued quite vigorously. His firm had recently written a strategic plan concluding that because demand for legal services had been decreasing for several years with no end in sight, they needed to increase market share not only through business development but through acquisitions of quality law firms. It was a key strategy. He said, "I know we cannot win them all, but we seemed to click so well with those people, I just don't understand." He was very frustrated.

The managing partner said the message he received from his counterpart at the candidate firm was cordial and polite. But he just felt that there was something else that he might learn about their approach, process and focus that might help in future acquisition scenarios. He asked if I might be willing to meet with his counterpart at the candidate firm to gain an objective debriefing with the goal of helping them with future acquisitions. His final comment was "It is just too expensive to lose deals like this. We invest an enormous amount of resources."

I knew the candidate firm's managing partner well and he readily agreed to speak with me about the process they followed during discussions with several firms and his thoughts on what went well and not so well.

His first comments were, "I personally wished we had gone with those guys (my client). I liked them a lot, our practices meshed well and I thought integration would be fairly easy. However, at the end of the day it seemed to my partners that the winning firm had a better plan, a better plan for us, a great handle on our culture and overall they just seemed to have done their homework better." A little probing enlightened me.

Although both firms had conducted similar types of meetings (practice groups met, office managing partners met, pro-formas were done, etc.), I heard something that piqued my interest. The managing partner said, "As my partners sat around the table for hours, weighing the pros and cons of each firm and the key issues, we seemed to keep coming back to the conclusion that the winning firm *just had a better plan*." I asked what he meant specifically and he said, "Well, each of my folks had a copy of the winning firm's prospectus and a two-page proposal from your client. Not that length made any real difference, but it just appeared that the winning firm had all the bases covered, had thought deeply about us specifically, and just had more on the ball." I asked if I could see the proposal and prospectus from the winning firm, to which he readily agreed.

I quickly determined two things. First, the actual proposals in terms of economics, compensation, governance and the like were almost identical. It was clear that the difference was the prospectus. The winning firm had put together a relevant, meaningful document that showed it had a compelling plan, a deep understanding of the firm it was acquiring – its practices, culture and fit into the overall scheme, as well as a viable integration plan. I thanked the managing partner for his courtesy and candor.

I called my client and told him the other firm offered no better deal than his, but that they were simply outsold in the battle for hearts and minds.

In the highly competitive fight for lateral partners and firms that can be acquired, the marketplace has become highly skeptical, more sophisticated in many ways and expectations have risen. Discussions among firms and managing partners occur constantly, with buyers and sellers jousting, probing and constantly evaluating positions. 'Back of the napkin deals' are rarely seen as credible and firms need to find ways to distinguish their selling proposition and demonstrate a clear and credible strategy, in addition to having the ability to figure out the mechanics of a deal. In many ways, mergers and acquisitions are selling. Firms need to employ all of the tools they can in order to make the sale.

I was asked recently to help a firm develop a regional strategy for recruiting groups of firms. We worked through a detailed analysis of what the profile of acceptable firms would look like in terms of practice, economics, culture and the like. The profiles were consistent with the firm's written strategic plan.

I then asked them to write a paragraph focusing on why a firm should join them. Their first efforts were a set of platitudes (mainly about themselves) that could have applied to almost any firm or situation. I told them to go back and state in clear, unambiguous terms what benefits the *other firm* would receive and what opportunities would be opened up should they join them. After a few iterations, they got it right and developed a rationale that could be understood and evaluated by potential candidates. Answering the "why should I" is at the heart of capturing a candidate's interest.

THE PROSPECTUS

Over the last 10 years, 43% of all US combination and acquisition activity was concentrated on just five states. When there is so much interest in any particular geography, firms need every edge they can get in order to compete for candidates and possibly consummate a deal. Every selling advantage should be pursued. A well-crafted prospectus is an invaluable, and potentially differentiating, tool to do this.

The objective is not to have a glitzy, slick brochure that simply sets forth a set of platitudes. It is to propose a clear business case and rationale for why anyone should join your firm. Ideally, the rationale would be changed to support the varying dynamics of different groups, however, it would always be consistent with the acquiring firm's overall strategic intent.

