



Do

Diligence

Confidentially

NAVIGATING

THE DUE DILIGENCE

PROCESS TO A DEAL



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content@permanentequity.com.

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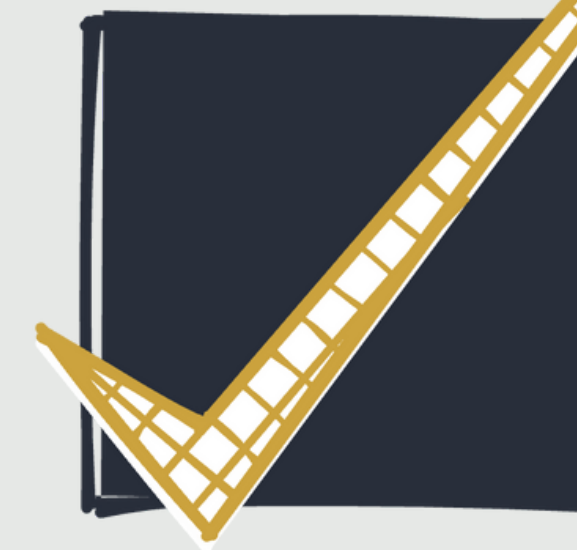
Table of Contents

4	Why We're Sharing Our Diligence Process
6	Diligence Timeline
7	Setting Diligence Objectives
10	Tools & Workbook
11	Diligence Maintenance Checklist
12	Build Your Diligence Team
15	Hiring an Intermediary Worksheet
18	Hiring an M&A Attorney Worksheet
21	Our Diligence Checklist
58	Table Turn: A Checklist for a Seller on a Buyer
60	Additional Readings & Resources
61	Expectations: Entering Due Diligence
63	The Skeleton Talk
65	Lies, Damn Lies, & Innocent Mistakes: Misrepresentations in Due Diligence
68	A Long-term Posture on Diligence
70	Start a Conversation with PE





Why We're Sharing Our Diligence Process



When I put my first SMB deal under LOI, my attorney said we needed to "do diligence" which I pretended to understand.

I literally typed into Google, "*Do Diligence*," read for 30 seconds, and then responded..."So we just ask questions? I can do that."

– Brent Beshore, CEO of Permanent Equity, on "doing diligence" for the firm's first deal in 2009

We're open-sourcing Permanent Equity's diligence process. In this guide, we're telling you [how to start](#), [what to do](#), [how to answer](#), [what to ask](#), and [how to structure the team](#) to see it through.

The open-source concept comes from software development, where engineers could access code written by others in order to debug, optimize, and improve it. By doing so, the software gets better faster and exponentially increases in utility – and therefore value – to the world. That exponential increase in value is why sharing something also makes sense economically.

So, we're putting our process and best advice out into the wild to make it better (to get to better relationships faster and surface more and better information sooner), but we're also doing it to help buyers and sellers enter into (and emerge from!) the diligence process equipped to do the work, build a deal, and get to close – so we can all focus on what comes next.

In smaller companies, one of the biggest challenges is knowing what "great" looks. That's as true for due diligence as it is for marketing or financial processes. When you're encountering something for the first time, it's virtually impossible to recognize what's normal or abnormal, good or not so good.

And most businesses only go through due diligence one or two times. So for virtually everyone involved on the seller's side, everything about the process is new. Yet we could not find a credible, readily available barometer on what to expect, let alone on what's reasonable. As a potential buyer, that seems like a problem.

Successful partnerships, especially in the long term, require that both sides understand the process and terms, and eagerly enter into agreement.

Thus, this project: Do Diligence Confidently.

In sharing our diligence process, we want to empower sellers and executives to confidently navigate the diligence stage of deal-making, which is ultimately your engagement to a buyer. One of our foundations at Permanent Equity is to focus on being helpful, not impressive. And so, "Is it helpful?" is the litmus test for each tool.

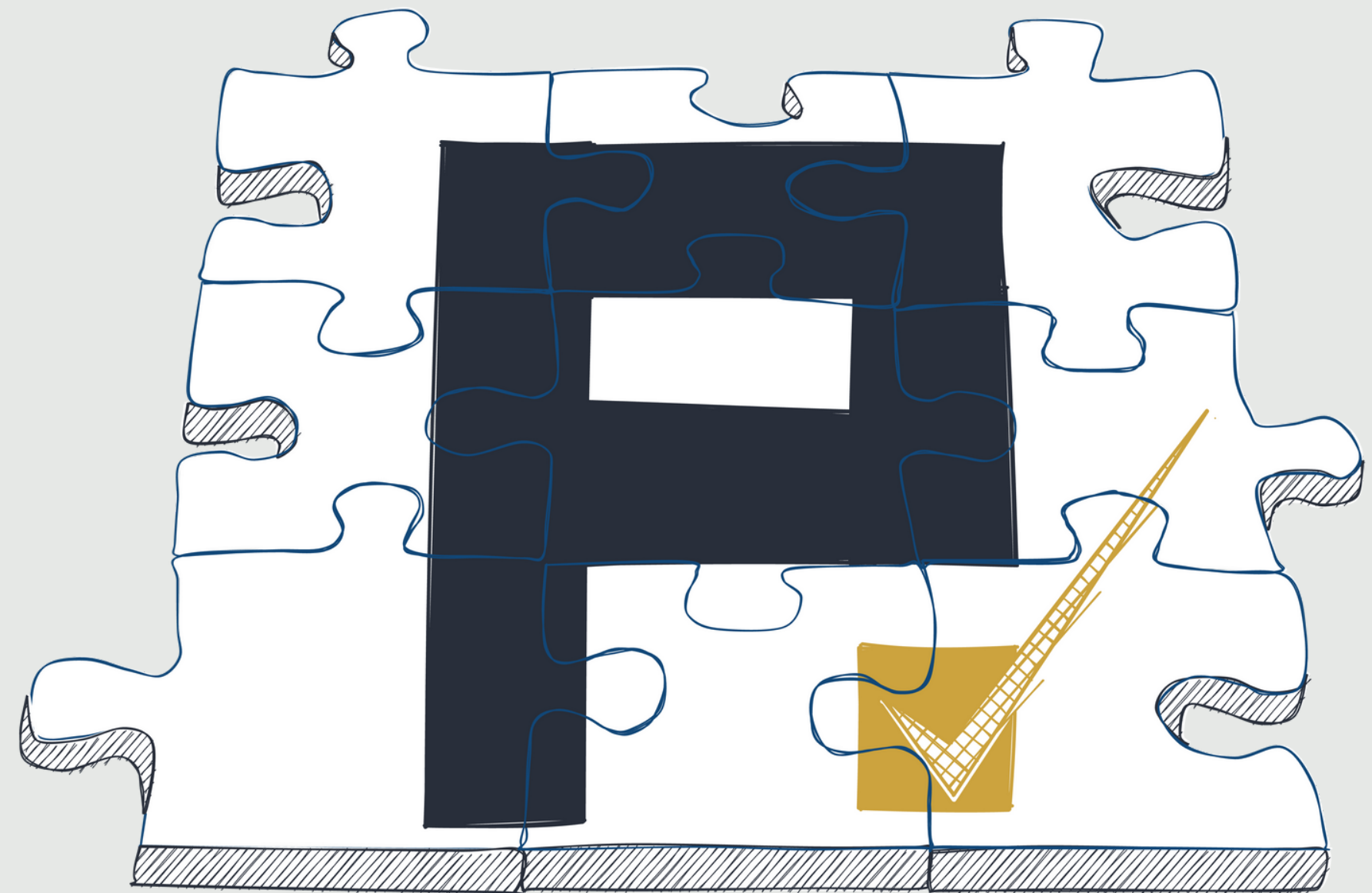
This content was not developed to manipulate valuation, to facilitate faster exits, or to present a suspiciously clean record to a buyer. These tools were developed to help real deals, those based in reality, successfully close. We've never seen a perfect company and frankly don't believe in them. Perfection is not the goal. The goal is that all parties can work from the same foundation on why you're doing the work, what happens as part of the work, how to get organized, and when to ask for help.

With that foundation, you can navigate due diligence confidently.

One note before you dive in: This isn't meant to be a comprehensive guide to diligence for any set of parties. Instead, it's a window into how we diligence at Permanent Equity. When you dig into these tools and resources, you'll notice that it's both time- and labor-intensive. It's work! While diligence is, in fact, asking (and answering!) questions, it's also building trust, understanding what winning looks like, and putting together deals that benefit the buyer, the seller, and the business collectively.

And if you want to go the extra mile, we also ask that you share this project with at least one person who may be involved in a due diligence process in the future. We'll be grateful, and eventually they might be too.

- The Permanent Equity Team





Diligence Timeline

While every deal and diligence process is different, here is a general timeline of the process from start to close. What's not shown below is that we are **having conversations** throughout each of these steps. Like we've said, we're building a relationship and the deal together.

1

Information Gathering

The **conversation** starts – We **gather information** to determine if we can be helpful with what you're trying to accomplish. Are our visions of success aligned?

2

Indication of Interest

We write a letter (an **IOI**) discussing what the future could look like and how we see the transaction going forward – what the enterprise value is, how much of the business we're buying, and any material obstacles or challenges.

3

Site Visit

We **visit your office(s)** for the first time to see if we can be good long term partners, and that what we've learned so far is true. And we want to get to know each other!

4

Letter of Intent

The **LOI** is a legal document – it's non-binding, but it does say that we're committing to each other (i.e., an exclusivity period when we go through due diligence under the assumption that we're working to close the deal).

5

Diligence

Diligence begins, and we use this time to ask questions, request documents, verify the information we've been given, identify challenges and opportunities, visit and relationship-build, and build a business deal that works for everyone.

6

The Business Deal

The diligence process confirms the **business deal** that reflects what's been discovered and discussed, as well as what the future of the company will look like.

7

Closing Checklist

We work with you to **make a checklist** of things that need to be changed or structurally modified before we can close.

8

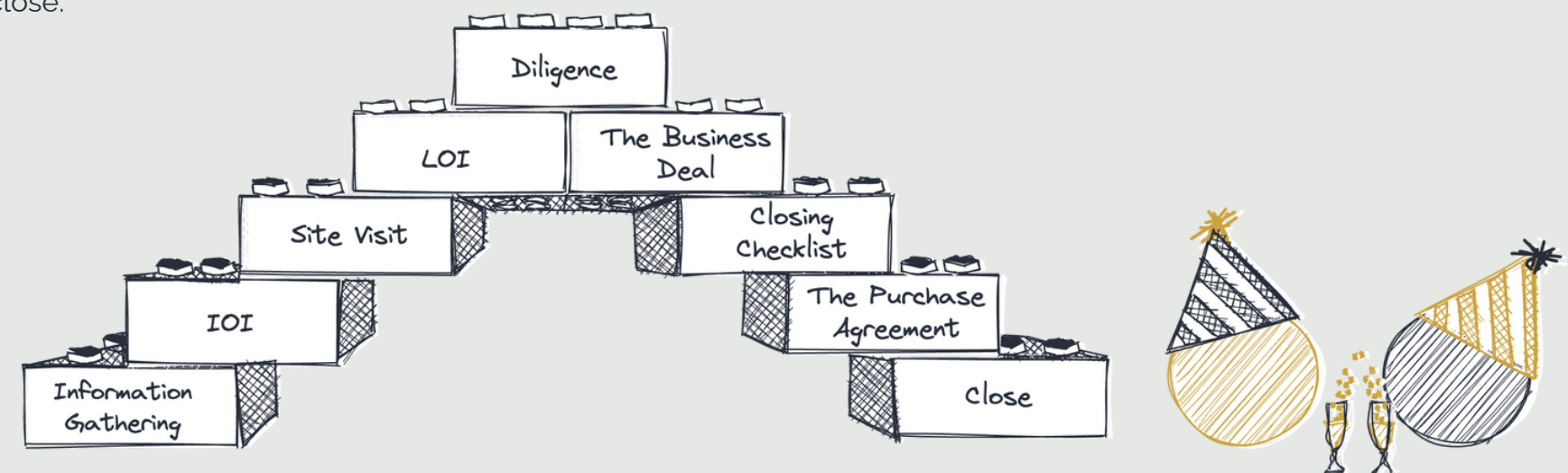
The Purchase Agreement

The business deal that we've been working on building for a period of months now needs to be **reflected in legal language** – a document called a **Purchase Agreement**.

9

Close

Celebrate!





Setting Diligence Objectives



Any deal is a trade. In M&A, a business owner is labeled a “seller” and the firm or individual investing is the “buyer.” But technically, both are trading value.

In order to go through, any trade has to be understood as a worthwhile exchange by both parties. At Permanent Equity, we strive for a good deal for both parties, not a perfect deal for either one. This translates into a combination of compromise, good faith and also the idea that we have to fundamentally value certain elements of the deal differently (e.g., a seller valuing guaranteed money today more than non-guaranteed money in the future).

Here’s guidance on how to think about what both sides want to get out of diligence in order to confidently exchange value:

BUYER’S DILIGENCE OBJECTIVES

To begin due diligence, Permanent Equity (or any buyer) has made a substantial offer of known value (money) for something we believe has value (your business). As a seller, you’re in a superior position of knowledge about your business, whereas money has a known value. And, up to this point, we’ve relied on information and discussion with you and your advisors to estimate a good and fair value. While there are multiple objectives within diligence (e.g., relationship building), in terms of the transaction economics, diligence verifies that the trade makes sense.

The capital proposed in an offer has market-verifiable opportunity costs. That money could be invested in public stocks, real estate, another business, or be stuck under a mattress (none of which are risk-free). In order for the exchange to make sense for a buyer, the potential investment has to be understood well enough to confidently compare and believe that the prospective investment has the desired potential upside. That doesn’t



mean it has to be the least risky or have a certain revenue profile, both because those are measures everyone values differently and also because different sources of capital behave differently. This is why it is perfectly understandable for an individual with 80% of their net worth in one business to have an interest in partial liquidity. And this is also why an investment fund would invest in a business that may need significant operational support in order to grow substantially. We all value things differently.

But unlike money, businesses are nuanced networks of people, relationships, and structures. And unpacking it all is the process of diligence.

Because of the complexity, due diligence can feel one-sided. You get a massive (though already tailored to our understanding of your business, we promise) list of questions and requests, some of which seem quite invasive or blunt.

Our questions aren't meant to be nitpicky or accusatory. We're genuinely trying to get to know the business. You've lived it. Unpacking the details helps to inform:

- How we think about relationships moving forward (individuals, team, customers, suppliers, communities, and more)
- How we might structure the transaction (e.g., taxes, entity structuring, risk factors)
- Where there are opportunities for improvement in the short, medium, and long term (upside!)
- How the purchase agreement should be outlined (details!)

To that end, when we have conversations and make requests in the diligence process, we try to focus on issues and questions that are relevant and important to you and your business. What might seem overwhelming in that process is frequently an attempt at ultimate clarity.

SELLER'S DILIGENCE OBJECTIVES

Given the buyer's objectives during diligence, it's perhaps obvious that one seller's objective during due diligence is to make sure that the business is accurately represented to the buyer. That's providing complete and transparent information about the company's finances, operations, and legal history. But also, it's about seizing the opportunity to help the buyer see what you see in your business – the value that you believe to be there and that you are exchanging in the transaction, including projections, opportunities, and intangibles.

