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THE ART OF NEW BEGINNINGS
CULTIVATING THE DEAL FROM ORIGINATION TO LOI

BEST PRACTICES OF THE BEST DEALMAKERS
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Introduction by
Marshall Sonenshine, Chairman, Sonenshine Partners

David A. Fergusson | Editor

"In the deal business, the early acts in each drama are special precisely because they are early. They set a tone, designed to accommodate the rituals and the surprises, the animal spirits and the compromises, the adversarial interactions and the closing dinner."

Marshall Sonenshine
Chairman
Sonenshine Partners

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INTRODUCTION

Drawing on the experience and expertise of the "best in class "dealmakers, The M&A Advisor (http://www.maadvisor.com), together with the leading provider of virtual deal management services, Merrill DataSite® (http://www.datasite.com), publishes the quintessential dealmakers guide series – **"The Best Practices of the Best Dealmakers."** Profiling the proven strategies and unique experiences of the leading M&A practitioners, "The Best Practices of the Best Dealmakers" series is distributed in regular installments for M&A industry professionals in both print and interactive electronic media. Previously published features and chapters are also available in the online library of Merrill DataSite and The M&A Advisor. We are pleased to present **The Art of New Beginnings: Cultivating the Deal, from Origination to LOI**. This installment examines the post-strategy development processes and best practice methods associated with deal origination and resolution, beginning with the necessary stage-setting communications with potential deal source intermediaries and networks that are key to the deal flow process, extending through the valuation and due diligence phases, the confidentiality agreement and culminating with the formulation and signing of the Letter of Intent (LOI). On the following pages you'll find helpful observations provided by candid interviews with leading dealmakers, including buyers, sellers and advisors, as well as timely insights into the most current trends.

"Opportunities often occur in the maelstrom, the vortex of multiple parties with their multiple agendas."
– Marshall Sonenshine

The Art of New Beginnings: Cultivating the Deal, from Origination to LOI

Introduction

The typical arc of the deal is social at the front end, adversarial during key inflection points, and obsessive in the final stages. In this respect, the front end of the deal is arguably the most fun part, the creative part, and the visionary part. The parties know that if they proceed they will find areas for conflict over price, terms, control of the company, et cetera. And they know that as those elements come to rest, their counsel and teams will engage in rituals of obsession over legal, financial, accounting and other matters. But in the earliest acts of the drama, the deal is social.

Indeed, the language of the early stages of dealmaking reflects the essential social character of the work. There is an "approach." The topic is "socialized." Parties establish a "relationship", which is not a relationship in the personal sense, but a transitory business relationship that might be able to facilitate the mix of collaborative and adversarial interactions that dealmaking requires. A "dialogue" ensues. In other words, the parties are doing the deal.

Deal people know these interactions have ritualistic and tactical designs as well as uncertain elements that can upend those plans. They are on high alert even when they are pretending to be casual in phone calls and meetings and dinners in various cities. This is part of the work of dealmaking, part of the charm of it.

The essays and interviews that follow vet the early stages of dealmaking, from strategizing to socializing to exploring to vetting to documenting letters of intent or memoranda of understanding. In these early gambits, deals are often rendered inevitable or inevitable failures. Much depends on variables that are inherently unpredictable, though skilled dealmakers increase their clients' odds of success considerably. In this context, one should know the standard practices and procedures, but one cannot be a slave to any standardization since deal processes involve human beings who are not really at bottom

playbook animals. Deal dynamics come in all shapes and sizes just as deal people and companies do. One size will not fit all.

Practitioners, whether bankers, executives, companies or investors, are often asked, "How do you source deals?" There is rarely a formulaic answer. Rather, the answer usually has to do with a constellation of analysis, professional network, persuasion, leverage, moxie, stubbornness and luck. I am a big believer in all of these tools of the trade, but a particular fan of persuasion. Perhaps that is the lawyer in me, or maybe it is just a personality tendency. Deal people often boast that they do not take "no" for an answer, which may well be true, but not accepting "no" begs a deeper conundrum of how to lead someone to a different answer. Each deal dynamic and situation is unique, so the answers here are a motley brew of carrots, sticks, arguments, logic, seduction, threats and social interactions.

There is merit to keeping some elements simple wherever possible. A particular example of this is the nondisclosure agreement (NDA). Much ink and blood has been shed over NDAs, but in truth, the number of NDAs that have led to real disputes, much less litigation, is miniscule. One can reasonably obsess (particularly when dealing between rivals) over non-solicitation of key target managers and standstill provisions in public or potentially hostile situations, but most of the other elements are thankfully fairly standard and not particularly worth obsession (though in some sectors, most notably technology and other trade secret or intellectual property rich arenas, things get trickier). If two parties cannot agree readily on NDAs, they are unlikely to agree on a deal. But like everything else in dealmaking there are exceptions, and this author has struggled through the occasional NDA that seemed tougher than the rest of the program.

The letter of intent (LOI) or memorandum of understanding (MOU) is another area of some debate. Many deals are best done without any LOI or MOU for the simple reason that the document is often not binding anyway. In those situations, once a price and a few other basic terms are in place, it may be efficient not to interpose another area of conflict when one can go straight to the only document that really matters, the definitive agreement. This may be sensible where the parties know exactly what they are doing, while in other situations the interposed LOI may be necessary to avoid chaos. Here again, one makes judgments based on the specific facts of a case, not some imaginary playbook for all games.

Usually, the most controversial issue in the LOI (other than price) is whether there is a grant of exclusivity during the suitor's due diligence process. The target should avoid it at all costs, and if they grant exclusivity they ought to get something good in return – like a good set of terms that they have reason to believe will survive the deal negotiation process. The moment a provisional nod is given, leverage shifts to the buyer. So, one ought to not stack the deck further in the buyer's favor without getting a few chips back in return.

The great fear for the target is that by granting exclusivity, the target confers on a buyer a privilege the buyer may later abuse, re-trading price for no valid reasons after the target has chased away other suitors by ignoring them during the exclusivity period. Thus, it may be wise to complete major diligence items first and then do an LOI with at most a short exclusivity window, if at all. But target beware: one person's "confirmatory due diligence process" is another person's opportunity to retrade.

Perhaps most important, the deal process must house both conflict and collaboration, since all deals have both ingredients. Dealmakers understand this and they behave accordingly. In some moments one invites the other side to a five-star dinner; days later, one may abruptly end a call or meeting with an epithet thrown in for effect. As noted, these dynamics are not exactly what are generally meant (at least for this author) by the word "relationship," but deal relationships bring people together for a very particular purpose – doing a deal.

For most companies, the deal is an interruption to the ordinary course of business; only for dealmakers is deal-making the ordinary course. Thus, dealmakers are an unusual lot. For us, the ebb and flow of deal interactions are colorful and opportunistic, much as is the case for trial lawyers and politicians. Opportunities often occur in the maelstrom, the vortex of multiple parties with their multiple agendas.

In the deal business, the early acts in each drama are special precisely because they are early. They set a tone, designed to accommodate the rituals and the surprises, the animal spirits and the compromises, the adversarial interactions and the closing dinner. Much happens at the beginning. Thus, this edition of Best Practices is dedicated to studying the Art of New Beginnings.

