CRITICAL VOCABULARY FOR A GREAT DEAL STRUCTURE

Deal structuring, or the process of creating a deal structure that is suitable to both the buyer and the seller, is a defining step in every acquisition or merger. If you are new to the process, it helps to be familiar with some basic vocabulary. We have pulled together this short cheat sheet to help first-timers prepare:

Term sheet
A term sheet is a document that spells out the terms and conditions of the sale. The goal of a term sheet is to summarize the main points of the deal agreements and to sort out as many differences as possible before beginning time consuming due diligence and/or executing legal agreements. Typically, the document is "non-binding" in that it reflects only the broad points between the parties involved and serves as a template for the legal teams to draft definitive agreements.

Asset Sale
An asset sale is the first of three common methods of transaction type. In this method, the buyer purchases the assets of the selling company. The buyer chooses which assets to purchase and typically negotiates which liabilities to assume.

Advantages include:
– The choice of the buyer to decide which assets to buy from the seller and which not to
– The buyer can avoid inadvertently taking on unknown liabilities
– Potential tax advantages for the buyer

Disadvantages include:
– The buyer may not be able to acquire non-transferable assets, such as patents, licenses, and permits
– Tax implications are usually less favorable for the seller

Stock Sale
In a stock sale, assets are not directly transacted. Instead, a majority or all of the seller's voting shares of a company are acquired by the buyer. This means the ownership of the seller's assets and liabilities are transferred to the buyer.

Advantages include:
– Taxes are typically minimized for the seller
– Contracts with customers and suppliers usually do not have to be renegotiated
– Buyer avoids having to revalue or retitle individual assets

Disadvantages include:
– Usually less favorable tax implications for a buyer
– Often more time consuming in terms of diligence as the buyer needs to complete extensive diligence due to assuming all the potential liabilities associated with the company's stock (rather than just purchasing and assuming select assets and liabilities as done in an asset acquisition.)

Merger
The third most common transaction type is a merger, which is exactly what it sounds like – an agreement between two separate business entities to become one new entity. When a transaction involves a "buyer" and a "seller," it is an acquisition, which does not necessarily lead to a new entity. Surprisingly, mergers are not overly complicated because all liabilities, assets, etc. become part of the new entity. That is both a pro and a con – less negotiation, but the new entity absorbs the positive and the negative characteristics of its' "parents."

Every transaction is unique, with specific needs for each party involved. Symmetrical assists Privately held Middle Market companies to strategically assess their needs and prepare for big transitions. If you are considering what options might be best for you, please contact us for a confidential discussion about how we can potentially help.