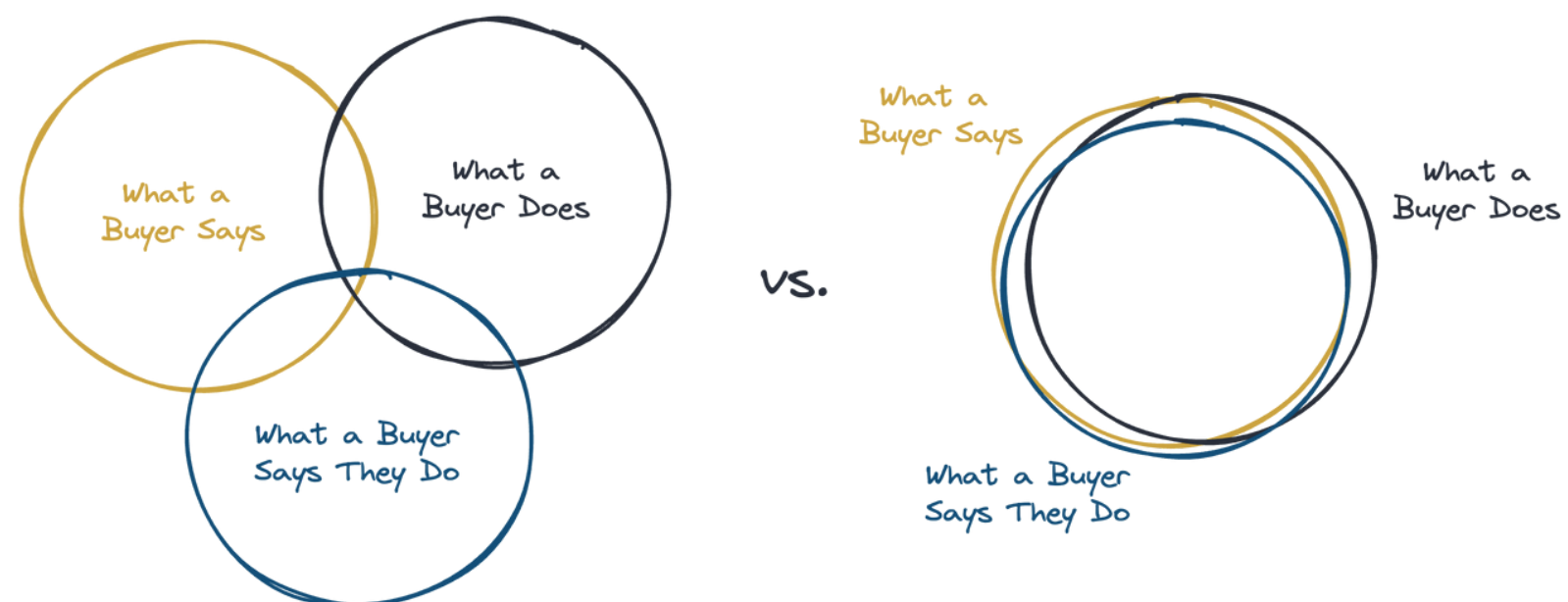
Fundamentally, this part of the diligence conversation is about demonstrating to the buyer that the exchange of certain value for uncertain value makes sense, i.e., helping us take risk confidently. But as a seller, your objective during due diligence shouldn't only be providing the information required to get the deal done. Again, diligence should be conversational, and a trade must go both ways.

So, due diligence is also a time where **the seller evaluates** the behaviors, attitudes, and communication style of the buyer. While we would argue that this type of assessment and trust-building is important no matter who you're transacting with, it's crucial if you're negotiating a long-term (say, 27-year?) partnership with a buyer. If you care about what comes next for your business, your employees, and your customers, you should use diligence as an opportunity to evaluate:

- Does what you're seeing line up with who the buyer said they were from the beginning?
- And does that square with who you want stewarding the business long-term?
- What does the buyer's behavior tell you about a future operating partnership? Brand stewardship? The continued cultivation of customer relationships and company culture?



Evaluating Buyer Behavior: *



* With apologies to Margaret Mead

As a buyer, we have an opportunity, through diligence, to learn the nooks and crannies of a business – what makes it what it is, what makes it successful, what presents risk, what presents opportunities for improvement. And, as a seller, you have the opportunity to help us see the value and potential in your business. On both sides of the equation, we're able to learn about the people involved – who they are and what they care about, and how we can best work together towards the common goals.

Transactions are about more than money. Approaching diligence as a mutual exchange of information highlights this idea. When approached as a trust-building, cooperative exercise, diligence is about demonstrating good behaviors and instilling confidence in the deal and the future – on both sides.

Bad Behavior and Red Flags

We've [written before about red flags](#) we've seen in sellers, but bad behavior can go both ways. If you're using the diligence period to evaluate fit with your prospective buyer (and you should be!), be on high alert for red flags. Here are a few to put on your radar:

- Breaking chain of command without communication/permission (e.g., contacting a customer/lender)
- The sources of funds don't stack up (or remain vague or continue to change)
- News starts to spread (i.e., confidentiality agreements have been violated)
- You're missing vital information about their intentions, financial capacity, or plans for the business post-acquisition
- They nitpick the valuation – and use diligence as a chance to shave dollars off the price
- Everything's warp speed or snail's pace (e.g., the time to review financial statements is unreasonable)
- The documents don't reflect your deal (e.g., you're supposed to partner, but there are no employment agreement drafts)
- They don't know the industry – and they aren't willing to ask the questions and do the legwork to learn the nuances
- The legacy is unimportant and the future is murky (i.e., the company's history, brand identity, or customer base are downplayed and post-close plans are unclear)
- The line between optimism and dishonesty is unclear and milestones keeps moving



Tools & Workbook

for Sellers





The Head & Shoulders Diligence Self-Check



The throwback Head and Shoulders shampoo tagline was: *You never have a second chance to make a first impression.* And if that isn't a motto for diligence, we don't know what is.

Run through diligence resources (ours, or others you have) and, for each question or section, ask yourself, "Do we know where to find this information? Can we produce these documents? How would we respond to this?" That type of preparation shows that you're putting thought and care into the process and, ultimately, helps build trust from the first impression.

If you don't want to do a full diligence process on your company (and we get it), here are seven questions to help you get organized. We recommend gathering this information in the six to eight months before you intend to put a deal together.

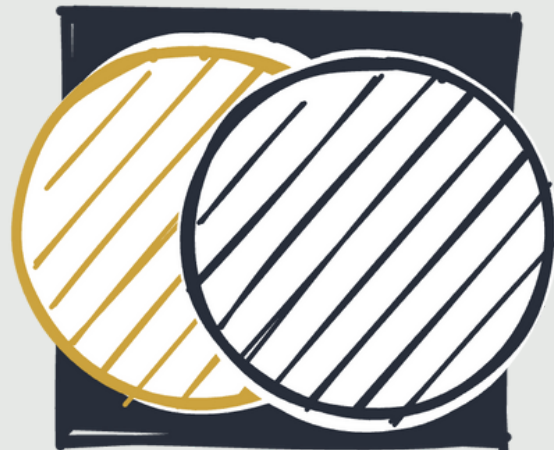
<input type="checkbox"/> Is the equity capitalization table up to date?	
<input type="checkbox"/> Can we provide documentation supporting the equity cap table and company history?	
<input type="checkbox"/> Do we have a current employee handbook?	
<input type="checkbox"/> Is our intellectual property secure? Do we have the necessary registrations in place (and updated, where necessary)?	
<input type="checkbox"/> Do we have minutes and organizational history for our business so a third party can understand how the business has evolved over time?	
<input type="checkbox"/> Can we provide valid, current copies of all material contracts?	
<input type="checkbox"/> Do we have and can we produce written agreements with material vendors and suppliers? If not, is there an explanation for why and a way to document the operating history between the business and these partners?	

A few notes. First, there are a lot of reasons why **you may not be able to sell your business**, some of which are addressed above, and some of which are more structural. When we say "clean," we don't mean you should gussy something up or present something that's not true. But there's a lot of value in getting organized before you go to market or start a deal process.

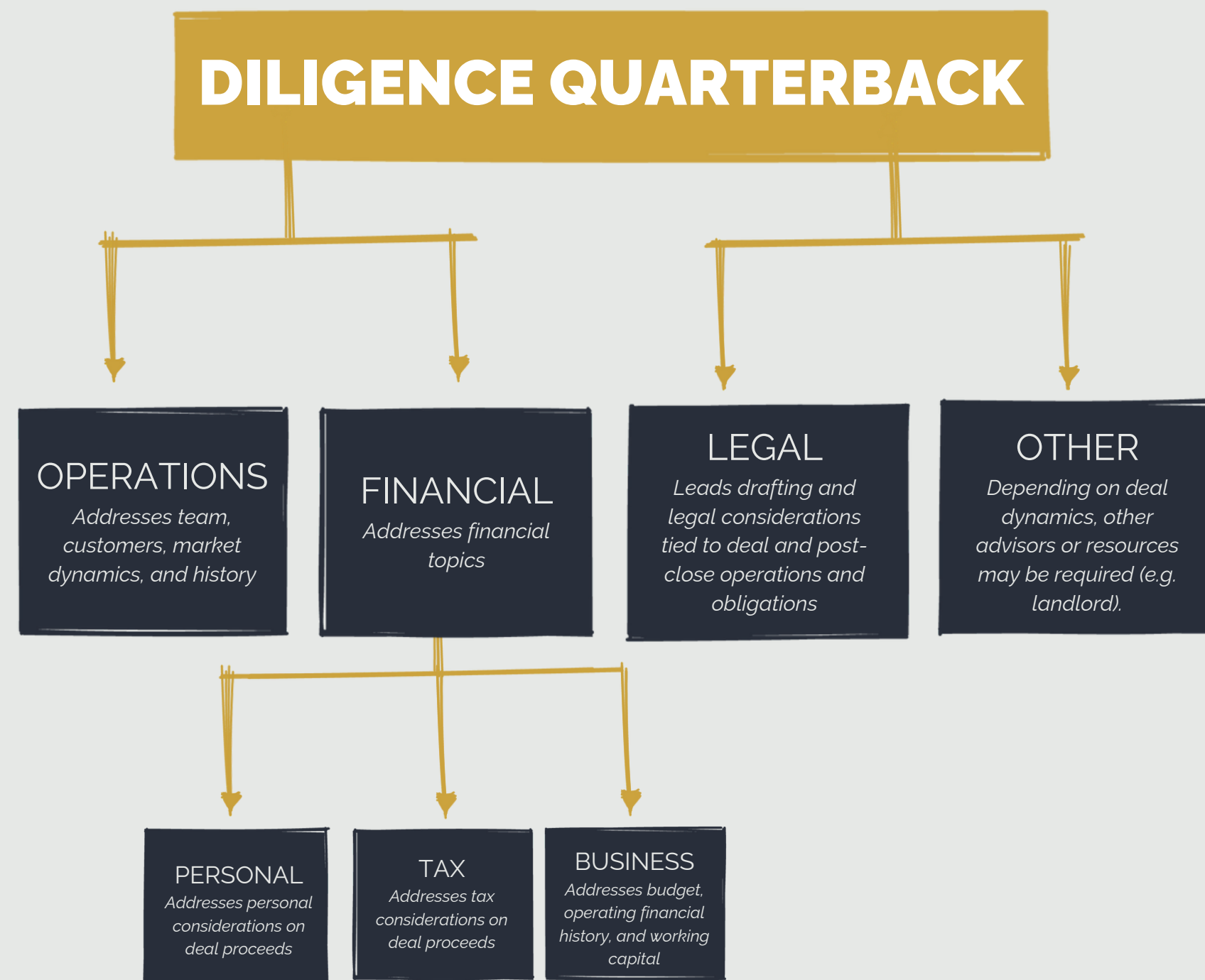
And, sometimes the most valuable answer to a question is "I don't know" or "I know we should have that, but I don't think we do." It's honest, it's self aware, and it helps to establish trust in relationships. It can also be one of the reasons you are looking for a partner.



Build Your Diligence Team



Diligence requires a team effort. Here are the essential roles of any diligence team:



THE DILIGENCE TEAM, ASSEMBLED

Building your diligence team is like being in the first 20 minutes of a heist movie. You're recruiting people from inside and outside of your organization with specialized knowledge and experience to tackle the diligence process. With rare exceptions, going it alone is not advisable. While we tend to think that bringing on external advisors in some of these roles is the way to go, how you construct your diligence team is, of course, ultimately up to you. But there's real value and capacity to be had in building the right team.

Generally, you'll include some combination of CEO, CFO/controller, and COO from your team. These individuals will be pulling most of the information and responding to diligence requests. Some questions to consider when bringing someone from your own team into the diligence process:

1. Who should be involved in the process?
2. Diligence takes up significant time. What else is on his/her plate? What concerns will he/she have? How can I best bring them into the process?
3. What will he/she be accountable for in the diligence process? Any anticipated gaps?
4. We still want to keep the circle of trust small. Can I trust this person to maintain confidentiality? Who will he/she be able to rely on as a resource?

Rounding out internal recruits, what roles do you want to fill with outside advisors and how are you going to recruit those people?

M&A ATTORNEY

If you're doing a deal for the first time, you probably don't have any experience working with an M&A lawyer. And, you might think that a general business or personal attorney can take on that role. But purchase agreements are different beasts – you want to work with someone who will understand the nuances of how a business deal is translated into a legal deal. So how do you source an M&A attorney? How do you qualify them? What are the typical fee structures that an M&A attorney would use? (See page 18.)

TAX ADVISOR

When you sell a business as an owner, certain percentages of the value of the business are

going to get allocated to different things, which have varying tax consequences – what counts as capital gains versus ordinary income, equipment versus goodwill... Said differently, things can get complicated. You want a dedicated tax advisor who advises on proceeds allocations for the purposes of reporting to the IRS and for thinking about where the money should ultimately end up. These decisions have personal consequences, but they also impact how allocations within the business deal.

INTERMEDIARY

Intermediaries are typically paid a percentage of the sale and provide two primary services: making the market and/or managing the diligence process on behalf of the owners. A third service line, most commonly offered by "M&A Advisors" specifically, may include operational prep for sale. As the owner, you can define the scope of work you are interested in compensating them for (i.e. if you already know who you want to do a deal with, you can hire them only to support diligence). (See page 15.)

Specific to diligence, the quarterback will be in charge of the overall process and moving along the business deal, which involves both information gathering and relationship management. But those roles can be split. Perhaps you as a seller are managing the relational side and the progression of the business deal, while you have an intermediary who's in charge of managing the diligence data room. Diligence is an administrative burden, and intermediaries are used to the process and expectations.

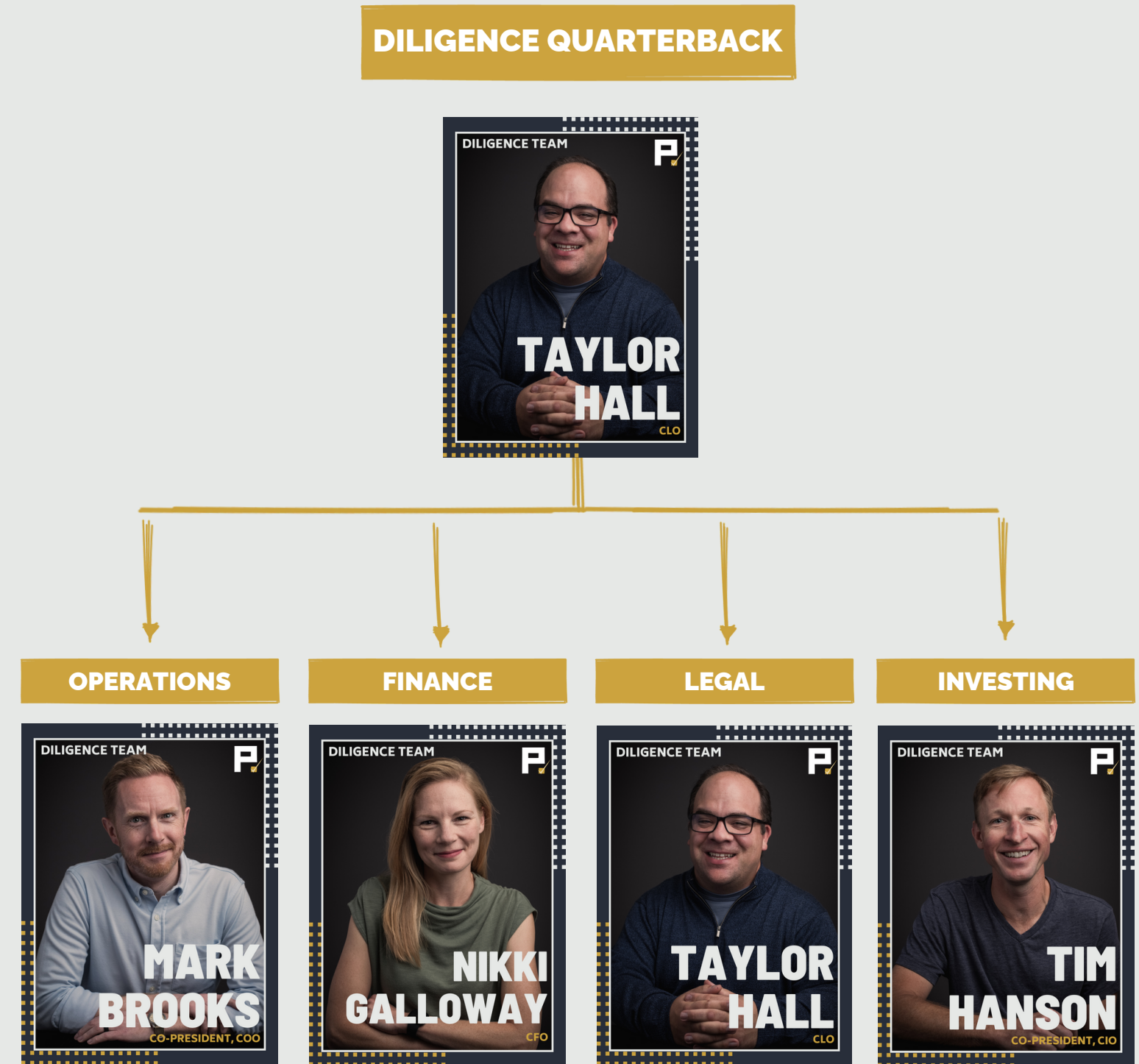
Some questions to ask an intermediary:

- What types of businesses do you typically represent? To whom have those businesses ended up selling?
- Specific to diligence, what services do you provide?
- What does your fee model entail (e.g., straight percentage on a deal, retainer, Lehman Formula)? And how do you define "consideration" (value in the deal)?