Marshall Sonenshine
Chairman
Sonenshine Partners

Part I: Finding and Pitching the Deal: the Beginning of the Beginning

A: Sourcing: the Start of the Mating Dance

"M&A practitioners, whether bankers, executives, companies or investors, are often asked, how do you source deals?' There is no formulaic answer."
– Marshall Sonenshine

Deal sourcing is the earliest step in the M&A mating dance that leads to the signing of a letter of intent, the first major milestone in the deal process. Sourcing is dependent on deal flow, which, in turn, is a product networking and research. There is no magic formula, no silver bullet for sourcing M&A deals, for juicing the deal flow process. Each deal begins as a result of months or years of assiduous care on the part of dealmakers, of lunches and contacts and information trading, of relationship building. Each dealmaker has their own way and style that suits their individual personalities, deal theses and corporate strategies. In short, there are as many deal-sourcing approaches as there are dealmakers. In the ensuing paragraphs, we will explore the origination approaches of four dealmakers, each representing a different professional sphere within the M&A practice.

B: The Investment Banker: 90 TMT Deals

"Instead of talking about other cable companies, I'm talking to every cable company owner." – Garrett Baker, President, Waller Capital Partners

Garrett Baker is an investment banker who is active primarily in the TMT (telecomm, media and technology) space since the 1990s, first with Bear Stearns and, since 1998, with Waller Capital Partners, where he is president. In 2014, he was named 40 Under 40 Dealmaker of the Year by the M&A Advisor. He is a sell side banker, assisting private equity funds in the sale of portfolio companies in deals valued under $3 billion. Baker has personally been involved in at least 90 TMT M&A transactions during his career. His approach reflects that of his private equity clients: he remains close to PE portfolio companies during their five- to seven-year hold period, gauging a portfolio company's growth while devising an evolving go-to-market strategy, all the while staying in touch with every potential buyer in his subsector. "Instead of talking about other companies, he explains, "I'm talking to every cable owner," he says.

"It's necessary to be an actual participant in your networks, beyond lunch dates." – Larry Chu, Partner, Goodwin Procter

For its part, his firm stays connected to business owners in its wider TMT base, including metro fiber providers, digital media and e-commerce companies. "We do the same for entrepreneurs who start businesses," Baker declares. "We track them over time, because they tend to hold onto their companies longer." Baker and his firm also track divestures by large corporations. He and Waller maintain relationships with many big companies valued between $10 billion and $50 billion that are considered clients. "We're not expecting them to sell their companies, but they may need us for divestitures or to hire us on the buy side," he says. "Maintaining those relationships and making sure that we make our contacts aware of the deals we have done and the deals that are in our pipeline keeps us top-of-mind, which helps our cause when deals emerge that are in our wheelhouse."

Waller, Baker says, has never employed an internal business development professional. "The way we get most of our work," he declares, "is by doing our work." In his eyes, the most effective way to market Waller's capabilities to potential buyers "is for an owner of a company to see us selling another owner's company, maybe selling that company to that owner, or showing it to that buyer and then selling it to another buyer for a higher price."

C: The Lawyer: Contributing Data to the Tech Ecosystem

"It's necessary to be an actual participant in your networks, beyond lunch dates."
– Larry Chu, Partner, Goodwin Procter

Larry Chu, a Silicon Valley attorney, is a partner at law firm Goodwin Procter. It's the Silicon Valley style to foster networks, he notes, but not merely by taking potential clients to lunch. In Silicon Valley, he explains, "It's necessary to be an actual participant in your networks, beyond lunch dates." Chu cites Stanford futurist Paul Saffo, who coined the expression "contributor economy" to describe Google's business model. What Saffo means, says Chu, is that Google users are not simply consuming a service by using the Google search function. Instead, users are actually contributing their data to the Google ecosystem.

Chu says that being a participant in the tech community in Silicon Valley "is about fostering relationships with individuals on the buy side, showing them emerging companies and cool technologies that we are seeing in the marketplace, helping them deal source." Similarly, he adds, attorneys from his firm's sell side practice introduce their contacts to potential investors, sources of human capital as well as to potential commercial relationships. "We try to participate in our community in a meaningful contributory way," Chu says. "We do this because we are blessed to be advisors in the technology space, where we are witness to so much dynamic activity in the form of emerging technology trends and new-born companies." Being a daily witness to such developments, he explains, "enables us to build robust and meaningful networks of people who turn to us for advice, to get a read on a new trend, or to unearth a potential deal." Assuming such a network building posture in the Silicon Valley mode creates top-of-mind awareness for dealmakers who can then expect a return on the information they have contributed to the tech ecosystem. His advice to dealmakers in and far beyond Silicon Valley: "A network that is nurtured and strong is the most effective way to source deal flow."

Chu's law firm also chooses not to employ business development practitioners to source deals. Instead, the firm relies on an internal marketing team. The marketing team, he explains, assists in arranging thought leadership events, "or fun things we can do with our friends and members of our client base, primarily private equity firms." In the tech world, he explains, business development professionals appear to lack the marketplace insight. "Having a big Rolodex doesn't work for us," he says, adding that, in a Silicon Valley environment, "business development professionals can neither talk intelligently about substantive topics that are relevant to our profession, nor can they participate in what is occurring in our marketplace." His perspective, he admits, differs from that of PE firms. "Private equity firms definitely need business development professionals to learn what is occurring in our world."

D: The Corporate Strategist: Adhering to Strategic Priorities, but Keeping an Open Mind

"If we acquire a company that comes to our attention through an advisor or a banker, the board should fire me." – Villi Iltchev, Senior Vice President of Strategy and Corporate Development, Box

"If we acquire a company that comes to our attention through an advisor or a banker, the board should fire me."
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Villi Iltchev came aboard at as Senior Vice President of Strategy and Corporate Development at Box, a Silicon Valley-based online file sharing and cloud content management service, after stints at Lifelock and Salesforce. His approach to sourcing, he says, begins with his company's corporate strategy. "I don't look to acquire companies that are not aligned with our three-year strategic objectives," Iltchev declares. He explains that he closely engages the Box organization and product teams to in order to garner a deep appreciation for their direction and, when possible, to influence that direction. When he achieves a solid understanding of corporate priorities, he adds, he is in a strong position to provide Box senior management with the appropriate relationships within every potential acquisition target.

Iltchev spends about 25% of his time communicating with external companies, some of which may become Box targets. He talks with two companies a day, ten companies a week, and five hundred companies a year. His corporate development team consists of two professionals and should, in combination with Iltchev's personal efforts, facilitate contact with about with about 1,000 companies annually. "This enables me to gain exposure to, or to have a relationship with, every company we may wish to acquire." In his relationship-building efforts, he explains, he communicates not only with potential immediate targets but also with emerging companies that might be worthwhile acquisition candidates years in the future. "I keep an open mind throughout this process," he says, "because part of my role is to find acquisition opportunities that may be off-strategy but are highly relevant and perhaps eye-opening and that might have an impact on our strategy."

