

List of provisions to consider including in the Merger Letter of Intent

There is no such thing as a standard LOI. Some firms like it to be comprehensive while others prefer extreme brevity. This list is intended to be a resource of potential items to include in the LOI. It's up to each firm to pick and choose the items each wishes to include in the LOI.

1. Effective date of merger/sale.
2. Name of the merged firm, if applicable.
3. Purchase price/buyout terms:
 - a. Purchase price of the seller which clearly delineates capital from goodwill. Goodwill may be stated in terms of % of fees.
 - b. How will the revenue volume of the seller affect his/her eventual retirement buyout from the buyer?
 - c. It should be clear how the capital of the seller will be determined and handled.
 - d. In a merger, what is the revenue volume that the seller will be given credit for by the buyer?
 - e. Provision for what happens if actual revenue volume of the seller ends up being above or below the projected level.
 - f. How long a period of time after the merger date, is the seller vulnerable to having the purchase price reduced?
 - g. Is there a minimum number of years that the seller's owners' will be required to work before early or normal retirement is allowed?
 - h. Is there a period of time beyond which, the buyer is no longer obligated to retain the seller's owners?
 - i. If any payments are to be made over a period of time, the method of calculating the payments should be specified. An example would be "payments based on collected billings."
 - j. The capital (which is primarily work-in-process and accounts receivable) of the seller will be retained by the seller, but put on the books of the buyer.
 - k. When the seller's WIP and A/R is collected after the merger, how will it be determined which balances the collections are applied against first: Seller's WIP and A/R or the WIP and A/R incurred after the merger?
 - l. How long a period of time after the merger date, will payments to the seller be determined based on collections instead of billings?

- m. What the down payment will be, if any, how it will be calculated and how it will be amortized.
- n. The period of time over which payments to the seller will be made, including guidelines of how the payments will be calculated. This should include the frequency of payment.
- o. Approach or terms that will apply to the buyer's purchase of the seller's fixed assets, if any.
- p. Tax treatment of the payments to the seller.

4. Seller's personnel and their compensation:

- a. Extent to which some or all of the seller's owners will be equity or non-equity partners in the new firm.
- b. To whom will the seller's owners report?
- c. Specify the extent, if any, that some or all of the seller's personnel will become employed by the buyer, and any liability for severance benefits.
- d. Extent to which compensation will be guaranteed for seller's owners and for how long.
- e. The LOI should state how the compensation of the seller's equity partners, non-equity partners and employees will be determined, starting with the first year after the merger.

Here is sample wording: "The Board sets the partner income allocation each year and the results are based on firm profitability and the performance of each partner, including the extent that expectations are exceeded."

- f. If seller's owners work part-time after the merger, it should be stated what the expectations are regarding the billable and total hours that will be worked, the rate of pay and the length of the part-time arrangement.
- g. How seller's owners will be compensated for originating or referring new clients to the buyer.
- h. How perks will be handled, especially those that the seller previously enjoyed and may be eliminated at the new firm.
- i. How will benefit plans be transitioned?
- j. Will employees be required to sign new employment agreements?

5. Retirement:

- a. If the seller is at or near retirement age, how long will the buyer guarantee employment to the seller? What has the buyer and seller agreed on regarding when the seller will retire?
- b. If the buyer and seller agree that the seller may continue to work after the expected retirement date is reached, what will be the terms of that relationship? Equity vs. non-equity partner vs. employee? Full time vs. part time? If part time, how much?

6. Ownership issues:

- a. Capital contribution of owner(s) of acquired firm that will be required.
- b. What the stock ownership will be of the seller's owners.
- c. Number of years of vesting the owners will be given credit for in the new firm's partner retirement plan.
- d. How voting and governance will work.

7. Clients, billings, billing rates:

- a. What the billing rates for seller's owners will be.
- b. In general, if fees and/or billing rates typically billed/used by the buyer are lower than the seller's, how will this disparity be addressed? Will seller be required to move to buyer's fees and rates? If yes, over what period of time?
- c. Will the buyer be required to make best reasonable efforts to retain all of the seller's clients? What constitutes "best reasonable efforts?"
- d. If buyer deems that certain clients of the seller are not a good fit for the buyer, does the seller have any ability to impact these decisions? What is the impact on an earn-out if certain clients are jettisoned?

8. Title and role of seller's owners:

- a. Title and role of all owners of the seller in the new firm should be stated. Mainly, who will come in as an equity partner and who will NOT.
- b. If one or more owners of the seller are to have management positions (department head, member of compensation or executive committee, office PIC, etc.), this should be spelled out.

- c. What will the buyer be obligated to do regarding taking over management of the seller and providing management and staff support to the seller?
- d. If owners of the seller are to have a special work hour arrangement (i.e., less than full time), what will that arrangement be and how will this time be compensated?
- e. If there are critical expectations of the sellers' partners, such as billable hours, client base managed or new business originated, this should be spelled out.

9. Office lease:

If the seller has an office lease that is unexpired as of the date of the sale or merger, who will be responsible for the future payments?

10. Prior acts:

- a. Each firm will not be liable for acts of the other, prior to the effective date of the merger.
- b. Will tail insurance for the seller need to be purchased? If so, who pays? (More commonly, the seller).
- c. If the seller did not carry malpractice insurance, how will insurance for the seller's acts prior to the merger be handled?

11. Role and compensation of consultant:

Sample wording: Buyer has retained Marc Rosenberg and The Rosenberg Associates (RA) as a consultant in connection with the transaction described herein and is responsible for the payment of any compensation due to RA in accordance with the Buyer's written agreement with RA.

12. Contingencies:

Statements of what the deal is contingent on, such as performance of due diligence and the parties obtaining approval from their respective shareholders and the execution of mutually acceptable definitive agreement(s).

13. Confidentiality

- a. Neither firm shall solicit, enter into or pursue any merger discussions or negotiations with any other party until 45 days after the date of this Letter of Intent (more of a buyer need than a seller need).
- b. Each firm agrees not to disclose the existence of the proposed transaction, the terms of this LOI, and any confidential information provided in connection with the proposed transaction for any reason, other than to employees, consultants and professional representatives reasonably required by either firm for the sole purpose of evaluating the proposed merger. Each firm further agrees that its consultants and representatives are bound by this confidentiality agreement and that any breach by these shall be deemed a breach by the firm for whom they are assisting.

If the negotiations should terminate without a transaction, these personal representatives shall not, acting for themselves or on behalf of any other person or entity, be permitted to use the confidential information. Each firm shall advise their respective professional representatives of the existence of the above terms.

- c. Should sale or merger discussions terminate, both the seller and the buyer agree not to disclose any confidential information about the other for three years after the negotiations are terminated.
- d. Each firm and their professional representatives will not make any public announcements or release any confidential or non-public information to trade publications or the press without the prior consent of the other firm.

14. Miscellaneous

- a. Each party bears all of its own costs regarding the merger.

Sellers' owners shall be required to sign the buyer's partner agreement, which will include a non-solicitation clause.