At the end of the day, you as the individual seller are the decision-maker. You're the primary negotiator of the business deal and the one responsible for weighing tradeoffs. So, you need to be the quarterback of your own deal from a relational and a business deal standpoint. Everyone that's working with you is doing so on your behalf and in your best interest. The bottom line? Make sure you assemble enough people with great expertise to provide insight to you and extend your capacity, but do not delegate judgment.

EXAMPLE PERMANENT EQUITY DILIGENCE TEAM

While you'll know best how to build your team, here's an example buyside team that you might work with if we were diligencing you. Specific roles and overall team depth are dependent on individual deal dynamics. At Permanent Equity, we try to assign operational diligence to those most likely to materially support the team post-close, so their involvement also functions as an operational ramp up.





Intermediary Hiring Worksheet

WHAT AM I HIRING SOMEONE FOR? WHAT ROLES WILL THEY PLAY?

An intermediary can support you as a seller in three advisory functions:

1. Preparing for Investment.
2. Making the Market.
3. Deal Progression & Diligence Support.

Here's a rubric to help you determine: What am I hiring someone for? What roles will they play?

Check your option for each item. Anything for which you've selected the choice on the right is part of the scope of work for which you're hiring an intermediary.

Hire

PREPARING FOR INVESTMENT

Diagnosis of weaknesses, opportunities, threats:	<input type="checkbox"/> Aware	<input type="checkbox"/> Not Aware
Work needed to improve (organization, team, documentation):	<input type="checkbox"/> Internal	<input type="checkbox"/> External
Marketing materials:	<input type="checkbox"/> From within	<input type="checkbox"/> Outsourced

MAKING THE MARKET

Buyer:	<input type="checkbox"/> Known	<input type="checkbox"/> Unknown
Confidentiality:	<input type="checkbox"/> Direct	<input type="checkbox"/> Liaison
Process:	<input type="checkbox"/> Relational	<input type="checkbox"/> Strict
Vetting:	<input type="checkbox"/> Personal	<input type="checkbox"/> Third-party

DEAL/NEGOTIATION

Diligence collection:	<input type="checkbox"/> Internal	<input type="checkbox"/> External
Data room management:	<input type="checkbox"/> Internal	<input type="checkbox"/> External
Closing checklist support:	<input type="checkbox"/> Internal/Attorney	<input type="checkbox"/> Advisor
Negotiation:	<input type="checkbox"/> Direct	<input type="checkbox"/> Liaison
Deal management:	<input type="checkbox"/> Internal	<input type="checkbox"/> Coordinated



Then, when you meet with prospective intermediaries, you have a list of the functions you're hiring for and can evaluate for those. Consider asking about the following issues:

APPROACH

Preparing for Investment	
Making the Market	
Deal Progression & Diligence Support	

EXPERIENCE

Closed Transactions By Type	
Most Relevant Situations	
Reasons for Last 3 Failed Deals	

FEE STRUCTURE

Fee Model	
Commitment Term	
Estimated Fee/Minimum Fee	
What is paid if there is no transaction?	

ANGLE

Approach to Our Situation	
Value Guidance	
Definition of Success	

PERSONALITY CHECK

Ethics	
Shared View on Success	



UNDERSTANDING THE FINANCIAL COMMITMENT

To work on your behalf (known as a “sell-side engagement”), an intermediary can be engaged under a retainer fee, a success fee, or a combination of the two methods.

Retainer fees, also known as work fees, typically start at \$50,000 and go up depending on the size of the potential transaction. Some retainer models involve a monthly installment, while others are arranged for a term at a flat fee.

Success fees usually represent a percentage of completed transactions. The details matter in success fee arrangements, as some will require you to pay the full value of all consideration in the transaction to them at close (including cash, debt, equity rolled over, seller note, earnout). Make sure you understand what proceeds are included and when payment is due.

The success fee percentages can be structured in several ways. On smaller deals, the success fee may be a flat percentage – usually 6% to 12% – of the transaction. On large deals, that flat percentage can drop as low as 1.5%. The workload required by an intermediary to close a deal does not differ tremendously based on the size of the transaction, and actually can be less work for larger companies considering the increased access to resources.

The most common success fees structure we see used in both sell-side and buy-side engagements is the Lehman structure. Under Lehman, you would pay:

- 5% of the first \$1 million
- 4% of the next \$1 million
- 3% of the next \$1 million
- 2% of the next \$1 million
- 1% of the remaining total

“Modified Lehman” terms involve altering the percentages (i.e. 6%/5%/4%/3%/2%, or 1.5% on the remaining total). Although we rarely see it, “Double Lehman” doubles the percentages (10%/8%/6%/4%/2%).

Some intermediaries employ the opposite of Lehman, called a reverse scaled success fee, in which the percentage rises based on the total amount. This obviously incentivizes the intermediary to seek out the highest possible price above all else. As with lawyers, working with an independent intermediary usually means lower costs than working with a firm. But buyer beware. An upfront “discount” may not pay off in the end.

If you engage an intermediary, you will be expected to pay at least a portion of their fee at closing. If an intermediary engages you under the guise that the buyer will ultimately cover your fee, we recommend choosing another intermediary. At best, you will frustrate the buyer and cause trust issues. At worst, the investor will walk when the “game” becomes apparent.

Most hiring agreements require you to make a 24- to 36-month commitment to have that firm represent you in the market. Most require exclusivity in this representation, which is another reason to choose wisely. In practice, that means that if you complete any transaction during that period, you may owe them a fee. The nuance is around whether the intermediary originated the introduction and their level of involvement.

Investors also sometimes engage intermediaries (known as “buy-side engagement”). The fee structures are similar and their marching orders are to go find potential sellers that are not actively trying to sell their business. There’s a good chance you’ve been contacted by one before. Buy-side intermediaries should not be charging you anything to introduce the potential buyer, as their fees are already covered. To do so is playing both sides, and is unethical.



M&A Attorney Hiring Worksheet

WHAT AM I HIRING SOMEONE FOR?

WHAT ROLES WILL THEY PLAY?

An M&A Attorney can support you as a seller in five functions:

1. Navigating due diligence
2. Analyzing and responding to Letters of Intent
3. Drafting documents: Purchase Agreement, Governing Agreement, Employment Agreements, Executive Compensation Plans, IP Assignment, Leases, Bills of Sale, etc.
4. Negotiating: Prioritization and ability to negotiate to a reasonable alternative
5. Completing all of the administrative tasks and action items that must be done before close

HOW DO I FIND AN M&A ATTORNEY?

- Look in your geographic region. Search for M&A attorneys in nearby mid-size cities.
- Check your network. Who do you know who has sold a business? Who did they use? And do they recommend them?
- Analyze their expertise – and be wary of an everything-and-the-kitchen-sink list of specialties.

Ask how they staff transactions. How many people will they put on the deal? Will it include paralegals? A bunch of associates? Multiple partners? The difference between having resources available and staffing particular resources is important for pricing and communication.
- How will communications occur? Who is the single point of contact?
- How many other deals are they working on? You don't want to be the only client they're working with, but you also don't want to be sixth or seventh down the stack.
- How do they deal with broken deals? (See broken deal fees under Financial Commitment.)



Then, when you meet with prospective attorneys, you have a list of the functions you're hiring for and can evaluate for those. Consider asking about the following issues:

APPROACH

Diligence	
Documents	
Negotiations	
Administrative Work	
Communication	

EXPERIENCE

Closed Transactions By Type	
Most Relevant Situations	
Reasons for Last 3 Failed Deals	

FEE STRUCTURE

Fee Model	
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UNDERSTANDING THE FINANCIAL COMMITMENT

The cliché of “you get what you pay for” isn't always true – but it's more true than not when it comes to legal services.

But, that doesn't mean there should be an open checkbook. You're entrusting an M&A attorney with getting some of the hardest, most complex parts of a deal over the finish line.

FEE MODELS:

1. Billable hours: Most attorneys will work on this model. If you have met with someone and you trust them and they have experience doing this and they have other clients, it's not in their interest to drag things out.
 - a. What can you expect? (Note that this can increase based on the factors under total cost expectations.)
 - i. In a mid-sized firm in a regional market, a partner-level attorney will have a rate of \$400-\$600/hour.
 - ii. In a larger firm in a tier-1 or tier-2 market, a partner-level attorney will have a rate of \$700-\$900+/hour
2. Flat fee: Less common.

BROKEN DEAL FEES:

Let's say you're a week from close and things fall apart on the deal. What happens? There are a million different ways to deal with this:

1. “The fee is the fee.” – You're expected to pay your bill.
2. Discounted model – You are expected to pay a portion of your bill.
3. Application on a future transaction – You can defer payment until a future transaction takes place.
4. Success fees – You may not pay a broken deal fee, but you'll pay an extra amount when a deal closes. It's unusual, but we still see it.

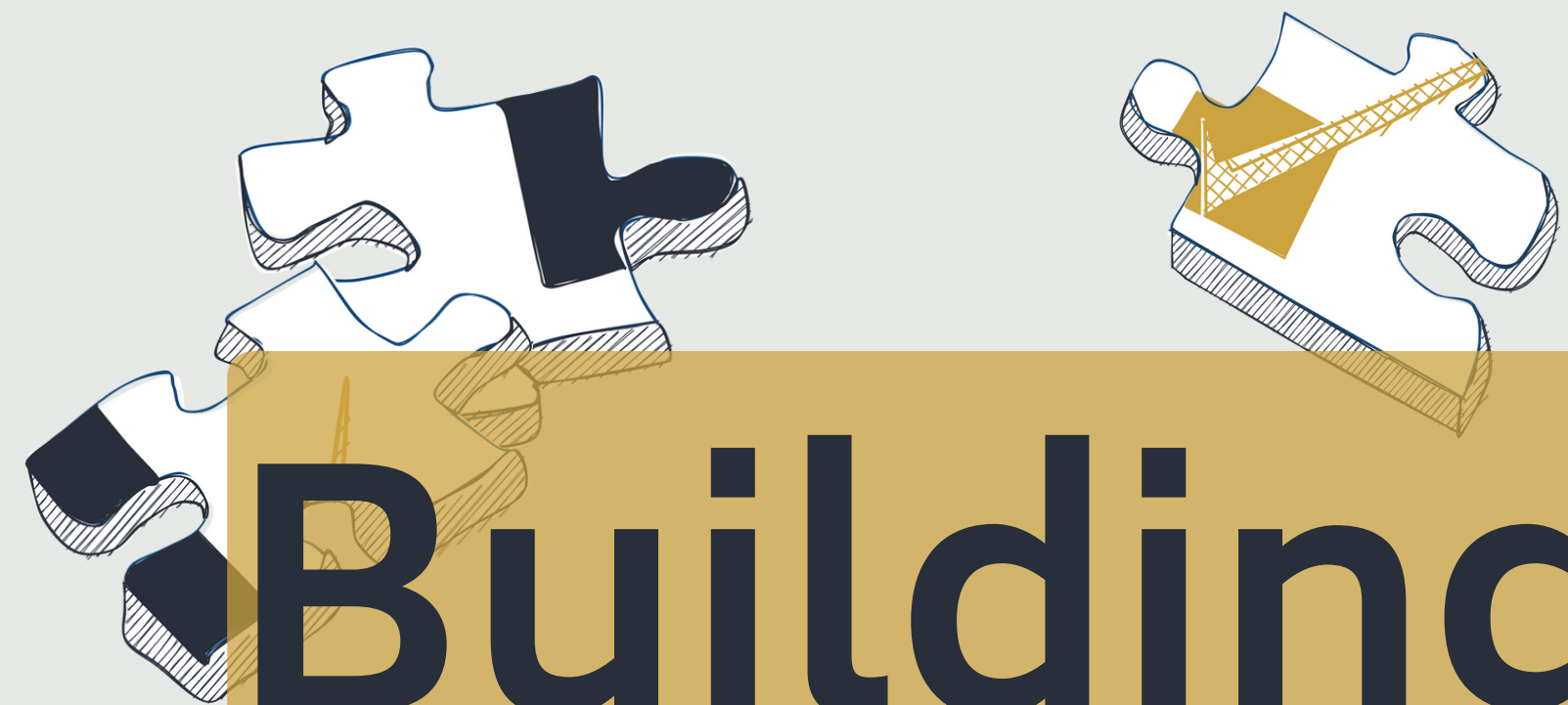
TOTAL COST EXPECTATIONS:

For a transaction at the \$50 million and under part of the market, it's reasonable to expect that you will land at \$100,000-\$150,000 in legal fees. What factors materially affect that number?

- How complicated the deal structure is to achieve a certain outcome
- Additional agreements and documentation for something like a rollover agreement
- The level of regulation in your industry
- The extent to which you need governmental or third party consents
- Whether you're negotiating debt documents in the deal
- Lender involvement
- A heavy real estate component

No matter what, get in the rhythm of checking in on costs with your attorney every few weeks, asking:

- What costs have I incurred to date?
- What's still outstanding that hasn't yet been billed?
- What's your current expectation for how much is left?