His approach, then, is two-pronged: finding immediate acquisition targets and finding and tracking surprising and "exciting" new companies for possible future acquisition. This approach, he says, adheres to the template he established at Lifelock and Salesforce during the past six years. "This is where the world is going; the Internet is disintermediating the brokers of information and the brokers of relationships," he asserts. This trend, which started in

the tech community, does not portend the end of the investment banking role in origination, Iltchev emphasizes. Instead, he says, it reflects the highly sophisticated nature of Silicon Valley deal sourcing, relationship building, and deal execution, "Because the velocity at which we in tech execute acquisitions is far greater than in any other industry."

For Iltchev, the rise of Internet speed-dating in M&A means that he has long since eschewed traditional M&A information sources. "I'm pitched every day, all day by individuals and companies selling access to M&A intelligence. I refuse to subscribe to any paid source of company information. I have no problem telling our board, 'If we acquire a company that comes to our attention through an advisor or a banker then the board should fire me.' If the company brought to us from outside sources was an attractive company in an attractive market I should not be finding out about it through an advisor."

To Iltchev, business development is relevant to platform sales, not to M&A dealmaking. As a strategic buyer, however, corporate development is his DNA. To him, as to most corporate development pros active in the dealmaking process, the primary mission of a corporate development team is to support corporate strategy through inorganic means. Yet in quadrants of the tech world, and at companies like Microsoft, for example, the corporate development team is the deal execution team. This team plays little if any role in strategy formulation, which, along with target selection, often emanates from individual business units. The corporate development function encompasses deal negotiation, process management and post-close target integration. However, in some tech companies, like Box, Salesforce and Lifelock, for instance, corporate development teams, in addition to deal execution, are closely engaged in strategy formulation at the product team level while also meeting annually with 3,000-4,000 potential acquisition targets. Iltchev, however, believes strongly that the corporate strategy should be owned, not by the corporate development team, but instead at the product level. "The individual who formulates strategy should be accountable for its implementation," he declares.

E: The Private Equity Executive: Ferreting Out Owners and Targets

"Ours is a very routinized sourcing process." – Bob Fitzsimmons, Managing Partner, High Road Capital Partners

A Citibank investment banker before co-founding High Road Capital (a private equity firm focusing on small and middle market companies) in 2007,

"We source deals by leveraging our contacts and focusing on centers of influence in our origination approach."
– Marc S. Price, Co-Founder, Executive Vice President, Loan Originations and Corporate Strategy, Salus Capital Partners

Bob Fitzsimmons rejects the direct approach to deal sourcing. "We think that the direct approach, calling directly into companies to, try to engage senior management in a dialogue about selling their company, is a very low-probability proposition," He says. Instead, Fitzsimmons continues, High Road (which views itself as a generalist investor favoring manufacturing services, healthcare and media targets in the $10 million-$100 million range with a $2 million-$10 million EBITDA) prefers to ferret out companies with owners who wish to sell, and who have already engaged a banker or broker to help facilitate the sale.

Fitzsimmons' firm maintains a database of about 6,500 intermediaries, amounting to more than half the intermediaries in the U.S. High Road maintains regular contact with the intermediaries in its database via blast and specifically targeted emails, regular phone calls and visits to the cities where intermediaries are concentrated. The firm is also active in the Association for Corporate Growth (ACG), an unofficial M&A trade association, with attendance at ACG meetings or larger events. High Road covers its niche nationwide and in Canada through combinations of these methods.

"Ours is a very routinized process," says Fitzsimmons. "We rigorously track how frequently we are reaching out to every intermediary in our database." High Road uses a customer relationship management (CRM) sales force to determine which intermediaries should be targeted for more frequent contact and those that require contact only once annually. Finally, special reports are produced aimed at aiding High Road in determining the number of intermediaries that have been successfully tracked.

Also routine for most private equity firms is the use of business development professionals to help source deals. In fact, Fitzsimmons recommends their use. "Our two business development professionals do nothing but source deals," he says. "In our business, transacting partners become busy doing deals and then fail to spend time prospecting for new deals." The result is that the transacting partners wait so long to ramp up prospecting following the close of a transaction that too much time is required to fill the deal pipeline. "We

have found that it is very useful to have professionals in the background who prospect fulltime because the sheer size of our prospect network of small middle market companies demands it." The head of the High Road business development team is a former investment banker who is adept at networking, a requisite skill in High Road's PE niche. "We need an individual with strong networking skills, excellent presentation skills, who is very disciplined at making contact with thousands of individuals each year, is effective and efficient with follow-up, especially with contacts who have deals to discuss, is proficient and explaining our objectives to company owners and the reasons why they ought to sell to us."

F: The Asset-Based Lender: Focusing on Centers of Influence

"We source deals by leveraging our contacts and focusing on centers of influence in our origination approach." – Marc S. Price, Co-Founder, Executive Vice President, Loan Originations and Corporate Strategy, Salus Capital Partners

In M&A transactions, not all financing is derived from funding sources that are regarded as traditional. Some transactions, especially those when the buyer may require additional liquidity, are funded by asset-based lenders. Lenders such as Salus Capital, and the secured ending divisions of large commercial banks, provide acquisition loans collateralized by corporate assets, including plant, equipment, trademarks and accounts receivable, for example. This collateral is viewed as the primary source of loan repayment, while the borrower's creditworthiness is regarded as a secondary source of repayment. A defining characteristic of asset-based finance is an emphasis on monitoring the collateral, with the asset-based lender focusing on credit analysis and the value of accounts receivable and inventory in estimating the level of liquidity that can be made available to the borrower. A loan structure is then formulated. Collateral monitoring technology is deployed that is continuous and focused on the collateral, an approach that significantly reduces the risk of loss inherent in delayed intervention and/or asset recovery by the lender.

Marc S. Price, an M&A Advisor 2014 Professional of the Year finalist, is Co-Founder and EVP/Corporate Strategy and Acquisitions at Salus Capital Partners, the asset-based subsidiary of Harbinger Group, Inc., a diversified holding company. Price says that the Salus core management team averages 20-25 years of experience, with special and extensive expertise in asset-based lending to middle market borrowers. Says Price: "We source deals by

"Credibility is the major element of the pitch." – Garrett Baker

leveraging our contacts and focusing on centers of influence in our origination approach." Such centers of influence can include private equity sponsors, loan workout professionals, commercial bankers, investment bankers, attorneys, former borrowers or a combination thereof.

Price points out that typical asset-based borrowers possess the following characteristics:

- Dependable and timely financial reporting
- Reliable systems and IT infrastructure
- A viable business plan
- Visibility to an exit or refinance
- A proven management team with relevant industry experience
- Portfolio diversification
- Familiarity with the asset class

Salus does not employ an army of business development professionals. Declares Price: "We'd rather spend the overhead dollars monitoring our portfolio." Nevertheless, he adds, his firm places corporate development professionals in strategic North American markets, such as Toronto, Atlanta, Los Angeles, New York and northern California. Their job: to make sure that the Salus brand and capabilities remain relevant and vibrant in each location

Part II: Pitching the Client: What Works, What Doesn't – and Where

A: Establish Credibility

"Credibility is the major element of the pitch." – Garrett Baker

Credibility is hard earned. Once earned, it becomes the most essential ingredient in most client pitches, whether the dealmaker is a banker, a PE

firm, a lawyer or a corporate. If even the slightest tear in the cloak of credibility becomes visible in the form of an errant fact or a wrong assertion, an opportunity valued at millions of dollars, tens of millions or more can dissipate faster than chimney smoke in a hurricane.

