



What's In An Offer?

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Analyzing, structuring and negotiating an offer are all crucial components to the acquisition process. Effectively presenting and communicating the offer to a potential seller is no less important, as it represents the summation of a buyer's efforts in carefully analyzing the opportunity, drafting models to analyze the investment returns that can be expected and creatively pricing and structuring an offer to address the issues important to the seller. The culmination of these efforts is presented to the potential seller in a written document that clearly outlines the key terms and structure of the deal.

There are many names for the forms that an offer can take, including Letter of Intent or Term Sheet. A Term Sheet is often in a condensed format, boiled down to bullet points, tables and charts. In most circumstances, a Letter of Intent is a more formal document signed by both parties, in which the material terms and conditions of an offer are presented in detail. Another form of an offer is a Letter of Interest which is similar to a Letter of Intent but typically is signed only by the buyer and is more general in terms of outlining a range of pricing that will be tightened up after more detailed information is received. This document is usually used to determine if the buyer's general pricing and terms are within the seller's expectations.

There are pros and cons to using a more formal Letter of Intent or a simple Term Sheet. The pros of using a Letter of Intent include providing a more detailed framework for the buyer, seller and legal counsel to draft and negotiate the definitive agreement. By clearly and specifically outlining the significant deal terms and structure, there is less room for disagreement later in the negotiating process or misunderstanding of important deal components. Conversely, a Letter of Intent is more likely to be reviewed by the seller's legal counsel before it is signed, which can delay the process and create negotiation of less significant deal points.

Since deal components are non-binding in both cases, spending time word smithing a Letter of Intent may cause a loss of momentum and put the deal at risk. A more detailed Term Sheet that includes the necessary components can expedite the process. Regardless of the form, all offers should include several key provisions:

- **Identification of the specific assets being acquired** - Depending on the transaction type (stock or asset), there are minor yet important differences as to what is being acquired, mostly relating to assets and liabilities and the assumption of contracts. Please refer to the illustration which outlines the significant items a buyer will want included within the acquisition.
- **Purchase Price** - Outline the payment seller will deliver at closing, incentive/earnout payments (opportunity for receiving, calculation of and performance requirements to achieve), working capital required, etc.
- **Other Terms** - Outline other important deal terms including employment of key individuals, how the facility will be handled and obligations that will not be assumed.
- **Due Diligence** - The offer is contingent upon a buyer's successful due diligence review. Sellers should be required to provide reasonable access to detailed financial, operational, legal and other information in order for the buyer to confirm its investment analysis upon which the offer is based.
- **Exclusivity** - It is reasonable to outline a specific time frame under which the seller agrees to deal exclusively with the buyer and avoid discussions with any other parties, allowing the buyer to conduct due diligence.
- **Binding and non-binding provisions** - A buyer will want to make the offer to purchase non-binding, with no obligation to continue with discussions should it desire to withdraw. Certain provisions, such as confidentiality and exclusivity, are often binding.
- **Other** - General outline of items such as: representations and warranties to be addressed, consents/licenses to be required, confidentiality, expiration of offer, etc.

In an acquisition offer, you have an opportunity to communicate much more than a purchase price and structure. The attention to detail, presentation and communication effectiveness will illustrate your firm's commitment to the process and dedication to putting your best offer on the table, as well as the degree of professionalism with which you approach important business decisions. Put it in writing.

Items Acquired (Not all encompassing / Will vary by transaction type)
The right, title and interest in seller's business
Customer list, expirations, renewal lists and prospect lists
Business and trade names
Carrier and broker relationships and agreements
Employee and business agreements
Books, records, correspondence and files
Fixed assets utilized in the business
Balance sheet assets and liabilities (will often be minimized in an asset transaction)

MarshBerry M&A Advisory Services

Deal Strategy

1. Acquisition Planning
2. Deal Return Modeling
3. Strategic Options Analysis
4. Alternative Buyer Comparison

Deal Preparation

1. Sale Preparation Management
2. Offering Memorandum Development
3. Strategic Pitch Book Design
4. Candidate Profile Creation

Deal Representation

1. Buy Side Representation (inc. Search & Screen)
2. Sell Side Representation
3. Letter of Intent Development / Negotiation
4. Creative Deal Structure Alternatives

Deal Analysis

1. Agency Fair Market Valuation
2. Market Comparables / Deal Benchmarking
3. After-Tax Return Optimization
4. IRR, ROI and EPS Analysis

Deal Execution

1. Diagnostic and Confirmatory Due Diligence
2. Intangible Asset Allocation - GAAP Reporting
3. Fairness Opinion
4. Definitive Agreement Best Terms / Conditions

Post-Deal Management

1. Post-Closing Integration
2. Goodwill Impairment Testing
3. Peer-to-Peer CEO Exchange
4. Earn-Out Maximum Consultation

SNL Financial M&A Advisor Rankings

Insurance Broker Merger & Acquisition Deals
1997-2010

Rank	Firm	1997 - 2010 # of Deals	2010 # of Deals
1	Marsh, Berry & Co. Inc.*	308	33
2	Hales & Company, Inc.	145	21
3	Reagan Consulting, Inc.	117	4
4	Mystic Capital Advisors Group, LLC	111	16
5	Macquarie Capital Advisors Grp., LLC	49	4
6	Bank of America Merrill Lynch	22	0
7	B.H. Burke & Company, Inc.	17	1
7	Sica Consultants, Inc.	17	2
9	Harbor Capital Advisors, Inc.	16	0
9	Keefe Bruyette & Woods, Inc.	16	1
11	Sandler O'Neill & Partners, L.P.	14	1
12	North Bridge Advisors, Inc.	13	0
12	Philo Smith & Company	13	3
14	Credit Suisse (USA), Inc.	9	0
15	Business Management Group, Inc.	8	0
15	Curtis Financial Group, LLC	8	0
15	J.P. Morgan Securities, Inc.	8	0
18	Boenning & Scattergood, Inc.	7	0
18	Gill and Roeser Holdings, Inc.	7	0
18	Nexus Group, Inc.	7	0
18	Optis Partners, LLC	7	3
22	2nd Generation Capital Corporation	6	0
22	Goldman, Sachs & Company	6	0
24	Austin Associates, LLC	5	1
24	Garland McPherson & Assoc., Inc.	5	0
24	Lazard Freres & Co., LLC	5	0
24	Piper Jaffray & Co.	5	1
24	Wells Fargo Securities, LLC	5	0

All States // Completed Transactions
Whole deals as reported by SNL Financial, February 2, 2011
* **MarshBerry has closed 28% of total deal flow since 1997**

MarshBerry's clients are committed to realizing their fullest potential with respect to growth, profit, survival and shareholder value. Our agent, broker, bank and carrier clientele engage us to achieve their goals within the retail and wholesale channels of the insurance distribution system. Our unparalleled industry-specific services include consulting, performance benchmarking, peer-to-peer exchange networks, merger and acquisition intermediation and producer recruiting.