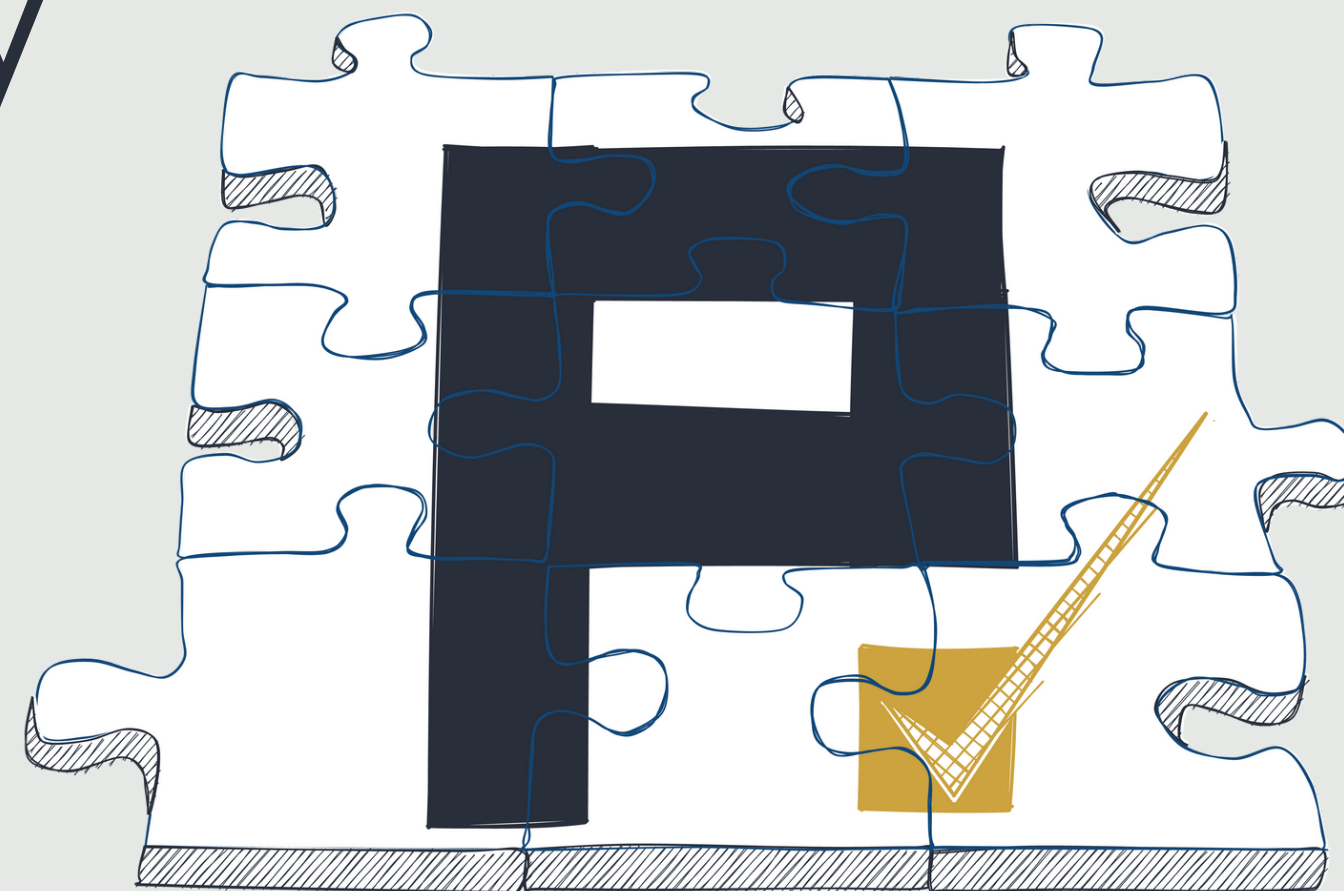


Building the Deal:

Due Diligence with Permanent Equity

This section of the workbook is the master list of our diligence questions, geared toward understanding the specifics of industry, type of transaction, and what you do. It includes a plain language version of each request, an explanation of what we're trying to understand, the type of documentation we ask for, and a space for your notes.

Ultimately, we want to understand: **Who are you? What do you do? Where are the risks? What else should we know?**





Who are you?

Wait, haven't we met? Yes, but we want to dive deeper – At a baseline, we need to know who makes up your company, how it's organized, what type of entity it is, where it operates, who holds ownership interests, and who has an impact on or say in decision-making.

It's the first step to understanding who we should talk to and negotiate with, where we need to look for more information, what liabilities we might consider, and how we can best partner with and steward your company.

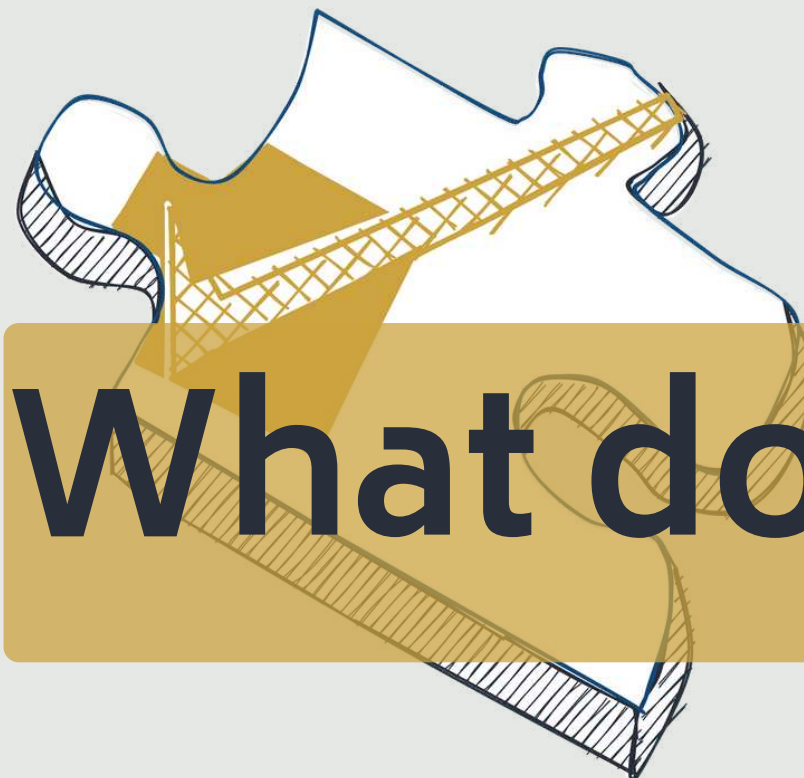
Question	Explainer	What We Ask For	Seller's Notes
<input type="checkbox"/> <p>What are you called and how are you organized?</p>	<p>Who are you? Where do you operate? What type of entity are you? And does that line up with what we're best able to steward?</p>	<p>Provide: Company org. chart listing:</p> <ul style="list-style-type: none"> • Legal name • Entity type • Ownership • Jurisdiction 	
<input type="checkbox"/> <p>Organizational documents of the company.</p>	<p>Help us get a baseline understanding for how, why, under what conditions, and with whom a business was organized.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Articles/certificate of incorporation • Articles/certificate of organization • By-laws • Certificate of partnership • Evidence of foreign registration • Operating, partnership, and stockholder agreements • Any other similar documentation 	
<input type="checkbox"/> <p>Minute books.</p>	<p>Many companies don't keep minutes, but if you have them, they're another way for us to understand how your company is organized.</p>	<p>Provide: Records of meetings and actions by written consent of the board of directors or equity holders of the company</p>	



Question	Explainer	What We Ask For	Seller's Notes
<input type="checkbox"/> History of the company.	<p>We want to know where you've been and what you've done as a company in the past. It's about understanding risks and liabilities.</p>	<p>Provide: A brief written history of the company including:</p> <ul style="list-style-type: none"> • Any predecessor companies • Changes of ownership • Reorganizations or acquisitions • Any other names the company has operated under 	
<input type="checkbox"/> Where do you have offices? Where do you do business?	<p>Knowing where you're located and where you work helps us understand associated laws, taxes, and any liens.</p>	<p>List: All cities, states, and other locations where the company:</p> <ul style="list-style-type: none"> • Is registered/qualified to do business • Maintains an office or inventory • Owns or leases real estate or has employees or independent contractors • Has material sales or business (more than \$50,000 in a year) 	
<input type="checkbox"/> Does the company have an interest in any other companies?	<p>From our point of view, we want to know what's part of your Company, what isn't, and how any agreements affect the numbers – and how they'd work in the case of a transaction.</p>	<p>List: Any other entities or ventures in which the company owns an interest with:</p> <ul style="list-style-type: none"> • The amount or percentage of the interest • Any related party agreements 	
<input type="checkbox"/> Who owns equity or something like it?	<p>We want to make sure that everyone who's supposed to get paid gets paid – that means diving into any formal or informal equity in the company.</p>	<p>Who owns equity in the company? Provide: Capitalization chart/table listing the owners of the Company's equity and how much they own</p> <p>Are there any other equity-like interests in the company? List: Outstanding equity options, restricted stock, appreciation rights, profits interests, warrants, and any other actual, derivative, convertible, phantom, etc. equity (or equity-like) interests</p>	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 671 106 742" type="checkbox"/> <p>What else impacts company ownership or deal economics?</p>	<p>If you've promised something equity-like to anyone or agreed to sell something to someone, it could shift who gets paid and what a deal looks like.</p>	<p>Have you promised any equity-like interests to anyone? Provide: Any oral or written agreements to grant or issue stock, options, restricted stock, appreciation rights, profits interests, warrants, etc.</p> <p>Is there anything else that might change the ownership or economics of the company or deal? Provide: All certificates, books and transfer documents, or other record showing all issuances, transfers, and/or cancellations of the equity interests identified</p> <p>Have you promised to sell something to someone? Provide: Any documentation relating to repurchases, redemptions, exchanges, conversions, or similar transactions</p>	
<input data-bbox="36 1440 106 1512" type="checkbox"/> <p>Who has a say?</p>	<p>And, we need to know who has influence over a transaction — anyone who has voting rights and needs to be involved in the sale.</p>	<p>Who has voting, operating, stockholder, or sales rights? Provide: Voting agreements, operating agreements, stockholder agreements, transfer restriction agreements, rights of first offer or refusal, co-sale rights agreement, put/call agreements, preemptive rights, etc.</p> <p>Are there any outstanding assignments of rights? Provide: All documents relating to outstanding proxies, powers of attorney, voting trusts, etc.</p> <p>Are there any restrictions on the transfer of assets or equity, or the ability to issue and pay any dividends? Describe: Any restrictions</p>	



What do you do?

We want to nerd out with you on all the whats, whys, and hows of what your company does and what makes it tick. Get ready for a deep dive on:

- how you approach financial matters (from the numbers and raw materials to projections and trends)
- who you do business with (customers, contracts, and vendors)
- what you own and how you protect it (assets, real estate, and intellectual property)
- how you manage employees (labor, employment, and benefits)

We get it – this is a hefty set of questions. The point isn't to overwhelm you – it's to get an accurate picture of what operations look like at your business (the day-to-day reality) to understand where we can be helpful and what an investment could look like.

Financial Questions

Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 1414 106 1483" type="checkbox"/> Financial statements.	<p>So, we've seen your summary financials – now we want to know how well those line up with reality, how they were compiled, and whether anyone else has verified them.</p>	<p>Provide: Financial statements, balance sheets, income and cash flow statements, and a summary of your accounting policies from the last five years</p> <p>Indicate: Whether the statements are audited, reviewed, compiled, or unaudited</p> <p>Show your work with: Historical and current balance sheet account reconciliations, detailing:</p> <ul style="list-style-type: none"> • Cash • Receivables and unbilled receivables • Inventory • Prepaids • Fixed assets • Reserves and accruals • Sales tax • Deferred income • Indebtedness • Other balance sheet entries 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 549 106 620" type="checkbox"/> <p>Interim financial statements.</p>	<p>Even though it's not finalized, we want to look at the raw, monthly data from the beginning of the fiscal year. It gives us a more granular view of your quality of earnings.</p>	<p>Provide: Monthly interim financial statements since the end of the fiscal year</p> <p>Show your work with: Historical and current balance sheet account reconciliations, detailing:</p> <ul style="list-style-type: none"> • Cash • Receivables and unbilled receivables • Inventory • Prepaids • Fixed assets • Reserves and accruals • Sales tax • Deferred income • Indebtedness • Other balance sheet entries 	
<input data-bbox="36 1103 106 1174" type="checkbox"/> <p>Projections.</p>	<p>Knowing where you think your company is going helps us think about how we'll work together post-close. But also, how you put your projections together (using an arbitrary growth rate, identifying key drivers of the business, etc.) gives us a lot of insight into how you think about your business and what's important.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Most recent projected financial statements • Supporting assumptions 	
<input data-bbox="36 1581 106 1652" type="checkbox"/> <p>How do you compile your numbers?</p>	<p>We've touched on it with individual financial statements, but here we're asking for the overarching explanation about how you put together your numbers. Looking at the books can only tell you so much unless you know the rules of engagement.</p>	<p>Provide: A description of and support for:</p> <ul style="list-style-type: none"> • Critical accounting policies • Revenue and cost recognition methods • Changes in accounting methods, principles or policies during the last five years • Non-GAAP financial measures 	



Question	Explainer	What We Ask For	Seller's Notes
<input type="checkbox"/> What stories do the numbers tell?	<p>We've gotten the numbers from the financial statements – now we want to know what story you get from them.</p>	<p>Provide: A summary of revenues, gross margins, and operating income trends for the past five years</p>	
<input type="checkbox"/> What trends do you see?	<p>If you look at your business's controllable and non-controllable expenses over the last five years, where are there patterns? And why are they there?</p>	<p>Identify and explain any trends in:</p> <ul style="list-style-type: none"> • Non-controllable expenses (rent, taxes, insurance, etc.) • Controllable expenses (direct operating expenses, advertising and promotions, utilities, general and administrative, repairs and maintenance, supplies, etc.) 	
<input type="checkbox"/> Budgets.	<p>Show 'em if you got 'em (please have them). But also, we'd like to know who made them, how accurate they've been historically, and what your budgeting tendencies are.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Budget for the current fiscal year • Budgets for future periods • Reconciliation of budgets to actuals during the last five years 	
<input type="checkbox"/> What have your tax advisors and accountants said?	<p>You've told us about your accounting procedures. Now we'd like to verify them with another source.</p>	<p>Provide: Any communication from the company's tax advisors and accountants describing:</p> <ul style="list-style-type: none"> • Accounting controls • Methods of accounting • Other procedures 	
<input type="checkbox"/> Anything not on the balance sheets?	<p>If you've got any "off-book" arrangements, we need to know about them. It helps us understand the full scope of the business's obligations and liabilities.</p>	<p>List: Any off-balance sheet arrangements, liabilities, or obligations</p> <p>Describe:</p> <ul style="list-style-type: none"> • The what and why of any of these arrangements • Their importance • Any revenue, expenses, or cash flows they generate • What will happen if the arrangement ends 	



Question	Explainer	What We Ask For	Seller's Notes
<input type="checkbox"/> Asset schedules.	<p>This serves as a sort of bibliography for the asset side of the balance sheet – what’s included in “equipment.” Titles should transfer at closing</p>	<p>Provide: The most recent asset schedule (both fixed and unfixed)</p> <p>Explain: The depreciation policies and methods for each asset class</p>	
<input type="checkbox"/> Do you have any deferred costs or prepaid expenses?	<p>These are sometimes listed as assets on the balance sheet. If so, let’s make sure they’re worth what they’re listed for.</p>	<p>Describe: Any deferred costs and/or prepaid expenses</p>	
<input type="checkbox"/> How do transactions work?	<p>Show us the process behind the numbers. We want to see how money comes in, and when and how it shows up on the balance sheet.</p>	<p>Describe: The receivables system and controls, walking a standard transaction through sales, billing, accounts receivable, and collections</p>	
<input type="checkbox"/> What’s past due? (And what happens next?)	<p>Money you’re able to collect quickly is worth more than money you can’t collect. If bills aren’t getting paid to you or by you, why? How do you deal with it?</p>	<p>What is past due and why? Provide: Aging schedule of accounts receivable and accounts payable</p> <p>Identify: Collections/payments since aging date, reasons for all past due payables and receivables</p> <p>What has this looked like in the past? Provide: Historical numbers – aging schedule for AR/AP and any AR write-offs for the last five years</p> <p>How do you decide when to write something off? Describe: Existing bad debt reserve</p> <p>Do you use a collections company for past due receivables? Describe: Past or current factored accounts receivables</p>	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 568 106 639" type="checkbox"/> <p>What long-term projects are you signed up for?</p>	<p>For construction and long-dated manufacturing, how do your WIP accounting and backlog factor into your balance sheets?</p>	<p>Provide: A schedule of:</p> <ul style="list-style-type: none"> • Backlog and WIP • Costs in excess of billings • Billings in excess of costs <p>Estimate: Percentage completion for ongoing projects</p> <p>Provide: Specifics on current backlog:</p> <ul style="list-style-type: none"> • Customer name • Work location • Start date • Contract size (\$) • Services to be provided • Anything outside the norm 	