Waller Capital's Garrett Baker presides over an investment banking firm with hundreds of TMT deals to its credit, a big plus in any pitch. Credibility, Baker says, enables Waller to legitimately claim marketplace dominance. Says Baker: "We tell private equity firms that another investment bank may claim that it did X number of deals involving X dollars and that the firm is first in the league tables. Our response to such an assertion is that we do 60% of the deals in the TMT sector – and our knowledge of this business and this sector is deeper. Period." The major ingredients of his pitch: establishment of credibility, and possessing a thoughtful plan to sell the company. "We don't hang out a 'for sale' sign and then summon buyers in the hope that they will show up." Instead, he explains to PE firms what he believes specific buyers are seeking and what his negotiating posture will be. He identifies the competitive hot buttons and explains, in detail, how he will push the right buyers to get the right price.

To asset-based lender Marc S. Price, credibility comes in the form of the ability to infuse clarity into complex concepts for the borrower's benefit. "You need to be relatable and concise in the pitch, and be able and willing to listen to what the client needs and then tailor a solution that fits a go-forward type of relationship in terms of addressing most of the potential borrower asks. Be certain, as a lender, that you will be able to live up to the pitch ingredients throughout the tenure of the relationship." Credibility is part of any first impression, and there is no re-do for a first impression, Price emphasizes.

B: A Concise Message Can Win the Day

"To me, the most essential ingredient of a successful pitch is a clear and concise message about what we can do for the client's business." – Bob Fitzsimmons

Private equity firms acquire companies, refine them, prime them for growth and sell them. It is not small task to convince a business to sell a company he or his family founded to a PE firm. That business owner, says Bob Fitzsimmons, wants to sure about the journey on which he and his employees may be about to embark: "To me, the most essential ingredient of a successful pitch is a clear and concise message about what we can do for the client's

"Know what you're talking about; don't make a mistake."
– Larry Chu

business." Fitzsimmons' PE firm, High Road Capital, specializes in buying smaller companies and then finding ways for those companies to grow. Most entrepreneurs are able to grow their companies' bottom lines to a certain point and then no more. Some owners simply do not wish to grow their company any further. Others wish to grow but lack the capital funding or the expertise to execute add-on acquisitions. In each of these scenarios owners are considering entrusting their company's fortunes to an external entity. That's when a firm like High Road enters the picture. At that point, Fitzsimmons says, his mission, in the form of a low-key informational pitch, is to explain to a business owner how Fitzsimmons and his firm operate." He tells them, he says, "that we pride ourselves on being fair, on being straight-shooters, that we are very focused on growing the companies that we acquire and have an excellent track record." These ingredients, he says, constitute a clear and compelling message that resonates with business owners.

C: Different Strokes for Different Folks in Silicon Valley

"Know what you're talking about; don't make a mistake." – Larry Chu

Pitches are the same, but different, in Silicon Valley, because dealmaking there is the same, but different. For starters, says Larry Chu, consider the risk/reward thought process in tech deals. If he had to pick one element of how the assessment process differentiates tech M&A deals from all others, Chu picks this: In classic M&A, a target is selected for its inherent business attraction or technology value. Tech buyers, however, place an equal value on the cost of missing out on the opportunity to buy that company. That is a cost that is difficult to quantify because it is unique to each buyer. In the blizzard of cloud deals during the past few years, gaining speed and scale in a vertical or sub-vertical technology has proven to be key. Declares Chu: "If you miss out on a target just because you're worried about the absence of classic support for the valuation, if you just look at it on a stand-alone basis, the deal assumes a different role in the risk-taking calculus, thus driving higher premiums than we are accustomed to."

Deal speed is another factor that differentiates tech deals from others. There are some big technology buyers that take their time but most buyers in the

tech space move very quickly. A 30-day process is the new normal. In 2014, the time frame has been further constricted. One prominent acquisition, Chu points out, was done in less than 10 days. "These are big, complex deals done in very short time frames." Narrow windows are possible, he says, because tech companies are accustomed to moving fast in product generation and also pivoting quickly to seize opportunities.

A third differentiating factor, and one of the tech industry's major challenges, is access to tech talent, an extremely competitive endeavor in Silicon Valley. In deal pitches and in deals, there is a spotlight on how to best structure deal retention, which Chu calls "founder unfavorable." Issues crying out for resolution include persuading tech founders to revest portions of the deal consideration that they would otherwise receive, and have earned through several start-up years. "Now those founders are suddenly are seeing buyers ask for 20%-40% and up to 80% of the deal consideration that they would have gotten to be revested over 2-4 years. You work hard and you think you are going to get that big payoff after you've been eating ramen for several years, but the payday is postponed or eliminated," Chu says. In many current tech deals, the carrot/stick approach is back in vogue. Revest is the stick. The carrots are go-forward incentive pools that are becoming bigger and more numerous. Comments Chu: "These are human elements that need to be factored into the cost of a deal that are unique to the tech industry – and some of the numbers involved are staggering."

Although tech deal terms are somewhat more relaxed than in other deal spheres, they are more draconian in ways that are largely alien in other industries, especially around exposure to intellectual property (IP) issues. The reason for IP contentiousness: intellectual property is the major asset in most tech transactions. IP has become a litigious battleground, says Chu. "The patent regimes around the world differ country by country and are fraught with potential litigation-type issues. Even if it's not an issue that affects the functionality of product, it can attract real-dollar liability in litigation and mountainous legal costs." Companies, he says, have been burned in tracking damages around IP issues that exceed the typical 10%-20% escrow. Now a second concentric circle has emerged consisting of IP-related hot-button issues, like privacy concerns and data security. "It's an ever-expanding circle of IP-related concerns," he remarks.

"Make the best possible first impression." – Marc S. Price

All of the above is a backdrop for tech dealmakers in making an effective client Silicon Valley pitch. Chu offers the following advice regarding the pitch's base expectation component at this turbulent tech moment in time: "Know what you are talking about; do not make a mistake." Being contextual, he points out, can be critical in outperforming in a pitch. "In dealmaking there is no such thing as one-size-fits-all." Recently, he says, his firm held a seminar for a large public company prospect that was seeking involvement in Silicon Valley dealmaking. The company is experienced in M&A dealmaking, but has traditionally used East Coast advisors and lacks tech dealmaking experience. During the seminar, Chu recalls, "We advised these participants that tech deal terms differ from others in rhythm and pace, in how the tech industry copes with human factors, such as retention. This is related to knowing your client and doing your homework. Including all of these factors in a pitch makes it more personal, in sharp contrast to a canned presentation." In this era, Chu concludes, clients and dealmakers do not lack for options. Therefore, he adds, "Liking the person you'll be working with becomes incredibly important; making a lasting personal connection very desirable."