Most of the prospectus should focus on the rationale of combining the business of the two firms. It should clearly state why the candidate firm fits the business rationale, and what benefits it should expect to derive from a combination. This is an opportunity to demonstrate the depth of research, evaluation, etc., that have been put into assessing the other firm. Given the ripples in the marketplace as a result of numerous combination discussions, a firm can differentiate itself simply by showing its commitment to evaluating candidates in a rational, businesslike manner. Such a showing will be well perceived and received.

As one frustrated managing partner of a very successful and highly sought-after firm said in exasperation, "If anyone gave me work product that stated what they would do for a client, I would be impressed. Most of what I get is useless and generally indicates shallow strategic thinking."

BENEFITS

The benefits of preparing a thorough and compelling prospectus are significant. An outstanding prospectus (not that it can cover-up poor strategy) is one that can differentiate your firm and place it at a competitive advantage when multiple suitors are part of the discussions. It can also ensure that the enormous amount of time and effort expended by management and others in the firms is supported as much as possible, thereby improving the 'hit rate.' Development of a prospectus forces a firm (in a businesslike and rational manner) to thoroughly evaluate its merger and acquisition strategies, rationale, etc., and allows for candidate firms to better understand where they might fit.

The prime economic benefits that accrue from such an approach arise in two areas. First, there can be an enormous amount of time saved (on behalf of key senior members of the firm) in culling candidates and in closing deals. Secondly, losing a deal is expensive. You will close more if you sell better.

These benefits comprise a powerful motivation for taking the time to develop a good prospectus.

SUMMARY

Altman Weil's *MergerLine* data shows the market for combinations is moving at an unprecedented pace. But many acquisition targets are skeptical about combination overtures, often confused about best choices and are seeking differentiable information about potential combination partners. Use of a combination prospectus can provide a selling edge both for firms that are looking to make acquisitions and for firms seeking to be acquired.

"I never again want to lose a deal because we were outsold or there was a perception that others had a better strategy." This was my client's final comment. He recognized, through a hard lesson, that the battle for market share and professional talent requires greater skill, sophistication and strategic insight than ever before.

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Creating the Merger Prospectus

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Following are many of the items that might be included in a prospectus. Although this is not exhaustive, it represents a good start.

I. **Firm Strategy and Combination Rationale**
   a. What is your strategic intent? (Be candid!)
   b. How do acquisitions fit in? In particular, how would my firm or group further the intent?
   c. What plans might you have for us?

II. **Firm Overview**
   a. Brief firm history (tie in strategic intent)
   b. Demographics (note any holes or gaps)
      i. Partners, associates, paralegals and staff
      ii. Gender and ethnic demographics
   c. Firm's growth history
   d. Office locations – purpose and history of each.
   e. Representative clients (core clients and those you can gain with the combination)
   f. Three to five year revenue history (be candid; AmLaw data are often not accurate)
   g. Pro bono, diversity, community/civic commitment, etc. (important to show values and culture)
   h. Firm values (list and comment)
   i. Top rankings (AmLaw, Chambers, Martindale, etc.; window dressing, but so what?)
   j. Professional development policy, systems, etc. (How committed are you?)
   k. Technology use/strategy

III. **Strategic Intentions**
   a. Growth objectives
   b. Geographic objectives
   c. Attorney recruitment philosophy
   d. Ancillary businesses
   e. Affiliations, alliances, etc.

IV. **Criteria for Evaluating Merger/Acquisition Opportunities**

a. Key leaders involved in evaluating opportunities

b. Key criteria – strategic, economic, cultural

V. **Firm Management Structure**

a. Management/Executive Committee

i. Terms, limits, elections, etc.

b. Managing Partner, Chair, President

c. Administrative Management (Finance, Human Resources, Marketing, etc.)

d. Committees (Associate Committee, Compensation Committee, etc.)

e. Management philosophy

f. Lawyer evaluation, feedback, mentoring

VI. **Practice Groups**

a. General descriptions

b. Number of partners, non-equity partners, associates, paralegals, support staff and other professionals

c. Representative clients for each practice group

VII. **Client Service**

a. Commitment / philosophy

b. Client surveys – hopefully good results

c. Marketing and business development efforts

d. Client testimonials

e. Client relationship management systems (explain thoroughly)

VIII. **Business Development**

a. Strategy / philosophy

b. Resources – personnel and economic

c. Systems and processes

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