Customer/Supplier Questions

Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 1249 106 1320" type="checkbox"/> <p>What products and services do you provide?</p>	<p>Your product and service portfolio. How much of each product or service has contributed to the top line of the business?</p>	<p>List: All services you provide, detailing (for the past five years):</p> <ul style="list-style-type: none"> • Revenue • Location • Customer 	
<input data-bbox="36 1470 106 1542" type="checkbox"/> <p>Who are your biggest customers?</p>	<p>How does your customer concentration break down and how much of your revenue do they account for?</p>	<p>List: 20 largest customers for each of the last five years, indicating amounts and nature of services provided</p>	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 577 109 652" type="checkbox"/> <p>Who are your top suppliers? What do those relationships look like?</p>	<p>The supply chain for the whole business. How dependent is your business on each supplier? How hard would it be to replace a supplier? Is your business a big client or a small client of any given supplier?</p>	<p>Who are your top 10 suppliers? List: Top 10 suppliers (other than suppliers of goods and services generally required by all businesses, e.g. office supplies, utilities, etc.) for each of the last five years, including:</p> <ul style="list-style-type: none"> • The amount of products supplied • The nature of products supplied <p>What kind of service are you getting? Describe: The status of the relationships with major suppliers and vendors and any supplier quality issues</p> <p>What pricing model are you using? Describe: The fixed pricing model used by the company with certain vendors and suppliers</p>	
<input data-bbox="36 1020 109 1095" type="checkbox"/> <p>What does your market look like?</p>	<p>Where are you in terms of scale relative to what the market has capacity for?</p>	<p>Indicate: The total market size for the company's services where it operates</p> <p>Describe: How you expect the markets for those services to change in the next five years</p>	
<input data-bbox="36 1285 109 1360" type="checkbox"/> <p>Who are your competitors?</p>	<p>How does your company stack in the competitive set? What is the competitive landscape?</p>	<p>Provide:</p> <ul style="list-style-type: none"> • A list of major competitors and descriptions of their competing services • An assessment of the relative market share of the company and its major competitors in each of the service areas offered by the company 	
<input data-bbox="36 1564 109 1639" type="checkbox"/> <p>What does your marketing strategy look like?</p>	<p>In your product and service portfolio, how do you sell each of those things?</p>	<p>Describe: Existing marketing strategies for each service line Any contemplated changes</p> <p>Provide: Any marketing and sales literature, brochures, etc.</p>	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 457 106 527" type="checkbox"/> <p>How do you guarantee quality?</p>	<p>What quality control program(s) have you implemented and how are they maintained?</p>	<p>Describe:</p> <ul style="list-style-type: none"> The company's quality assurance/quality control process for all jobs <p>Provide/Describe:</p> <ul style="list-style-type: none"> Compliance manual Internal processes Checklists Training Testing, etc. 	
<input data-bbox="36 958 106 1028" type="checkbox"/> <p>Warranties & claims.</p>	<p>You have products and services in the market, how do you service them? What is the company liable for if there's a defect in the product or service?</p>	<p>Describe:</p> <ul style="list-style-type: none"> Any warranties you provide related to work or services How warranties differ for different types of services <p>Provide:</p> <ul style="list-style-type: none"> Copies of any warranties and/or related documents the company provides to customers <p>List and describe:</p> <ul style="list-style-type: none"> All warranty claims and associated costs during the last 10 years 	
<input data-bbox="36 1433 106 1502" type="checkbox"/> <p>Any off-the-books activities?</p>	<p>Another chance to tell us about any handshake deals or other off the book transactions that may have been developed in the trenches of operating your business. We need to know about them so we can help formalize these kinds of transactions.</p>	<p>Detail:</p> <ul style="list-style-type: none"> Any "off the books" activities the company engages in 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 437 106 502" type="checkbox"/> <p>Do you offer discounts or rebates?</p>	<p>What's your philosophy on list price vs actual sale price? How long do you sell a product at full price before moving it to discount? Do you participate in Prime Day, holiday sales, etc?</p>	<p>List and describe:</p> <ul style="list-style-type: none"> Any discount, rebate, credit, or other similar terms or programs offered to customers 	
<input data-bbox="36 789 106 855" type="checkbox"/> <p>How do you do estimations?</p>	<p>If you provide services to clients, how do you estimate the cost for each project? And with internal projects, how do you estimate the time it will take to implement internal changes?</p>	<p>Describe:</p> <ul style="list-style-type: none"> How much, if any, of the process is automated How the process is delegated across each office The level at which estimations occur How many estimators work out of each office 	
<input data-bbox="36 1146 106 1211" type="checkbox"/> <p>Business valuations, market studies, feasibility studies, appraisals.</p>	<p>Have you gone through the process of having your business valued before?</p>	<p>Provide:</p> <ul style="list-style-type: none"> Copies of all business valuations, market studies, feasibility studies or appraisals of the company completed during the last five years Any recent analyses of the company prepared by investment bankers, engineers, management consultants, auditors, etc. 	



Asset Questions

Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 1014 106 1084" type="checkbox"/> <p>What inventory do you have? How does it come in and go out?</p>	<p>We want to understand the rules of your inventory game.</p>	<p>What inventory do you have? How much does it cost?</p> <ul style="list-style-type: none"> • Provide: Current inventory schedule • Describe: Inventory costing procedures and valuation assumptions <p>What's slow-moving inventory?</p> <ul style="list-style-type: none"> • Provide: <ul style="list-style-type: none"> ◦ Policies and procedures used to identify the company's excess, slow moving, or obsolete inventory ◦ An analysis of current excess, slow moving, or obsolete inventory <p>Have you made any adjustments to the balance sheet or carrying costs?</p> <ul style="list-style-type: none"> • List: Historical book-to-physical adjustments for the last three years <p>Does your inventory match the sales?</p> <ul style="list-style-type: none"> • Provide: <ul style="list-style-type: none"> ◦ Reconciliation of perpetual inventory listing to the general ledger ◦ Breakdown of inventory by product line <p>Do you have the assets in place to support earnings you think you'll make?</p> <ul style="list-style-type: none"> • Provide: Computation of day's sales in inventory and inventory turnover, by product line and in total <p>What's your catalog?</p> <ul style="list-style-type: none"> • List: Products and services currently sold by the company and its subsidiaries, together with applicable prices and discounts 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 658 106 727" type="checkbox"/> <p>What property do you own?</p>	<p>Owning property and leasing property come with two different sets of challenges and responsibilities. So, what do you own?</p>	<p>List:</p> <ul style="list-style-type: none"> • All property owned by the company, including the address and use for each parcel <p>Provide:</p> <ul style="list-style-type: none"> • Documentation of: <ul style="list-style-type: none"> ◦ Title ◦ Title insurance ◦ Mortgages ◦ Deeds of trust ◦ Leases ◦ Security agreements • Any available: <ul style="list-style-type: none"> ◦ Maps ◦ Surveys ◦ Floor plans ◦ "As-built" architectural plans and specifications, etc. 	
<input data-bbox="36 1303 106 1373" type="checkbox"/> <p>What property do you lease?</p>	<p>And what do you lease?</p>	<p>List:</p> <ul style="list-style-type: none"> • All real property leased by the Company (whether as lessor or lessee) <p>Provide:</p> <ul style="list-style-type: none"> • Outstanding leases • Subleases • Estoppel certificates • Related subordination or non-disturbance agreements • Maps • Surveys • Floor plans • "As-built" architectural plans and specifications, etc. 	



Question	Explainer	What We Ask For	Seller's Notes
<input type="checkbox"/> <p>Certificates of occupancy.</p>	<p>Are the properties that you own or lease compliant with all regulations and fit for use?</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Certificates of occupancy pertaining to any of the property the company owns or leases 	
<input type="checkbox"/> <p>Any property encumbrances?</p>	<p>If someone has a claim against one of the company's properties who isn't the owner, it can affect transferability and restrict free use until it's taken care of.</p>	<p>List:</p> <ul style="list-style-type: none"> • Material encroachments • Liens • Easements • Other encumbrances on the property <p>Provide:</p> <ul style="list-style-type: none"> • Documentation of any of the above 	
<input type="checkbox"/> <p>Zoning.</p>	<p>What uses are your properties zoned for? And are those uses properly documented?</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Copies of any: <ul style="list-style-type: none"> ◦ Zoning letters ◦ Zoning variances ◦ Governmental permits, licenses, and approvals required for the use and operation of property 	
<input type="checkbox"/> <p>Equipment.</p>	<p>Not only do we want to know what machinery and equipment you have, but we also want to know what its useful life is. Having to replace something eventually is one thing, but having to replace it immediately is a different calculation.</p>	<p>List:</p> <ul style="list-style-type: none"> • Fixed assets • Machinery • Equipment <p>Identify:</p> <ul style="list-style-type: none"> • For each asset or group: <ul style="list-style-type: none"> ◦ Whether it is owned or leased ◦ Cost ◦ Depreciation reserve ◦ Method of depreciation ◦ Insured value ◦ Estimated remaining useful life ◦ Condition suitability for use ◦ Appraised value • For any leased assets: <ul style="list-style-type: none"> ◦ All supporting documentation ◦ The underlying lease agreement 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 589 106 658" type="checkbox"/> <p>Cars and rolling stock.</p>	<p>We need to know what vehicles you own not only to have an accurate count, but also because there are particular, state-specific processes for transferring ownership.</p>	<p>List:</p> <ul style="list-style-type: none"> • Automobiles • Trucks • Rolling stock • Other registered equipment <p>Identify:</p> <ul style="list-style-type: none"> • For each asset or group: <ul style="list-style-type: none"> ◦ Whether owned or leased ◦ Year made ◦ State of registration ◦ Registration number ◦ Estimated remaining useful life ◦ Insured value • For any leased automobiles: <ul style="list-style-type: none"> ◦ All supporting documentation ◦ The underlying lease agreement 	
<input data-bbox="36 1146 106 1215" type="checkbox"/> <p>Any other material property or equipment?</p>	<p>Are there any purchase agreements where you have obligations outstanding? For example, perhaps you bought property with a restrictive covenant or limited indemnity.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • All agreements relating to the purchase, sale, or lease of the company's material personal property and equipment and any related financing arrangements, security agreements, or installment contracts <p>Describe:</p> <ul style="list-style-type: none"> • Any other arrangements concerning material items of equipment used by the company 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 808 106 877" type="checkbox"/> <p>What intellectual property do you own, license, or hold?</p>	<p>For IP, you either own it or you have a right to license and use it. If you license IP, we want the details of the contract and relationship with the IP owner. If you do own it, we want to know how you've protected it and how long that protection lasts.</p>	<p>List and document:</p> <ul style="list-style-type: none"> • The extent to which the following are owned, licensed, used, or held for use in business operations: <ul style="list-style-type: none"> ◦ Foreign and domestic patents ◦ Patent applications ◦ Certificates of invention ◦ Registered industrial designs ◦ Registrations and applications for registrations of trademarks and service marks ◦ Unregistered trademarks, service marks, trade names, corporate names, and other business names ◦ Foreign and domestic copyright registrations and applications ◦ Domain name registrations ◦ Trade secrets and other material proprietary know-how, technology, processes, or information <p>With, as applicable:</p> <ul style="list-style-type: none"> • Jurisdiction • Record and beneficial owner • Filing and issue dates • Patent or registration number or application serial number • Application and registration dates • Registration number • Registrant • Registrar • Registration and renewal dates 	
<input data-bbox="36 1596 106 1665" type="checkbox"/> <p>Who developed the IP?</p>	<p>Sometimes many parties are involved in the creation of IP. Knowing the details of who was involved and how much lets us understand every party that might have claim on ownership.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Documentation of and agreements with and third parties that contributed to IP development. • Confidentiality, invention assignment, work for hire, or other proprietary rights agreements from all employees, consultants, and third party independent contractors who participated in IP development • Details of any current or former employee, consultant, or other third party who has claimed any interest in the IP 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 645 106 714" type="checkbox"/> <p>What agreements do you have related to intellectual property?</p>	<p>The details and the nuances of who developed, contributed to, and owns IP matter to who gets to use it, when, and under what circumstances.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Copies of all agreements around intellectual property owned, licensed, used or held for use, including: <ul style="list-style-type: none"> ◦ Agreements by which third-party intellectual property is assigned to or licensed by the company ◦ Agreements by which the company assigns, sells, or otherwise transfers or licenses intellectual property to any third-party • Documents, policies, and procedures relating to the development, exploitation, and protection of intellectual property, including: <ul style="list-style-type: none"> ◦ Form invention and proprietary rights agreements ◦ Work for hire and invention assignment agreements ◦ Non-disclosure agreements, etc. • Settlement, co-existence, and other agreements connected to intellectual property-related disputes • Non-competition agreements, restrictive covenants, and other agreements restricting the ownership, use, or exploitation of intellectual property. 	
<input data-bbox="36 1170 106 1240" type="checkbox"/> <p>Manuals and documentation.</p>	<p>We want to know how what you made works! Also, those manuals and documents may themselves be subject to copyright.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Manuals or other written documents detailing the procedures for protecting the secrecy of intellectual property and trade secrets 	
<input data-bbox="36 1568 106 1637" type="checkbox"/> <p>Have there been any claims or disputes related to your IP?</p>	<p>Pending or threatened litigation aren't deal killers – but they do indicate how disputed any IP is and where there are risks.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Pleadings, correspondence, and other relevant documents related to any current or past potential, pending, or threatened claims/disputes: <ul style="list-style-type: none"> ◦ Alleging infringement/misappropriation of any third party's intellectual property ◦ Alleging a third party's infringement/misappropriation of the company's intellectual property ◦ Challenging the ownership/validity of any intellectual property owned by or licensed to the company 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 590 109 662" type="checkbox"/> <p>Websites and social media.</p>	<p>Your websites and social media tell us a lot about you, how you interact with customers, third parties, and the public, and what type of data you might have. And, transferring ownership of those sites requires its own list of procedures.</p>	<p>List:</p> <ul style="list-style-type: none"> All active websites and social media accounts the company uses <p>Describe:</p> <ul style="list-style-type: none"> Any interactive communications conducted through the Company's websites and social media accounts (such as marketing, customer support, other interactive communications, or e-commerce) <p>List:</p> <ul style="list-style-type: none"> Employees, consultants, or independent contractors authorized to post content on the company's websites or social media pages <p>Provide:</p> <ul style="list-style-type: none"> Agreements relating to websites or social media sites, including content development, website hosting, etc. 	
<input data-bbox="36 1384 109 1455" type="checkbox"/> <p>Data security.</p>	<p>If you collect personal information (and most businesses are dealing with other people's personal information of some kind), you should have policies and procedures around how you collect, use, and transmit that information – and what happens if something goes wrong.</p>	<p>How do you use personal information?</p> <ul style="list-style-type: none"> Describe: Collection, use, storage or transmission of any personal information of customers, etc. <p>What procedures do you have around privacy?</p> <ul style="list-style-type: none"> Provide: Current and historical privacy and data security policies and practice manuals <p>Who else receives this information?</p> <ul style="list-style-type: none"> Provide: Agreements with service providers and other third parties that receive any personal information subject to any data privacy or security requirements <p>Have there been any issues?</p> <ul style="list-style-type: none"> Detail: Complaints, claims, investigations, audits, proceedings, or litigation related to information security practices Provide: Any related notices, pleadings, correspondence, or other relevant documents Detail: Actual or potential data and information security breaches, unauthorized use or access of the Company's IT systems or data, or data and information security issues now or at any time in the past 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 527 109 596" type="checkbox"/> <p>What software do you have?</p>	<p>Custom, databases, off-the-shelf... We want to know what you have, how you're using it, and whether you're distributing or licensing it.</p>	<p>Custom software:</p> <ul style="list-style-type: none"> • List: Custom and/or proprietary software and databases • Identify: How each is used and whether it is licensed or distributed to any third parties • Provide: Copies of any such license or distribution agreements <p>Commercial software:</p> <ul style="list-style-type: none"> • List: Third-party commercial software and databases used • Provide: Copies of all related license/service agreements • List: All open source software used 	
<input data-bbox="36 939 109 1009" type="checkbox"/> <p>Systems and networks.</p>	<p>We ask questions related to your network systems, structure, and the hardware in use.</p>	<p>Describe:</p> <ul style="list-style-type: none"> • All computer systems, software packages, networks and service bureaus used, by location 	
<input data-bbox="36 1202 109 1271" type="checkbox"/> <p>What IT systems do you use?</p>	<p>Many smaller companies don't have in-house IT support, so how do you handle this piece of the business?</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Agreements relating to software and IT systems and services, including, where applicable: <ul style="list-style-type: none"> ◦ IT outsourcing/services ◦ Software and system development, hosting, maintenance and support ◦ Network support, back-up, and disaster recovery 	
<input data-bbox="36 1530 109 1600" type="checkbox"/> <p>Have you had any IT failures?</p>	<p>Yes, it's useful to know what recent problems there have been. But more important is the question of whether there's still something that needs to be fixed.</p>	<p>Describe:</p> <ul style="list-style-type: none"> • Any failures of or interruptions in the IT systems during the last five years • How these failure have been remediated 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 408 106 476" type="checkbox"/> <p>What backup arrangements are in place?</p>	<p>How have you prepared for possible disasters?</p>	<p>Describe:</p> <ul style="list-style-type: none"> • Back-up and disaster recovery arrangements • Facilities management and ongoing support arrangements • Service levels and charges 	