D: Advice to CEOs from a Tech Pitch Catcher: Understand Your Product

"Good companies are not being sold, they are being bought." – Villi Iltchev

For tech company CEOs looking to sell to a strategic buyer, Villi Iltchev of Box has this advice: the winning pitch starts with the product. Iltchev prefers to contact, or to be contacted by, CEOs of potential acquisition candidates, not by external advisors. "Good companies are not being sold, they are being bought," he emphasizes. Good companies, in Iltchev's estimation, possess three key ingredients: a well-informed CEO/founder able to succinctly and convincingly describe the product, a strong talent base, and, of course, the requisite business metrics.

"If a company comes to me through an advisor, it is, by definition, not a quality company," Iltchev alleges. A quality company, he says, is headed by a CEO/founder who is well versed in their company's products and customer relationships, and who is able to speak effectively about them. Unfortunately,

he adds, some sellers either lack sufficient knowledge of their product or are unskilled presenters, which detracts from their ability to make a cogent and compelling pitch to a prospective buyer. Says Iltchev: "I expect the CEO to know his product and to be able to walk me through every decision made surrounding that product, to tell me how and why the product has been a winning formula for his customers and why his company's customers picked his product over a competitor's."

Iltchev also expects the seller to possess a deep pool of talent. As important as a company's product and technology may be, Iltchev says, absent a talented workforce, they are worth but a fraction of the company's true purchase value, even in a very large acquisition. He makes an effort, beginning early in the acquisition process, to build relationships with the target's talent. Iltchev emphasizes that those relationships "are incredibly important in building trust and must be authentic, genuine, honest, and transparent, even in the initial phases of the deal process." The reason: without sufficient talent retention, there is no deal.

And the seller's business metrics must meet buyer expectations. Before he pulls the trigger on a deal, Iltchev says, he requires an affirmative response to his three questions: 1.) Does the product match his strategy; 2.) Is the seller team a team I can work with; 3.) Do the metrics measure up?

E: Advice to Asset-Based Lenders: Be Relatable, Be Accountable

"Make the best possible first impression." – Marc S. Price

In weekly meetings with his staff, asset-based lender Marc S. Price makes it a point to simplify the essential ingredients of his firm's stump pitch to prospective borrowers: 1.) Be relatable and concise in the pitch; 2.) Listen to the borrower's needs; 3.) Be able to tailor a solution that addresses most of the borrower's asks and facilitates a go-forward relationship; 4.) As a lender, be able to live up to the pitch ingredients throughout the tenure of the relationship; 5.) Make the best possible first impression. As the team leader, he says, "I hold myself accountable to the same standards as my team."

"CAs are generally ignored." – Garrett Baker

Part III: The Run-up to the Letter of Intent: the End of the Beginning

A: The Confidentiality Agreement: The Dancers Face the Music

"CAs are generally ignored." – Garrett Baker

"CAs are very significant." – Villi Iltchev

Once the social phase of the pre-LOI dealmaker dance winds down, it's time to begin to get real, to tip-toe toward the potentially adversarial stage of the M&A dance that can begin with post-LOI due diligence and extend through the purchase agreement, the close and post-close integration. The formulating, negotiating and signing of the confidentiality agreement (CA), also known as a non-disclosure agreement (NDA), and then the Letter of Intent, marks the end of the beginning of the deal process.

The significance of the CA varies wildly among dealmakers. Some ignore it. Others obsess over it. At either extreme, however, the CA must be dealt with by the deal participants. What is significant about the CA/NDA is that it is the first formal agreement to be entered into in an M&A transaction. The CA, at its essence, is an arrangement wherein both parties in the transaction agree to share information with each other but to refrain from sharing that information with outsiders. The dealmakers also promise not to divulge the information that discussions between them are in fact occurring and are ongoing. In other words, the discussers are not allowed to talk about the discussions. Despite the disdain with which it is sometimes regarded, the CA/NDA is a serious legal document that mandates discretion by the dealmakers on both sides of the table.

According to Garrett Baker, buyers and sellers in the TMT space usually ignore the CA. "The CA gives the client some sense of protection that its information, and the news that it is involved in a deal, is not getting into the marketplace." But Baker also says that, in his opinion, the CA does not provide much of an advantage. "The players in the space know about a significant deal almost immediately," he remarks.

Attorney Larry Chu has a higher opinion of the CA's value. He views CAs as multifaceted agreements that address the disclosure and, more importantly, the use of confidential information, which is especially important in the tech world in which Chu is a practitioner. "When you are sharing trade secrets, business and details about your technology with a potential buyer," he says, "disclosure is damaging, but equally damaging is sharing the information and then not doing a deal, and the information you shared in good faith is put to uses which you did not anticipate or protect yourself from." Too often, Chu says, dealmakers fail to focus sufficiently on CA provisions that protect against such outcomes. CAs often contain a residual clause giving a buyer the legal right to use information gleaned from due diligence in building the buyer's own technology without paying royalties. "You could be giving up some very important use and ownership rights in a CA without any awareness of what you are ceding," Chu warns. Secondly, he cautions, care must be taken around provisions such as non-solicits, for instance, especially on the sell side. "In a competitive environment a seller is sharing environment details about employees. If the deal falls through, those employees can be picked off by competitors." Lastly, CAs set expectations and rules of the road around how and when information will be shared while defining the liability. "There are often provisions around not making representations on this information," Chu notes. There are rules about contacting customers and around sharing privileged information. "You have to be smart in a practical way in constructing a CA that includes the sharing of information about customers, because your M&A counterparty might be a competitor of some of those customers," he says. Chu's bottom line advice regarding CAs: Do not talk to a possible merger partner unless a CA is in place. "It's surprising how often that advice is not followed," he says.

Private equity exec Bob Fitzsimmons concedes that a CA is less important to him than to a strategic. But he also notes that, in a way, the CA is important to all dealmakers. "In order to know whether we want to buy a business, it is necessary for us to have information about the operation of that business. Therefore, the seller must be made to feel comfortable providing very confidential information to us." The most reliable way to provide that comfort, he says, is by having a well-drafted CA that will preclude a buyer from doing anything adverse with the information obtained.

Asset-based lender Marc S. Price takes CAs seriously. "We're an SEC-registered advisor and part of a public company. At the outset of every opportunity we

"We want to walk in smart – not only about the company, but also about the industry in which the company operates."
– Bob Fitzsimmons

produce standard NDAs and copies that are run in parallel with the origination effort but accountable to our general counsel." This procedure, he explains, allows all parties in a transaction to understand that his company is in receipt of privileged information and therefore obligated to live up to the terms of the CA.