Workforce Questions

Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 1033 106 1101" type="checkbox"/> <p>Who works for you?</p>	<p>Details about the various types of employees you have tell a story about the relationship between the business and the people working there, including expectations, dispersion, tenure, etc.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Organizational charts detailing the management team • A detailed schedule of all employees, including: <ul style="list-style-type: none"> ◦ Names ◦ Start dates ◦ Location ◦ Pay (salary, hourly, commissions, etc.) ◦ Benefits ◦ Job title 	
<input data-bbox="36 1427 106 1495" type="checkbox"/> <p>What does compensation look like?</p>	<p>Understanding wages for key people means knowing who's highly compensated and what incentives are already in place for them.</p>	<p>List:</p> <ul style="list-style-type: none"> • All compensation paid in the last fiscal year to: <ul style="list-style-type: none"> ◦ Executives ◦ Officers ◦ Key employees • With: <ul style="list-style-type: none"> ◦ Salaries ◦ Bonuses ◦ Non-cash compensation 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 484 106 559" type="checkbox"/> <p>Policies, handbooks, and manuals.</p>	<p>Seeing what policies you have written down and what they look like help us understand issues and opportunities around compliance and requirements as an employer.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • All employment policies, handbooks and/or manuals, including: <ul style="list-style-type: none"> ◦ Confidentiality policies ◦ Wage and hour policies ◦ Equipment and IT policies ◦ PTO policies ◦ Equal employment opportunity, anti-discrimination, anti-harassment, and anti-retaliation policies ◦ Leave policies ◦ Drug and alcohol policies ◦ Workplace health and safety policies and procedures 	
<input data-bbox="36 915 106 990" type="checkbox"/> <p>Training and continuing education.</p>	<p>Capacity and focus on training programs and continuing education tells us a lot about the culture of the company, what you do to promote it, and opportunities around hiring.</p>	<p>Describe and document:</p> <ul style="list-style-type: none"> • The company's training and continuing education programs 	
<input data-bbox="36 1262 106 1337" type="checkbox"/> <p>Restrictive covenant agreements.</p>	<p>What are your expectations around confidentiality, proprietary rights agreements, and restrictive covenants? We want to make sure they're enforceable.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Copies of all forms of restrictive covenant agreements, including: <ul style="list-style-type: none"> ◦ Confidentiality ◦ Non-disclosure ◦ Non-solicit ◦ Non-compete • A list of employees who are party to any such agreements 	
<input data-bbox="36 1618 106 1694" type="checkbox"/> <p>Do you work with independent contractors or consultants?</p>	<p>The difference between independent contractors and W-2 workers is a sticky one. We want to know the terms of the agreements so we know what we're signing up for and how you interact with your independent contractors.</p>	<p>List:</p> <ul style="list-style-type: none"> • All independent contractors and/or consultants working for the company • The services they perform <p>Provide:</p> <ul style="list-style-type: none"> • Copies of any agreements with contractors or consultants 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 540 106 607" type="checkbox"/> Employee contracts.	<p>Anything that establishes legal rights and obligations give us information on the agreements between the business and its employees and contractors.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Offer letters, agreements, and other contracts with employees, independent contractors and consultants including: <ul style="list-style-type: none"> ◦ Employment agreements ◦ At-will acknowledgements ◦ Severance agreements ◦ Change of control agreement ◦ Separation and release agreements ◦ Option and other similar equity agreements ◦ Any other material agreements 	
<input data-bbox="36 896 106 964" type="checkbox"/> Do you use any staffing agencies?	<p>If you're using 3rd parties to recruit people, we want to understand when they become your employees and how benefits, etc. work.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Agreements with any professional employer organizations (PEOs) or staffing agencies • A list of employees covered by any such agreements 	
<input data-bbox="36 1247 106 1315" type="checkbox"/> What happens when an employee is terminated?	<p>Are there any severance or termination obligations? Payout expectations? Knowing who's been fired also tells a story about the relationship between the company and its employees.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Severance or other post-termination compensation payment plans/arrangements • Schedule of all employees terminated by the company in the last 24 months <p>Describe:</p> <ul style="list-style-type: none"> • The circumstances of their termination • Their demographics • Whether it's believed any legal claims will be asserted by these employees 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 527 109 596" type="checkbox"/> <p>Collective bargaining and union agreements.</p>	<p>This is a threshold question – do you have union employees? We also want to know if there have been any large-scale employee issues and whether there are any union health and welfare funds or pension funds.</p>	<p>Is the company party to any collective bargaining agreements?</p> <ul style="list-style-type: none"> • Provide: Copies of any collective bargaining or other similar agreements with any unions <p>Any labor disputes, organizing activities, etc.?</p> <ul style="list-style-type: none"> • Describe: Any current or past threatened, actual or pending labor disputes, work stoppages, work slowdowns, walkouts, lockouts, or union organizing activities <p>Any union health, welfare or pension funds?</p> <p>List: All such funds to which the company contributes or participates, including all single and multi-employer plans, and information about their funding status and any associated withdrawal liability</p>	
<input data-bbox="36 1127 109 1196" type="checkbox"/> <p>Any employment-related disputes?</p>	<p>Individual labor disputes or threatened proceedings around employment-related actions extend to hiring practices, interviewing, application screening, or any other employment related activities and help us understand the potential liabilities.</p>	<p>List: Any current or past actual, pending, or threatened labor or employment-related:</p> <ul style="list-style-type: none"> • Disputes • Litigation • Administrative or regulatory proceedings • Consent decrees • Judgments • Orders • Settlement agreements • Similar agreements related to employment-related dispute, litigation, administrative, or regulatory proceedings 	
<input data-bbox="36 1530 109 1600" type="checkbox"/> <p>Have you been inspected or audited in employment-related matters?</p>	<p>This question is particularly focused on any government-related actions.</p>	<p>Describe: Any inspections, audits, or investigations by the:</p> <ul style="list-style-type: none"> • Occupational Safety and Health Administration (OSHA) • DOL (such as wage and hour or immigration-related audits) • Equal Employment Opportunity Commission (EEOC) • US Immigration and Customs Enforcement (ICE) and/or NLRB 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 390 106 457" type="checkbox"/> <p>Have there been any workplace discrimination issues?</p>	<p>You may have detailed these claims before, but we ask the specific question to make sure they don't get missed.</p>	<p>Describe:</p> <ul style="list-style-type: none"> • Complaints, grievances, or investigations related to: <ul style="list-style-type: none"> ◦ Workplace discrimination ◦ Harassment ◦ Sexual harassment ◦ Retaliation ◦ Other related claims 	
<input data-bbox="36 664 106 731" type="checkbox"/> <p>How do you handle employment eligibility verification?</p>	<p>Requirements and expectations around how an organization verifies the employment status of employees vary.</p>	<p>Describe:</p> <ul style="list-style-type: none"> • The company's practices with respect to Employment Eligibility Verification (Form I-9, etc.) 	
<input data-bbox="36 1311 106 1378" type="checkbox"/> <p>What benefit plans does the company sponsor? How do they work?</p>	<p>Your benefit plans tell us what employees are entitled to participate in, what their expectations are, and how they stack up to comparable companies. The tax and regulatory reporting documents and any legal proceedings or complaints help us understand how the benefits work, what's required, and whether there's any risk involved with them.</p>	<p>What benefit plans are available?</p> <ul style="list-style-type: none"> • List: Employee benefit plans, including: <ul style="list-style-type: none"> ◦ Profit sharing and savings plans ◦ Bonus plans ◦ Long-term incentive plans ◦ Stock option or other equity incentive plans ◦ Commission arrangements or any other similar compensation plans ◦ Pension or retirement plans ◦ Supplemental retirement plans ◦ Retiree medical arrangements ◦ Deferred compensation plans ◦ Severance, medical, flexible spending, dental, or other health and welfare plans ◦ Other employee compensation/benefit plans or arrangements <p>How are those plans organized and administered?</p> <ul style="list-style-type: none"> • Provide: <ul style="list-style-type: none"> ◦ Plan documents, including amendments ◦ Summary plan descriptions ◦ The latest application for determination to the IRS ◦ Any IRS determination letter ◦ The latest Annual Report on Form 5500, 5500-C, or 5500-K <p>Are there any complaints or court filings related to these plans?</p> <ul style="list-style-type: none"> • Provide: Copies of complaints, pleadings, and court filings connected to any pending lawsuit involving any employee benefit plan within the past three years 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 437 109 502" type="checkbox"/> <p>Deferred compensation plans.</p>	<p>These types of plans (anything for which an employee is getting paid later for service you're performing now) aren't uncommon, but they are subject to specific tax, labor, and employment laws.</p>	<p>Describe:</p> <ul style="list-style-type: none"> • Any deferred compensation plans, including: <ul style="list-style-type: none"> ◦ Amount accrued and/or paid during the most recent fiscal year ◦ Amounts of accruals through a recent date 	
<input data-bbox="36 709 109 774" type="checkbox"/> <p>Pensions.</p>	<p>Fundamentally, we want to know if people are entitled to money that isn't there to pay it.</p>	<p>Detail:</p> <ul style="list-style-type: none"> • Any terminated pension plans and unfunded pension liabilities 	
<input data-bbox="36 939 109 1005" type="checkbox"/> <p>Group medical expenses.</p>	<p>This lets us know what your expenses have been for medical benefits over the years and what we might expect in the future.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • An analysis of group medical expense and any group medical accruals 	
<input data-bbox="36 1215 109 1281" type="checkbox"/> <p>Worker's compensation.</p>	<p>Understanding how and how frequently employees are getting hurt at work helps us understand premium costs and where there may be opportunities for more training and education.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Copies of worker's compensation insurance policies • A list of all pending claims (as well as any material historical claims) • An analysis of historical workers compensation expenses and any workers compensation accruals 	



Where are the risks?

We've said it before, and it bears repeating here: There are no perfect businesses. Investing in a business is never risk-free. We just want to know what risks we're taking.

To be clear, there are risks inherent to many of the questions we ask and requests we make in other parts of the checklist. But here we want to get specific about what factors in your business present risk (and opportunities for improvement).

Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 1262 103 1333" type="checkbox"/> <p>What do you owe to someone else?</p>	<p>As you might imagine, we're probably going to ask this question in a variety of ways to get to nuance, details, and (you got it) risk. But the baseline request is to just tell us what's out there.</p>	<p>List:</p> <ul style="list-style-type: none"> • All outstanding indebtedness including: <ul style="list-style-type: none"> ◦ All short-term debt ◦ Long-term debt ◦ Intercompany debt ◦ Guaranties <p>With:</p> <ul style="list-style-type: none"> • All amounts, maturities, prepayment, and payment terms 	
<input data-bbox="36 1633 103 1705" type="checkbox"/> <p>What debt do you have access to?</p>	<p>Perhaps you have access to additional debt that you haven't drawn on yet. Knowing the types and terms helps us understand opportunities and obligations.</p>	<p>List:</p> <ul style="list-style-type: none"> • Outstanding standby letters of credit • Performance bonds • Performance guarantees • Similar credit support obligations 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 577 106 647" type="checkbox"/> <p>Do you have any obligations to repay someone in the future?</p>	<p>From equipment to machinery to real estate, there are a lot of possibilities for owing somebody something at some point. Knowing them now allows for accurate assessment and ensures things don't lapse post-close.</p>	<p>Detail:</p> <ul style="list-style-type: none"> • Any other material financing arrangements: <ul style="list-style-type: none"> ◦ Capital leases ◦ Synthetic leases ◦ Sale and leaseback arrangements ◦ Installment purchases ◦ Similar arrangements <p>Provide:</p> <ul style="list-style-type: none"> • All loan and credit agreements • Mortgages • Deeds of trust • Letters of credit • Indentures • Promissory notes • Other evidence of indebtedness • Any amendments, renewals, notices, or waivers 	
<input data-bbox="36 1134 106 1204" type="checkbox"/> <p>Has anyone else made a claim against the business's property?</p>	<p>When we buy something, we want it to be free and clear – so we ask you to provide a record of anything that might be out there. We'll then cross-check that list against public databases.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • All documents that create: <ul style="list-style-type: none"> ◦ Liens ◦ Mortgages ◦ Security agreements ◦ Pledges ◦ Charges ◦ Other encumbrances on the company's assets or equity or in the company's favor ◦ Copies of all Uniform Commercial Code financing statements 	
<input data-bbox="36 1459 106 1528" type="checkbox"/> <p>Who is guaranteeing loans?</p>	<p>When we're underwriting downside, we want to make sure we can cover fixed costs.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • A list of all third-party guarantees and copies of those guarantees 	
<input data-bbox="36 1688 106 1757" type="checkbox"/> <p>Is the business guaranteeing any loans?</p>	<p>Whatever we're buying must be able to stand on its own. So here we're looking for any assets that have been used as cross-collateral, etc.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • A list of all inter-company guarantees and/or guarantees given the company has given and copies of any such guarantees (or evidence of the release of any such guarantees) 	



Question	Explainer	What We Ask For	Seller's Notes
<input type="checkbox"/> Have you promised to give anyone money in the future (in any way)?	Think of this as the catch-all question. We really actually want to know if any other money is owed or promised anywhere.	List: <ul style="list-style-type: none"> Any agreement to provide funds to or otherwise invest in any other person or entity 	
<input type="checkbox"/> Does the business have any financial arrangements with any employees or agents?	Has the company given employees loans or vice versa? Has someone not been paying themselves for a period of time? Are the financials independent and able to stand on their own feet?	Identify: <ul style="list-style-type: none"> Any financing arrangements or loans between the company and any employee, director, officer, agent or equity holder that were outstanding during the last year Provide: <ul style="list-style-type: none"> Copies of any related documents 	
<input type="checkbox"/> Any other contingent liabilities?	If there's one thing we've learned, it's that weird stuff consistently hides in inconsistent places. And, if we don't ask about it, we may never learn about it.	List: <ul style="list-style-type: none"> All outstanding and/or contingent liabilities incurred by the company outside the ordinary course of business 	
<input type="checkbox"/> Tax returns.	What you've told the government about yourself is another lens into who you are, how much business you do, and what kinds of tax liabilities and exposures you might face.	Provide: <ul style="list-style-type: none"> Copies of all: <ul style="list-style-type: none"> Federal, state, local, and foreign income tax returns for the past five years Franchise, employment, use, and sales tax returns for the past five (5) years Any other tax returns regarding business, assets, or income of the company for the past five years 	
<input type="checkbox"/> Tax elections.	Is the company organized the way the government thinks it is for tax purposes? The answer can affect how a transaction might take place.	Provide: <ul style="list-style-type: none"> All past and present tax elections, including: <ul style="list-style-type: none"> 2553 (S Election) elections, consents, agreements, or waivers 8869 (QSub) elections consents, agreements, or waivers 	



Question	Explainer	What We Ask For	Seller's Notes
<input type="checkbox"/> Have you ever been audited?	<p>Essentially, has the IRS or any other governmental organization ever looked hard at your business, and what did they find?</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Documentation of any past or present: <ul style="list-style-type: none"> ◦ Federal, state, or local tax examination or audit of the Company and the results of each such audit ◦ Tax litigation or appeals process 	
<input type="checkbox"/> Tax correspondence.	<p>Yes, it's important to know whether a tax authority found anything weird with your business. But more useful is how you responded.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Correspondence between the company and the IRS or any foreign, state, or local tax authority 	
<input type="checkbox"/> Any other tax liabilities?	<p>What else could be out there – particularly things that wouldn't necessarily be on our own tax return?</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Copies of any tax indemnification, sharing, or allocation agreements, including any joint venture agreements that have the effect of tax allocation agreements 	
<input type="checkbox"/> What tax benefits are you receiving? How would an acquisition affect them?	<p>If you're receiving any subsidies that might not apply after a transaction, it might affect the economics of the business and the terms of the deal.</p>	<p>Describe:</p> <ul style="list-style-type: none"> • Any preferred tax status or tax benefit that could be adversely affected by an acquisition • Any available tax attribute carry-forwards • Any undertakings given by the Company to tax authorities • Any special tax rulings or agreements arranged with tax or other governmental authorities 	
<input type="checkbox"/> Where do you file sales and use tax returns?	<p>Fundamentally, we want to know if you're paid up on your taxes. There are some tricky rules in place about where you may need to pay sales tax. If there's an issue, we want to be able to make a plan to address it.</p>	<p>Identify:</p> <ul style="list-style-type: none"> • All jurisdictions in which you file sales and use tax returns <p>Summarize:</p> <ul style="list-style-type: none"> • Total sales and use taxes paid (by jurisdiction) during the last five years 	