Calling the CA "very significant," Villi Iltchev includes NDAs, but only later in the deal process when he wants to "get serious." The purpose of an NDA, in his opinion, is twofold: 1.) "I don't want to tell everyone in Silicon Valley that I'm having conversations with an entrepreneur, or that I've decided not to buy his company"; 2.) "I don't want the entrepreneur spreading the word that he is talking to me." However, under some circumstances, he says, the NDA can often prove to be mostly useless. "People from the company I'm talking to about a possible deal can say, 'I'm talking to a company whose name begins with B and ends with X.' " Old-school lawyers often request extra NDA provisions to guard against such eventualities, but usually fail to have their requests granted. One such provision, Iltchev says, is a residuals clause that states, in his words, "What you tell me that remains in my brain I get to keep and use as I see fit. I can destroy any documents you want me to destroy, but what you tell me stays with me." Never, he says, will he sign an NDA or even have a meeting with any individual who demands a residuals clause. Nor, he declares, will he, or has he ever, signed a non-solicitation clause. "We are in an Internet world now and I can find all the employees I want to find. Nor do I want to send our HR department a list of companies that we can or cannot approach." Requests for these clauses occur frequently, he says. "I'm still asked for them. It's like a game, because the other party wants to see if they can slip this clause past me – but they can't."

B: Pre-LOI Management Meetings: How Often? How Useful Are They?

"We want to walk in smart – not only about the company, but also about the industry in which the company operates." – Bob Fitzsimmons

The jury is out on how many meetings buyers should have with seller management before the LOI phase begins. Bob Fitzsimmons prefers to meet

with the entire senior management, not a single individual and not only the seller's owner. "When we have a first meeting with the seller, it is with the seller's management team. We like to show up well-prepared, having learned as much about the seller's business as possible. We want to walk in smart – not just about the company, but also about the industry in which the company operates." That means arriving with a set of questions that have been thoroughly thought through. The management responses to those questions, he says, will determine whether or not his PE firm proceeds with the acquisition. At his firm, Fitzsimmons emphasizes, pre-visit preparation helps them to "get up the curve faster, and to demonstrate interest and enthusiasm to the managers on the other side of the table."

Garrett Baker's investment banking role does not include conducting due diligence for counterparties. His key meeting is with his client, the seller. His aim is to determine how the client wants to present the business to prospective buyers and to make sure his Waller Capital team has a thorough understanding of the client's business. His major request of his client: "Make us aware of any information we need to know so that we provide you with the best advice on how to most effectively approach the market." His aim is not to glean every scrap of information about the client's operations. That is the buyer's role via due diligence, not his as the banker.

When he represents buyers, Larry Chu finds value in management meetings. He uses these meetings to scope out the deal terrain, especially when the transaction involves private company acquisitions in which there is no public market to set the benchmark for valuation, "when all you have to go on is data points." Pre-LOI, he explains, it is important to obtain the capitalization table to learn how much money has been raised and then meld that information with the expectations of venture capitalists. The objective: to triangulate on a value that makes sense to the buyer and also to the seller founder and his investors. "I need the constituencies in the deal to be, if not happy, at least comfortable with the valuation because it is too difficult to buy a company if the seller investors are not behind the sale." Especially in tech deals, he explains, it is important to get a feel for the management team, to learn if the team members are sharp, effective and prepared.

Management meetings are a sound way to determine the strategic fit of the seller into the buyer's organization. With a strategic buying binge underway in Silicon Valley, the buyer needs to know if the seller fits with the buyer's

"There is nothing more telling than the perspective gleaned from sitting across a table from a potential borrower's CEO, CFO or other constituents - Marc S. Price

strategic roadmap. This is especially crucial in an industry in which traditional valuation methodologies are not those that need to be deployed in assessing a target. Pre-LOI, Chu explains, it is important for the tech buyer to acquire the needed information in order to put forth a proposal.

Tech strategist and corporate development ace Villi Iltchev insists that in a sizable transaction, "serious" buyers, after spending 2-3 days or less with a target's management team, ought to be able to garner the needed information as to whether they should acquire the business. "Our meetings with the target management at Box headquarters and at the target's company are also for relationship building purposes," Iltchev asserts. Then he spends a day, two at the most, with the seller team covering all major issues in a series of two-hour meetings, each meeting dedicated to a specific issue, usually sales and marketing, product, and vision. He also spends half a day with the target's engineers, "geeking out" on architecture and making sure, from a technology perspective, that the acquisition is the right fit. Often, he adds, there are follow-up conversation as his team proceeds with model building, valuation and creating a case for synergies. In aggregate, he concludes, three full days with the target management team is the maximum a buyer should expend in a tech transaction. It is at that point, Iltchev notes, that the target's founder should be advised that "a request for the buyer to spend more than three days with target management is a waste of the buyer's time."

For asset-based lender Marc S. Price, management meetings are an occasion to differentiate his team and company from other lenders in an M&A deal. "Our money is green, just like every lender's," he says, "but we have an unwritten rule at Salus that one of the partners must meet the individuals who run the company we are lending money to." More often than not, he says, "my gut will tell me whether or not the management team members will have the ability to navigate through their business plan." It's one thing, he says, to make a transaction underwriting decision based on a set of financials, audited statements, projections and other ancillary due diligence documents, "but there is nothing more telling than the perspective gleaned from sitting across a table from a potential borrower's CEO, CFO or other constituents." That is the

best way, he emphasizes, "to get a clear reading on whether the borrower can uphold the rules, requirements and spirit of what is being contemplated on any credit facility that we close and fund."

D: Proceeding to LOI: To Go or Not to Go, What Are the Criteria?

"In tech, and certainly in the serious community of serial acquirers, you want to have greater than 90% certainty that at the end of due diligence, you will do this deal." – Villi Iltchev

The response to the go/no-go dilemma is mainly the province of strategics and private equity firms – and lenders. Bob Fitzsimmons' PE firm, High Road Capital, maintains a rigorous decision-making process with regular check-ins from the High Road team before the firm submits a letter of intent. As is typical among private equity firms, at High Road the critical issues are discussed at Monday morning meetings. Every deal that has come into the house in the previous week is discussed. "We go around the table and solicit the opinions of all the investment professionals as to whether those companies are worth pursuing," explains Fitzsimmons. "If we get a strong positive consensus, we submit an indication of interest and arrange for our team to visit the company." Following the visit, the team reports its findings to the firm's investment team. Based on those findings and the scope of the opportunity, the investment team will dig further into the opportunity, assessing its viability. If viability is likely, the investment team will conduct a financial analysis, run models and consult with lenders about deal financing and arrange for further meetings with the target's management team to discuss issues raised during the first meeting as well as obtain answers to questions that emerged from the financial analysis. Then the investment team decides whether to send an LOI. However, before the LOI can be submitted the team writes a 20-30-page memo outlining the fundamentals of the target's business, the proposed outline of the financial structure, price terms, financing, an assessment of the investment risk and mitigants, the investment thesis, and an appraisal of the target management team, the company's position in the industry, and general industry trends. The completed memo results in a discussion by an investment committee at High Road's weekly meeting where a debate ensues about the merits of moving forward with the LOI.

For Villi Iltchev, the go/no-go decision hinges on a percentage. "In technology, and certainly in the community of serious serial acquirers, you want to have

"[The LOI] is less a proposal of marriage and more an agreement to go steady for the next 45 days." – Larry Chu

90% or greater certainty that, at the end of due diligence, you will do this deal," he says. A buyer's worst nightmare, he adds, is having to back out of a deal after a negotiated LOI. "As a buyer, you never want to be in that situation where you drag a seller through the mud, and then back out." The best way to avoid that eventuality is for the buyer to lay the groundwork first via relationship building, modeling, technology and strategic assessments and a briefing of the board of directors. Laying this groundwork, Iltchev says, helps ensure that no matter what diligence reveals, absent a major negative surprise, the transaction will go forward and the buyer will not seek to renegotiate value.

For both Fitzsimmons and Iltchev, renegotiating terms and retrading price is an abhorrent practice. In tech, declares Iltchev, "I, as a buyer, am either going to do the deal or not. Diligence is not an opportunity to renegotiate terms." Iltchev says he has made 30 acquisitions in his Silicon Valley career and has backed out of only two during diligence, "One of those deals made it to diligence because of my poor executive leadership when I was unable to spend sufficient time with the target management team upfront," He says, and in the second aborted transaction, he recalls, diligence-related issues were the cause. Bob Fitzsimmons' firm got its name, High Road, by pledging to always take the high road in negotiations with sellers, including a promise not to retrade price or to renegotiate terms.

As a lender in M&A deals, Marc S. Price, thanks to his firm's disciplined screening process, is able to provide borrowers a quick decision on funding. "We ask for essential information that helps determine whether the deal fits in terms of our business." As an asset-based lender, Salus Capital provides fully formulaic loans based on whether borrower assets securing the loan meet the Salus underwriting criteria. "Once we have the initial management meeting with the borrower, coupled with diligence, we can form an opinion, get to business terms and formulate an LOI," Price explains.

E: The Ebb and Flow of LOI Negotiations: Formalizing the Informal

"[The LOI] is less a proposal of marriage and more an agreement to go steady for the next 45 days." – Larry Chu

For some dealmakers, its non-binding nature makes the LOI unnecessary. Once major items such as price and a grant of exclusivity are determined, they believe, it's probably more efficient to proceed to the definitive, and binding, purchase agreement rather than to become bogged down in the ebb and flow of more detailed LOI negotiations. At best, the LOI is a document that attempts to formalize the informal, to provide buyer and seller dealmakers with a framework for the ensuing phases of the deal execution process. While some have compared the LOI to a marriage proposal, others, like lawyer Larry Chu, balk at the comparison. The LOI, he remarks, "is less a proposal of marriage and more an agreement to go steady for the next 45 days."

Bob Fitzsimmons, however, prefers a detailed LOI. "We like to spell out as many of the transaction terms as possible at that point in the process." His preference, though, can result in LOI negotiations that are more complex. As for all dealmakers, price is the prime negotiating point on Fitzsimmons' LOI agenda. "We'll propose a price, but it's rare that a seller agrees immediately to our proposal." Ordinarily, he continues, "When we propose a price, we also have to determine how much pricing flexibility we have." Occasionally, he says, "We'll submit a price that is as high as we can possibly go." More often than not, though, he has a little more upward price flexibility beyond the price submitted in the LOI. The ebb and flow of negotiations, Fitzsimmons concedes, is part of every deal.

During LOI negotiations, buyer and seller attorneys are not yet facing off because the LOI is a preliminary document and non-binding. Typically, LOI negotiations focus more on the business aspects of the transaction and much less on the legal aspects of LOI provisions. Legal haggling is saved for the formulation of the binding purchase agreement. Nevertheless, explains Fitzsimmons, the LOI informally addresses the basic elements of the purchase agreement, including terms, warranties, baskets, survival period and caps. "We want to have those items laid out and agreed to in the LOI rather than leaving them for later, when they can create problems in the process. That's what we use the LOI for."

Larry Chu cautions that buyers and sellers need to maintain a balanced perspective during LOI negotiations: "The seller has to realize that the buyer cannot agree to everything." He also cautions that the LOI is not the definitive agreement. If the buyer is unable to commit to a point price or a point amount of escrow, the buyer should work within appropriate ranges. He advises the

“Both sides will never agree on a methodology or a framework”
- Villi Iltchev

buy side to be reasonable as well. “The buyer cannot announce that the only item he will commit to paper is a price or a price range.” Instead, the buyer ought to understand that the seller has anxieties as well. The seller knows the buyer holds the purse strings, and thus the seller will strive to gauge degrees of deal and price certainties. Focusing on key items of concern at the LOI stage, Chu emphasizes, is a useful technique in arriving at a handshake deal, via the LOI, at an early stage of the deal process. To Chu, the most dangerous currents in the pre-LOI ebb and flow surround the buyer’s desire to get a seller into exclusivity. The seller’s awareness that granting exclusivity will result in sharply reduced negotiating leverage, with the buyer maximizing that point of leverage to extract as much detail and deal certainty as possible, is the major cause of tension in the pre-LOI stage, Chu says. As the buyer pushes to complete diligence, a commitment to the seller remains somewhat murky. The seller, meanwhile, pushes the buyer for additional clarity regarding price and deal certainty terms. The chances for a fouled deal atmosphere can rise. Not rushing through the LOI, whether buyer or seller, can result in a clearer deal environment and a lessening of tension.

For Villi Iltchev, the goals, strategies and motivations of buyers and sellers as they negotiate an LOI fall into several buckets. In tech deals, as in deals in other industries, price is paramount, because pricing discussions include the treatment of options, retention bonuses, holdbacks of equity and adjustments in working capital, for example. The areas of negotiation concern beyond pricing are usually the certainty of close and the duration of the exclusivity period, with the buyer ensuring the seller that diligence will focus on confirmation, not discovery. Iltchev refuses to become involved in talks about valuation, because, as he claims, “Both sides are looking to glean information from the conversation, and both sides will never agree on a methodology or a framework. It leads to a pointless conversation with no upside.”

On buyer protection provisions, much of the debate centers on the size of the escrow and the duration of the general escrow. In tech deals, Iltchev says, exclusivity is fundamental and the only discussion focuses on whether the exclusivity period will be 30 or 60 days or somewhere in between.

There is much contention and negotiation around the definition of special reps and, of course, around how intellectual property risk is shared. According to Iltchev, lawyers enter the picture when discussions move to various indemnity provisions, which, in tech, involve frequently contentious talks about IP. IP negotiations can become so nasty, Iltchev says, that he is often tempted to punt on those negotiations until a week before the definitive agreement is signed and the deal closed, all of which is moot unless price discussions can settle around an acceptable ballpark figure. In Silicon Valley, buyers not only understand the seller's technology, they also understand that every tech start-up has institutional investors, which can present a level of complexity for buy side negotiators. As soon as buyers begin to negotiate a term sheet, Iltchev says, they are cognizant that the seller's founder has to negotiate not only with the buyer but also with the target's institutional investors. The good news, though, is that in most cases, the target's founder already favors the buyer. The buyer's mission, then, is to aid the founder in the founder's behind-the-scenes negotiations with the company's institutional investors. Fortunately, in the tech world, says Iltchev, M&A negotiators "know what they are doing and are experienced and competent." Terms are standard and public. According to Iltchev, outside of Silicon Valley, and especially on the East Coast, there is less standardization and more creativity.