Question	Explainer	What We Ask For	Seller's Notes
<input type="checkbox"/> Do you file any excise tax returns?	<p>If you're selling in non-U.S. markets, there are additional tax liabilities and complications to consider.</p>	<p>Identify:</p> <ul style="list-style-type: none"> Any excise tax returns filed for the production, sale and distribution of product All jurisdictions where the company is subject to VAT (value-added tax) or a similar tax 	
<input type="checkbox"/> Related party matters.	<p>These are some of the messier areas when it comes to teasing out the reality of a business. Conflicts of interest can have unexpected forms and unpredictable outcomes – we're trying to get a bead on what a business is capable of doing on its own.</p>	<p>Are there links between people in the business that would dissolve in the case of a transaction?</p> <ul style="list-style-type: none"> List: Any indebtedness or other obligations of or to the company to or from any officer, manager, equity holder, or employee Include: Amounts or any other relevant terms of those obligations <p>Who ends up getting "company" properties (i.e., company cars) post-close?</p> <ul style="list-style-type: none"> Describe: Assets or properties used by the company in which any officer, manager, equity holder, or employee has any interest <p>What else is out there?</p> <ul style="list-style-type: none"> List: Any material transactions between the company and any of its officers, managers, equity holders, or employees not already listed 	
<input type="checkbox"/> What insurance policies do you have?	<p>What are you actually insured for now?</p>	<p>Provide:</p> <ul style="list-style-type: none"> Policies or binders of insurance or self-insurance arrangement, including: <ul style="list-style-type: none"> Workers compensation, disability, automobile, general liability, fire and casualty, products liability, professional liability, business interruption, officers' and directors' liability, key-man life insurance Information on: <ul style="list-style-type: none"> Deductibles Coverage limits Other significant terms Names and addresses of all insurance agents and brokers 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 502 106 572" type="checkbox"/> <p>How have you used the insurance?</p>	<p>Knowing what you're paying, claims you've filed, pending claims, and what you're not paying for and why tells us a lot about the nature of your business and if there are any outstanding liabilities.</p>	<p>What claims have you made?</p> <ul style="list-style-type: none"> • Provide: Schedule and summary of insurance premiums paid, claims filed, and loss history during the last five years <p>Have there been any denials or cancellations?</p> <ul style="list-style-type: none"> • Document: Any cancellations, denials of claims, or denials of insurance during the last five years <p>Any upcoming claims?</p> <ul style="list-style-type: none"> • Provide: Schedule of any currently pending or likely claims 	
<input data-bbox="36 864 106 934" type="checkbox"/> <p>Do you have any self-insurance programs?</p>	<p>If you have any type of in-house insurance programs, we'll likely have follow-up questions.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Schedule of any self-insurance programs or other similar risk retention 	
<input data-bbox="36 1093 106 1163" type="checkbox"/> <p>Bonding requirements.</p>	<p>For general contractors or subcontractors, we want to understand what bonding obligations you have.</p>	<p>Describe:</p> <ul style="list-style-type: none"> • Existing bonding requirements and relationships <p>Provide:</p> <ul style="list-style-type: none"> • Any underlying documentation or support 	
<input data-bbox="36 1480 106 1549" type="checkbox"/> <p>Permits, licenses, certificates.</p>	<p>Here, we want to mine for any additional information on the types of government approvals you've received to operate your business. And, the scope of the answer helps us understand how regulated your business is and what needs to happen post-close to ensure the proper licenses are in place.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • From all foreign and domestic governmental and regulatory authorities: <ul style="list-style-type: none"> ◦ Permits ◦ Licenses ◦ Certificates ◦ Authorizations ◦ Registrations ◦ Approvals ◦ Exemptions ◦ Applications ◦ Dates of issuance and renewal 	



Question	Explainer	What We Ask For	Seller's Notes
<p>Litigation and legal proceedings.</p>	<p>We want to know about all recent, current pending, or possible litigation. It helps us get a better understanding of the risk inherent in your business, anything that might create outstanding restrictions or obligations on the company, and whether there's an individual involved in legal proceedings that occurred in connection with their performance on the job. This is a big list – buckle up.</p>	<p>Have you been involved in any recent legal proceedings?</p> <ul style="list-style-type: none"> • List: All litigation and other legal proceedings involving the company during the last five years • Provide: Related documentation (pleadings, settlements, judgments, etc.) • Describe: How these matters were resolved. <p>What have your lawyers said about it?</p> <ul style="list-style-type: none"> • Provide: Copies of all letters sent during the last five years from counsel relating to litigation or contingent liabilities <p>Is there any pending litigation?</p> <ul style="list-style-type: none"> • List: All pending litigation, administrative, or regulatory proceedings, investigations or governmental actions • Describe: The claim and the principal parties • Provide: Copies of all pleadings or other material filings made or correspondence received <p>Is there any threatened litigation?</p> <ul style="list-style-type: none"> • Describe: Threatened litigation, legal claims, regulatory actions, or other actions or proceedings • Include: Any correspondence relating to any threatened governmental investigation or alleged violation of law or regulation <p>Any legal judgments, decrees, or agreements in effect?</p> <ul style="list-style-type: none"> • Provide: Any currently effective consent decrees, judgments, other decrees or orders, settlement agreements and other similar agreements involving the company or its assets, employees, or equity holders <p>Any litigation regarding bankruptcy, securities law, etc.?</p> <ul style="list-style-type: none"> • Provide: A copy of any litigation involving an executive, stockholder, officer or director of the company concerning bankruptcy, crimes, securities law, or business practice during the last five years 	





Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 476 106 549" type="checkbox"/> <p>Investigations from governmental authorities.</p>	<p>Past, present, threatened, possible. What has led or could lead to an investigation? Knowing this information now means we can work towards solutions together.</p>	<p>Describe and document:</p> <ul style="list-style-type: none"> • Currently pending or threatened investigations, inquiries, or proceedings initiated against the company by any governmental authority • Any investigations, inquiries or proceedings that were previously initiated or threatened against the company by any governmental authority. How were these matters resolved? • Any other circumstance where the company has been or may be accused of violating any law or failing to possess any material license, permit or other authorization • Any other material correspondence, filings, reports, and notices received from or provided to any governmental authority 	
<input data-bbox="36 1277 106 1350" type="checkbox"/> <p>Exports and imports.</p>	<p>This certainly depends on your business, but if you're importing or exporting, we want to ensure you have the proper approvals and authorizations in place – and that we know what's allowed and regulated in terms of purchase and sale of goods in international jurisdictions.</p>	<p>List:</p> <ul style="list-style-type: none"> • Approvals required for the company to do business, including export, import, or customs: <ul style="list-style-type: none"> ◦ Permits ◦ Authorizations ◦ Certificates ◦ Registrations ◦ Concessions ◦ Exemptions, etc. ◦ All approvals, etc. granted that are currently in effect or pending renewal <p>List:</p> <ul style="list-style-type: none"> • Countries to which the company exports or has exported any items <p>Provide:</p> <ul style="list-style-type: none"> • Copies of correspondence with, submissions to, or documents received from Bureau of Industry and Security, Office of Defense Trade Controls or Office of Foreign Assets Control, including requests for advisory opinions, commodity jurisdiction requests, commodity classification requests, applications for export licenses and responses thereto, export licenses, "is informed" letters, reports filed pursuant to the Export Administration Regulations or an export license, requests for documents or other information, voluntary disclosures, pre-charging letters, charging letters, warning letters, documents reflecting settlement of alleged export control violations 	



Question	Explainer	What We Ask For	Seller's Notes
<input data-bbox="36 390 109 465" type="checkbox"/> <p>Do you have any government contracts?</p>	<p>There are always unique elements to acquiring a government contract. If you're a government contractor or subcontractor that will lead to some further questions.</p>	<p>Provide:</p> <ul style="list-style-type: none"> Copies of all contracts between the company and any governmental authority 	
<input data-bbox="36 746 109 821" type="checkbox"/> <p>Where do you operate?</p>	<p>We've asked about properties you own or lease before, but when we talk about environmental risks, we need to know anything you've ever owned or leased. Just because you don't own a property anymore doesn't mean you're out of the liability woods for environmental risks.</p>	<p>List:</p> <ul style="list-style-type: none"> Facilities or other properties currently or formerly owned, leased, or operated by the company and its predecessors 	
<input data-bbox="36 1065 109 1140" type="checkbox"/> <p>Environmental studies.</p>	<p>We ask for any studies you've had done to help us figure out if we need to commission additional studies.</p>	<p>Provide:</p> <ul style="list-style-type: none"> Environmental studies, reports, site assessments, or data prepared with respect to your properties 	
<input data-bbox="36 1497 109 1572" type="checkbox"/> <p>Hazardous waste.</p>	<p>Some industries and businesses use toxic chemicals and/or produce toxic waste. If you've filed reports on this, it tells us what types of reports you have to file, indicates whether you're handling it properly, and helps us assess potential risk.</p>	<p>Provide:</p> <ul style="list-style-type: none"> Copies of all legally required reports of hazardous waste activities including the generation, transport, treatment, storage, or disposal of hazardous waste <p>Describe:</p> <ul style="list-style-type: none"> Toxic chemical used and/or hazardous waste created in connection with the operation of the business Any release of hazardous substances or petroleum known by the company to have occurred at properties <p>Identify:</p> <ul style="list-style-type: none"> How chemicals and waste are stored and disposed of Any contracts for storage or disposal services 	



Question	Explainer	What We Ask For	Seller's Notes
<input type="checkbox"/> <p>Asbestos.</p>	<p>Is this a rabbit hole we need to go down?</p>	<p>Verify:</p> <ul style="list-style-type: none"> • Whether asbestos or asbestos-containing material ("ACM") is used, generated, stored, treated, disposed, removed, or otherwise located at the properties • Whether it is friable and/or the cost of abatement 	
<input type="checkbox"/> <p>Have there been any investigations or complaints related to environmental law or health and safety?</p>	<p>Have you ever done anything or been accused of doing anything contrary to environmental or workplace health and safety law or regulations?</p>	<p>Describe:</p> <ul style="list-style-type: none"> • Any past or current investigations, notices, complaints, etc. related to any actual or alleged violations of: <ul style="list-style-type: none"> ◦ Federal, state, or local environmental law or regulation ◦ Workplace safety and health law or regulation <p>Provide:</p> <ul style="list-style-type: none"> • Copies of any related correspondence, notices, complaints, orders, judgments, rulings, or settlements. How were these matters resolved? 	
<input type="checkbox"/> <p>Environmental-related correspondence.</p>	<p>Communications with and from the government indicate reporting requirements. Violations or actions from private parties clue us in to additional risk. Potentially responsible party letters indicate that there may be outstanding liability. We simply want to know any information about hazardous material at any of your current or historical properties.</p>	<p>Provide:</p> <ul style="list-style-type: none"> • Copies of any applications, statements, or reports to: <ul style="list-style-type: none"> ◦ The EPA ◦ Any state department of environmental regulations ◦ Any similar state or local regulatory body, authority, or agency • Documents relating to potential environmental liability to private parties: <ul style="list-style-type: none"> ◦ Complaints ◦ Claims ◦ Lawsuits ◦ Other documents • Any "potentially responsible party" letters or other similar notices or requests for information from any governmental or regulatory authority 	



What else should we know?

Every business is unique. And some key documents and questions don't fit easily into one category. But there's still important information that we need to thoroughly understand your business. And, as we've said before, you know your business better than anyone else. So help us see what you see in your business and let's wrap up loose ends with this final round of diligence.

Question	Explainer	What We Ask For	Seller's Notes
<input type="checkbox"/> Other material contracts.	<p>When you receive the list of questions and requests, there will probably be a list of other material contracts we ask for. Every business has a series of contracts that, within the context of that business, are the most material. It's not the same in every business or context, and we try to determine what those are to tailor the preceding questions. But, we want to make sure we haven't missed anything, so we include this section both as a catchall and as a thinking exercise to help you tell the story of the business.</p>		
<input type="checkbox"/> Who needs to provide consent?	<p>This is anyone who needs to be informed a transaction is happening and to approve a transaction.</p>	<p>List:</p> <ul style="list-style-type: none"> • Contracts, leases, security agreements, licenses, permits, etc. that may require the consent of any third party (including any governmental agency or instrumentality) to the proposed transaction 	
<input type="checkbox"/> Who else needs to be notified?	<p>This is any third party that needs to be informed of what is happening, but doesn't have any rights.</p>	<p>List:</p> <ul style="list-style-type: none"> • Any other notification required to be given to or consents required from any third party (including any governmental agency or instrumentality) in connection with the proposed transaction 	



TABLE TURN:

A Diligence Checklist on a Buyer for Sellers

Diligence processes differ from buyer to buyer, and some buyers are better at it than others. We suggest asking the following questions to get a sense of a buyer's history, expectations, approach, organizational skills, roles, and likelihood of close.

(And, know that we're happy to answer these questions, too.)

Buyer Profile:

Capital sources:	
Amount of capital:	
Capital terms:	
Team size:	
Names/Roles:	
Expected resources (operations team, etc.):	

Of the last ten letters of intent you signed, how many resulted in a closed transaction?

Of those that failed in due diligence, what were the causes?

On average, how long do most of your due diligence periods last?



As part of diligence, may I talk with one intermediary and one owner who have gone through due diligence with you?

What roles do your accounting firm and law firm play in the process?

How is work divided amongst you and your team?

What would have to happen for you to pull the plug on the acquisition?

How often are you planning to be on site and what type of work do you typically do when on site?

What's your average turnaround time on reviewing documents?

How would you describe your pace of due diligence?

What will be asked of my team and who specifically would you like included in due diligence?



Additional Readings & Resources



Expectations: Entering Due Diligence

Signing a letter of intent and kicking off due diligence is a big step and requires trust. Although nothing is consummated, you're getting business-engaged and promising to be exclusive. But let's be honest, due diligence is not designed for fun. It's full of tough conversations, thorough reviews of financial, legal, and historical documents you may have long since forgotten, and negotiation around who's responsible for what. With that said, it's kind of like eating your veggies – make the best of it and be healthier because of it.

Most financial buyers outsource due diligence because it's expensive and time consuming, and also because they may lack the expertise to evaluate all of the areas of a business that must be understood before a transaction can be finalized. As a result, outside accountants

and lawyers are brought in to turn the business upside down on their timeline and with competing clients pulling at their attention, which can be demanding on the seller. Yet this diligence is almost always done by junior folks, reviewed by the next rung up, and then approved by the senior partner who interfaces with the buyer. So while the buyer is managing its risk, it's missing an opportunity to build a relationship with the operators. Further, post-close, all the knowledge gained during the process dissolves into the hired firm and the acquirer has to start the get-to-know-you process all over again.

If this seems less than ideal, it's because it is.

At Permanent Equity we handle due diligence differently. We have built a full-time diligence team in-house with senior experts who are focused and attentive, and who will be working with the operating team post-close. This allows for much quicker turnarounds, the building of deep knowledge, and post-close consistency. We do this because we believe it helps us close deals faster, with more knowledge, and with better post-close relationships. Here's what you can expect from us during due diligence:

Detail Orientation: Diligence is intentionally detailed. Please pay close attention to the requests and questions posed, and be thorough in responses. "Thorough" does not translate to quantity of words or documentation. Rather, if you know that the document requested will lead to more questions, be proactive. It will save everyone time and reduce the potential for issues close to closing.

Timeliness: Time kills deals. We work hard consistently and never let things "sit." When we can, we try to turn in under one business day, including follow-up questions. That said, while we've never been accused of being slow, we also understand that sellers have a full time job running their company and are respectful of the additional time sometimes needed to respond to our requests. Ultimately, we'll move at your pace and won't set arbitrary deadlines.

Let's discuss and set mutual expectations for pace of work. We've closed deals in under 2 months and some have taken almost a full year. We're happy to set milestones and keep you informed on how much progress is being made. Certain things will set us up to move at a faster space, including availability for meetings/calls, deal-specific legal counsel, thoroughness and timeliness of responses, and general simplicity of intended deal structure. A well-resourced and responsive selling team can expect exploratory, confirmatory diligence, working capital confirmation to last 4-8 weeks, with a first draft of the purchase agreement provided 1-2 weeks thereafter. Ancillary documents usually follow a week after receiving seller's counsel's purchase agreement revisions. All-in due diligence and documentation will likely last between 2-4 months.

Tone: We will ask tough questions, but pledge to do so with transparency and respect. We're not looking for "gotchas" that will kill the deal, but genuinely want to understand why things are the way they are and if they might be improved upon.

Benefit of Doubt: When we find something amiss, we give the benefit of the doubt and won't jump to conclusions. If some corrective action needs to be taken, we'll give you a heads up about it and try to help get it done. Spending time on a deal destined to die is in no one's interest.

Negotiation: Parallel to the diligence process we'll be negotiating the terms and structure of the transaction based on what we're finding. Given the importance of timeliness, and unlike other negotiators, we try to only ask for exactly what we think is fair and will show our work in terms of how we got to where we did. If you disagree, that's fine, but we ask that you show your work as well. Then, we can all settle on a solution that keeps the ultimate goal of closing prioritized.

Communication: We understand why sellers hire intermediaries to help them through this complicated process, but our strong preference is to communicate directly with the organization we're diligencing and the people we'll be working with post-close. We understand this doesn't work for everyone, but let's establish clear lines of communication and a cadence from the outset. In other words, who should be talking to whom and when.

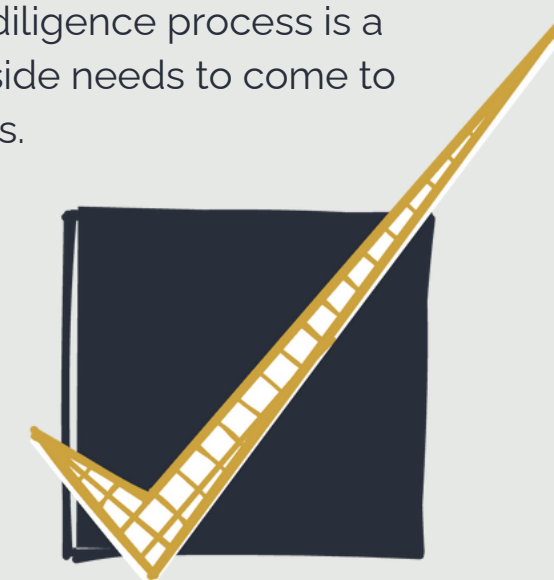
Games: Due diligence isn't a game for us, and we enter into it expecting to do the deal outlined in the LOI, assuming the information checks out. That said, we don't expect goalposts to be moved on us either. If you ultimately expect to close on different terms than those outlined in the LOI, we should talk ASAP. Games generally end in delays, mistrust, and broken processes.

Throw a Flag: If we find a deal-breaker during diligence, we will tell you as soon as possible and we ask that you do the same if something is not working for you. Again, spending time on a deal destined to die is in no one's interest.

How Deals Die: We enter diligence with every intent to close, but, in full transparency, sometimes that doesn't happen. No doubt you've heard horror stories about getting the runaround, retrades, or the inability to close due to a lack of capital. Those aren't a concern with us. We shoot straight, don't retrade, and never make an offer that we don't have the cash on hand to close.

For a deal to die, generally one or more of the following has happened: material misrepresentation or suppression of information, demands for deal structure changes, an unwillingness or inability to communicate, and/or a lack of trust that inhibits transparency and progress. In practical terms, if you don't want the business to continue to grow and succeed post-transaction, there's a good chance the process may break.

No matter who does it, diligence is expensive and time consuming. We've invested in this capability in-house because we believe it makes for a smoother process, a higher likelihood to close, and better performance post-close. Yet every diligence process is a two-way street and our experience is that for it to work, the other side needs to come to the table with the same commitment to these underlying principles.



The Skeleton Talk



When you own a business, you're *intimately* aware of the issues and eccentricities and downright problems of that business. Maybe they play out in the back of your mind or maybe they barge their way into the forefront of your everyday operations and concerns.

They're sure to be front and center, though, when you start thinking about selling your business. At that point they're less "things we should fix or improve or optimize one day" and more "skeletons in the closet."

Whether you think the issues will keep you from finding a qualified buyer, tank your valuation, or find their way into the rumor mill, when faced with discovery calls and negotiations and diligence, it can start to feel like the best option is to bury those skeletons under a few shoe boxes and the winter coats and hope your prospective buyer doesn't notice.

WHY YOU SHOULD BARE YOUR BONES

If you want a credible valuation for your business, you've got to let your skeletons out in the open and walk them around a little.

There is no perfect business. Businesses are collections of people trying to accomplish something; people are messy, and therefore companies and organizations are, too. Every company has its fair share of issues.

The point isn't to play a game of "Gotcha!" when identifying issues, but to understand how the business operates, what you envision the future to look like, who's involved in the business, what the history has been (good and bad) – and how that's led to where the business is now (good and bad).

And, a healthy history of failure can actually be a feature for investors. If your organization has a history of encountering obstacles and being able to turn them into opportunities (even if those opportunities aren't always fully realized), it shows innovation, resilience, and an ability to learn from past failures – all of which present a more compelling narrative. The relevant questions are then not whether there are issues to be solved, but instead: What are the type and magnitude of the issues? How have problems been approached in the past? What are the obligations of the business that would exist after a transaction?

DILIGENCE AND BONE-PICKING

Of course, when you're entering into a conversation with a prospective investor, it's fine to stagger the information you give. Ideally, you're developing a solid, trust-based working relationship, and that's not going to come all at once in a single conversation. There is, however, a difference between disclosing different layers of information at higher levels of trust and deliberately holding back or hiding damaging information – shoving some furniture in front of the door to the room with all the bodies.

But that's what diligence is for. And if you're working with a competent investor, they're going to find out eventually, and it's that "eventually" that matters.

Case in point: Let's say, based on our conversations and the information you've disclosed about your business, that we think your business is worth \$45 million. The process moves along with that valuation in mind. And then, at some point, you say, "Oh by the way, did you know that we sold the building in a 20-year lease-back that the business is obligated to? And I sold the IP, so we don't actually own it anymore. And we're in three lawsuits around employee issues."

Your business is no longer worth \$45 million.

For us, conviction and disclosure are directly related to one another. If we learn something at the beginning that turns out not to be true, that's problematic. Not only is there the issue itself (which was always going to be there), but there's also the erosion of trust that comes with feeling – and being – blindsided and misled. Ultimately, those types of deceptions waste everyone's time, and even if the conversation and the transaction continue, the relationship shifts, the table is poorly set, and distrust and wariness creep in. And, the damage may be irreparable.

NOTHING NEW UNDER THE SUN

The upshot is that because all businesses have issues and a few skeletons hanging around in a dusty corner, any problem you've got is probably going to at least resemble something an investor has seen before.

Current challenges in your business are potential opportunities for investors. The real returns come from being able to solve problems, particularly at that "tastes like chicken" layer of business. But it only works if we know what the problems are. And we can only make a call on whether or not we're the right ones to help solve your problems if we know what they are in advance. Yes, there are deal breakers, but a business that's an honest hot mess has a lot more potential than one that's trying to hide even a small mess.

Hiding issues makes the path to close harder. For one, in the purchase agreement you will legally attest that you're not hiding anything material (and will be liable for damages if you do). But even avoiding legalese, it makes a lot more sense to continue down the path of a conversation that starts with, "I know you're interested in investing. I've got to tell you now, early on, that we've been putting band-aids on XYZ problem. Can we be thoughtful and fair about what that means in terms of operational priorities and valuation?"

Because there's not a single business out there without any problems, and because most investors have seen some version of any problem you've got, bring out the skeletons. If you do it early and reasonably, you're proactively sharing all the information that a buyer needs to confirm that things are what they look like and that they're organized the way that you said they were. It sets expectations for the relationship and the transaction – and gets everyone working towards the same objective.



Lies, Damned Lies & Honest Mistakes

Depending on the day, attitudes on conducting due diligence range from a skeptical “Trust, but verify” to a Mulder-esque “**I want to believe.**” In any event, the purpose of due diligence remains consistent. It’s getting a satisfactory answer to three questions:

1. What have you told us that we can verify? What can't be verified and why? And what isn't true?
2. What haven't you told us that we need to know?
3. What don't you know that we should know?

Or, to paraphrase anthropologist Margaret Mead, “There's what people say, what people do, and what people say they do.”

There are some other valuable types of information that comes from due diligence that we get into elsewhere, but this is the crux of it. And the essence of these questions is, “What's verifiable reality, and how does that line up with what you told me about your business?”

And that framing begs the question of misrepresentation.

WHO ME? NO WAY.

Our experience is that the vast majority of people that we work with fall closer to the innocent mistake end of the spectrum than the malicious and/or fraudulent misrepresentation end. Most of the time, most missing documentation is missing because a seller simply didn't know we really meant “all” or didn't fully understand what we were asking for.



But, people do try to gussy up the numbers sometimes. And the intent and nature of that extra shine can make all the difference. And, here's the other thing about misrepresentation: Once somebody's caught in one lie (or half truth, or suspected omission, or gussying up of information) everything else becomes... a little more suspect.

Let's start with the basics. A misrepresentation is a false statement of a material fact made by a party that then affects the other party's decision in agreeing to a contract. There are three overarching types of misrepresentation:

- Innocent misrepresentation: You make a statement of fact that is untrue, but you're unaware that it's untrue.
- Negligent misrepresentation: You're violating the idea of "reasonable care" by not trying to verify if a statement is true before executing a contract.
- Fraudulent misrepresentation: You knowingly or recklessly make a false statement.

WHAT, WHY & HOW

Then, we're left with three more questions (due diligence is nothing if not an exercise in asking questions):

- What might someone misrepresent?
- Why might someone be motivated to do that?
- How might someone protect themselves against misrepresentation (or incentivize different behavior from the beginning)?

First, the what. And, quite honestly, the list of what people misrepresent is seemingly endless (and, remember, not all misrepresentation is intentional). A short and wildly incomplete list of possibilities includes gross margin (you can move things to operating expenses to make your gross margin look better), sales numbers (if you don't include refunds or discounts, or book future sales as current, your sales can look drastically different), EBITDA (don't get us started on the sheer creativity available in adjustments), unrealistic budgets (if you've got the right inputs, you can make a forecast say anything you want it to), working capital needs...

The "what" of misrepresentation is why so many diligence checklists, including ours, ask the same question in many different ways – and for the documentation to back it up.

Then there's the why. In fraud examiner circles, there's what's called the Fraud Triangle.

Here, people misrepresent things or withhold information because of the confluence of pressure, rationalization, and opportunity. And, even in innocent misrepresentations, it's easy to see how these three forces can create an environment where an omission seems reasonable or a slightly shinier number feels better.

For a small business owner, this might look like: "I need to retire and sell the business because of a health situation. I've worked really hard and deserve this. And I'm the only one who has this information, so no one will be able to easily find it out." Other options might be simply wanting a quick close or a higher price, wanting to make a boring business look more exciting or shinier, or wanting to avoid disclosing information that might be embarrassing (whatever that means to you).

Then, finally, there's the how, as in how to prevent misrepresentations. Due diligence is meant to cast a net both wide and deep to capture information and piece together a picture of a business that's as close to reality as possible. Like putting together a puzzle, you can sort through pieces that have migrated over from different boxes and other pictures ("I think that's a nose? But this is a picture of a castle?"). And if you discover something's missing, you can probably approximate what should go there ("Okay, that piece was definitely part of the ocean.") But how much easier would it be to just... start with the right pieces in the first place?

AVOIDING MISREPRESENTATION

How does that happen? Trust and transparency. The key lies in fostering relationships, working with good partners, discussing the process, and providing clarity around what's being asked in the diligence process and why.

And the work isn't all on the seller's side. For buyers, it means doing the work to get what we think we're getting in the diligence process – asking for information and stories and

projections and numbers and trends and explanations in different ways, and then asking for the documentation to back that information up.

Finally, it's about developing a process that aligns incentives from jump. At Permanent Equity, that means setting the tone at the top, ensuring that everyone has skin in the game (and stakes on the table if misrepresentations and misstatements become material), and leading with the expectation that everyone wants to keep the game going. It doesn't mean that we never get burned, but it decreases the motivation for misrepresentation and provides everyone a common language and direction when it does happen to (hopefully) move forward.



A Long-term Posture on Diligence

There's a persistent idea in deal-making, especially around the due diligence process, that "time kills all deals." People are in a hurry, and they're trying to ensure a deal doesn't stagnate, wither, and die on the vine. And there's real value to ensuring that a closing happens in a reasonable amount of time.

But the inverse is also true: If you "rush to the altar" on a deal and with people you haven't fully vetted, built relationships with, and share trust between and among, it's going to come back to bite you.

Our view? *When you're laying the groundwork for a 30-year partnership*, diligence should take as long as it takes. What counts as "appropriate" is subjective, but can either set the process up to fail or to build trust.

When partnering for the long haul, angling to renegotiate the deal in diligence is an unsustainable strategy. In some transactions, the idea that, for a seller, "You'll never get more for your company than what's in the letter of intent – from that moment forward it's going to be an exercise in trying to beat that number down" holds. Is that more true in financial acquisitions that aren't geared toward building a long-term operational partnership? Yes. When you're buying something and your sole concern is about what the financial return looks like in a 3- to 7-year horizon, dollars dictate everything.

But when you stretch that time horizon for decades, not only do the incentives change, but

the scale of problems and what it takes to come to a solution change too. When a house is sold, a seller may hope a leak goes unnoticed and the buyer may want to knock down the price for an HVAC unit near death. Long-term relationships aren't built that way. If you're trying to optimize for a generational partnership, well, **you've got to live together after the deal closes.**

In practice, that means that if you're looking at "problems" in a business from the 30-year mindset, things that might have seemed insurmountable are instead worth the investment to get it right. And you have the latitude to be a little wrong. You're not optimizing for short-term returns on a one-time bite at the apple. You're optimizing for long-term stability, durability, growth, and partnership.

The upshot of that is that diligence can be the first step towards building a meaningful long-term relationship. By the time we get to the point where we're ready to put in the time, effort, and resources required for this type of diligence, we don't want there to be a "gotcha." (Of course, if new information emerges – **intentionally withheld or not** – that materially impacts the situation, there's another conversation to be had.) We have a shared goal of closing, and we want to surface issues to work collaboratively to find solutions, understand and mitigate risk, and get **across the finish line.**

Except that it's not a finish line. Because, with a long-term partnership, closing isn't an end step, it's just the next step in building trust and creating fruitful relationships. And, it's a key reason why diligence can't be a one-way street and, in our process, isn't simply about analyzing the documents a seller submits or writes on a sheet of paper. It's a conversation, and the behaviors and modes of communicating and process of doing diligence tell you just as much about the future of the partnership as the answers themselves.

When people go through tough experiences together (think boot camp), they are more likely to come out the other side bonded together by strong relationships and high levels of trust. While we're not putting due diligence in quite the same bucket as military training programs, it's still not an easy or fun experience. And, if you're a buyer that outsources due diligence or are optimizing for quick profitability and sale, you may approach the process

with a "just the facts, ma'am" mentality – which doesn't leave a lot of room for bonding or an incentive to examine things that might be relevant long-term.

But if you go into the process with one of your goals being to build the trust and relationships required to promote sustainability and flourishing of the business post-close, diligence isn't just document review. You're looking for collaborative opportunities to work together and share resources. Or open and transparent communication during the due diligence process and beyond. Or practice in solving problems (say, improving insurance coverage or restructuring contracts) together. Or the risk mitigation and problem-solving to tackle the inevitable and unexpected challenges that crop up in long-term operating partnerships.



Start a Conversation with Permanent Equity

Our approach to diligence is rooted in our firm's foundations:

Keep our word, always:

Doing what you say you are going to do is the ultimate competitive advantage.

No assholes:

We are all messy, but life is too short to tolerate intentional harm.

Do no harm:

The first rule of stewardship is not to break what already works.

Helpful, not impressive:

Our role is to be in service to others without expectation of acknowledgment.

Growth without goals:

Sustainable progress requires that we regularly update our thinking based on new information.

Interested in learning more?
View our [Investment Criteria](#).

Ready to start a conversation?
Contact our [Investment Team](#).