For Marc S. Price, as an asset-based lender with a valuation background, a source of negotiation contention is the process of working through legal documentation regarding how the lender/borrower relationship is governed on an ongoing basis. "There should be a balance between business people and attorneys," he says. Business people should drive the process, not attorneys, he insists. In terms of valuation, in asset-based deals a non-binding summary of terms regarding the LOI is executed that is subject to diligence, which necessitates transparency and an upfront response by the secured lender regarding potential modification to loan structure or to LOI terms if diligence presents items that require modification. Any modifications, he advises, should be workable by both sides.

Conclusion

Every consummated M&A transaction marks not the end but a new beginning, a fresh start for a newly combined company whose presence will alter its marketplace. Getting to that new beginning, though, often requires the expert use of origination techniques and strategies, plus the determination to stay the course to the LOI and beyond, improvising when necessary and compromising tactically and skillfully to keep the deal process moving forward, cultivating the deal every step of the way, from the earliest stages to the signing of the purchase agreement.

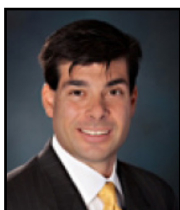
CONTRIBUTORS' BIOGRAPHIES

Garrett Baker is President at Waller Capital Partners. He initiates and executes M&A transactions for cable and telecom clients, leads Waller Capital's cable coverage, and oversees the day-to-day operations of the firm. Garrett's early career focused on telecom operators, including wireless carriers, fiber providers and ISPs. Since 2005, Garrett has been the most active M&A banker in the cable industry. Recent transactions include representing: Wave Broadband on its sale to Oak Hill Capital Partners and GI Partners, RCN on its sale to ABRY Partners; US Cable on its sale to MidContinent, Baja & Charter; MCV Guam on its sale to NTT Docomo; WideOpenWest on its sale to Avista Capital; Alpheus Comm on its sale to Gores Group; Time Warner Cable on its non-core divestiture to Windjammer Communications; American Fiber Systems on its sale to Zayo; Everest Broadband on its sale to SureWest; JetBroadband on its sale to ShenTel; Choice Cable on its sale to Spectrum Equity / Patriot Media; New Wave on its acquisition of non-strategic assets from Charter Communications; Grande Communications on its recapitalization; The Blackstone Group on the sale of Sigecom; JetBroadband on the acquisition of Suddenlink's Virginia assets; NY3G on its sale to Sprint Nextel; Providence Equity on the sale of Northland Cable to Metrocast/Harron; Alameda Telecom on its sale to Comcast; Vision Communications on its sale to Eatel. Prior to Waller, Garrett was an M&A banker at Bear Stearns & Co. During his career, he has completed over 70 M&A transactions valued at over $15 billion. Garrett has been recognized by MultiChannel News as one of the cable industry's "40 Under 40" top executives. He is a member of the Young Presidents' Organization (YPO). Garrett graduated with honors from Wake Forest University with a B.S. in Analytical Finance. He holds the Series 7, 63, 24 and 79 FINRA licenses.

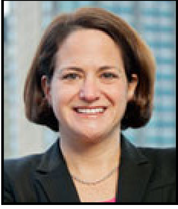
Larry Chu is a partner in Goodwin Procter's Technology Companies, M&A/Corporate Governance and Private Equity Practices, a member of the firm's FinTech Practice and leads the firm's Technology M&A Practice on the West Coast. He represents domestic and non-U.S. public and private companies in mergers and acquisitions, dispositions and corporate finance transactions in the technology, Internet, digital media, financial technology, e-commerce and biotech industries, and also has represented clients in the consumer products (including CPG), beverages, apparel, telecommunications, oil and gas, industrial products and manufacturing, banking and financial services, and asset management sectors. In addition, he represents private equity funds in connection with the acquisition of, and investment in, certain public and private portfolio companies, as well as banking clients in connection with their roles as financial advisor and dealer/manager on M&A transactions. Mr. Chu's transaction experience includes public and private mergers and acquisitions, tender and exchange offers, carve-out transactions, asset acquisitions and dispositions, recapitalizations, management buyouts and going-private transactions, joint venture arrangements, and strategic alliances and minority investments. He also has extensive experience with cross-border transactions and has helped a number of serial acquirors manage their buy-side M&A programs. He has been recognized as a leading attorney in his field by The Legal 500 and has also been included on the Global M&A Network's list of "Top 50 North American M&A Lawyers."

Villi Iltchev is Senior Vice President of Strategy & Corporate Development at Box, where he leads strategy and inorganic initiatives including M&A and investments. Iltchev most recently was head of M&A at San Francisco-based Lifelock, where he led the acquisition of Palo Alto-based Lemon for $42.6 million. Before that he headed M&A and investment at Salesforce, where he led the San Francisco-based enterprise software company's 2011 investment in Box.

Robert J. Fitzsimmons is Managing Partner at High Road Capital Partners. Robert co-founded High Road in 2007 and currently serves on the Board of Directors of Advanced Sleep Medicine Services, All Current Electrical Sales, BlueSpire, The Crown Group, Dowden Medical Communications Group, HandiQuilter, PANOS brands, and SMB Machinery Systems. As Managing Partner, he oversees all aspects of the firm's activities. Previously, Bob served as a Managing Partner with The Riverside Company, a leading private equity firm focused on the smaller end of the middle market. Prior to joining Riverside in 1994, Bob was an investment professional with Citicorp Venture Capital, an investment banker with Citicorp Mergers & Acquisitions, and an auditor and tax accountant with Price Waterhouse. He has executed over $2 billion worth of transactions and is a frequent speaker at private equity industry events. Bob received a B.S. in Accounting from the University of Pennsylvania and an M.B.A in Finance from the University of Chicago.



Marc S. Price is an Executive Vice President at Salus Capital responsible for the structuring of all loan originations and the strategic direction for all Salus Capital corporate initiatives. Marc has more than 15 years of financial services experience with a broad background in financial analytics, sales and marketing, relationship management and business development. Prior to joining Salus Capital, Marc was responsible for the structure and underwriting of asset-based loans in his role as First Vice President, Director of Financial Analytics and Underwriting at First Niagara Commercial Finance. Previously, Marc was a Vice President at EMCC, Inc., a Schottenstein Stores Corporation affiliate, where he managed the Valuation Services group which provided asset-based lenders, commercial and retail finance companies and private equity funds with comprehensive accounts receivable valuations. Marc was also a member of the EMCC debt-buying investment team. Prior to EMCC, Marc was a principal at State Street Global Advisors and an Associate at General Catalyst Partners, a Boston based Venture Capital fund. Marc is a member of the Turnaround Management Association (TMA) and Commercial Finance Association (CFA).



Mindy Berman is Managing Director/co-founder at Investor Group Services IGS. She brings 20 years of strategic management experience to her role as managing director of IGS, which she founded in 1998. Her leadership on strategy reviews, industry assessments, and due diligence studies enables clients to gain a comprehensive view of the marketplace and the foresight to make critical business decisions, particularly around acquisitions and investments. She has extensive experience helping clients develop smart strategic plans – enabling them to enhance growth and profitability. Formerly a principal at The Parthenon Group, Mindy has a deep resume that includes clients in industries ranging from finance, publishing, and healthcare, to industrial machinery, telecommunications, and consumer products. Mindy holds an MBA with distinction from Harvard Business School and graduated summa cum laude with a BA in history from Amherst College.

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