



## viewPOINTS

# THE UNSOLICITED QUERY: RUN, FORREST, RUN!

WHY RESPONDING TO AN  
UNSOLICITED QUERY TO  
BUY YOUR BUSINESS CAN  
BITE YOU IN THE END.



Health Care Mergers and Acquisitions



You're at your desk, deleting your way through your inbox. Your moment of Zen is interrupted when your assistant tells you that you have a call from one of the largest providers in your industry. When asked what it is about, you get the all-too-familiar "business opportunity."

Okaaaaaay.

Although you typically steer clear of sales pitches masquerading as "business opportunities," given this particular caller, you ask your colleague to put them through.

Then with that wary tone born of a thousand unrequited cold calls, you answer, "Can I help you?"

And then, with just the right combination of well-practiced enthusiasm and sincerity, you hear "This is Mark from Acme Health Care. We've heard a lot of great things about your company, and we were wondering if you ever considered an acquisition?"

Savvy entrepreneur that you are, you figure he's not asking if you're interested in buying them.

Nope.

You just got an unsolicited query to acquire your business.

Particularly in health care services, where consolidation is as common as an insurance claim being denied for insufficient documentation, providers receive calls like this seemingly every day.

So, what should you do when you receive an unsolicited query from a well-respected buyer?

Most of the time you send them off to the digital dust bin of deleted voicemails. But every once in a while, especially after you've won a hard-fought cease-fire agreement in the never-ending thermostat wars, you think to yourself, "What do I have to lose?"

Sounds innocent.

But quite often, at that very instant, you already have.

Lost, that is.

Here's why.

In mergers and acquisitions, the rules are pretty simple.

For buyers, it's acquire companies for as low a price as possible. For sellers, just the opposite.

No bad guys here. Just the natural laws of commerce.

As you might imagine, the strategies to achieve these ends are vastly different.

For buyers, it all comes down to generating what is referred to as "proprietary deal flow."

As the name suggests, a buyer is in a "proprietary deal" when they are the only acquirer a prospective seller is entertaining.

Now, intuitively, most sellers would probably acknowledge that, absent competition from other potential suitors, it is unlikely that the buyer will come up with the highest possible valuation.

So, if value maximization is the seller's goal, as it almost always is, why do so many end up on the "wrong side" of a proprietary deal?

Well, it all starts with the unsolicited query, and the ignominious, "What do I have to lose?"

Let's play it out.

**If you steal a copy of the buyer's playbook, it goes something like this:**

**Step 1:** Make unsolicited query.

**Step 2:** Establish a low bar for the seller to engage; i.e. a quick get-to-know each other meeting, off-site of course, when the buyer is in the area (which, coincidentally, just so happens to be in the next week or so).

**Step 3:** Slowly up the seller's ante of invested time, resources, and emotional commitment. This is done through follow-up calls, verbal exchange of financial and operating data, talk of value ranges with an attractive high end (subject to examination of further details, of course), exchange of more detailed, written financial and operating data, perhaps agreement to perform certain tasks typically reserved for due diligence, all in the name of giving the seller the best – and most reliable – proposal.

While, from the buyer's perspective, goal one may be to truly assess the viability and valuation of a potential deal with the subject company, goal one(a) is to get the seller so involved in the "what do I have to lose process," that they wind up having quite a bit to lose in terms of emotional and financial investment in the deal.



**Step 4:** Make a formal offer that falls around the 60th percentile in terms of value range. High enough that it seems like it's a good deal for the seller, but far lower than they might have otherwise garnered in a more open, multiple buyer process.

**Step 5:** Use what has now become a long and expensive process to leverage post letter of intent price concessions (based upon due diligence findings), as well as favorable terms and conditions in the definitive purchase agreement. Because, to the seller at this point, the prospect of not selling and starting the whole process over again from the start sounds less appealing than a simultaneous root canal and colonoscopy.

Sounds Machiavellian?

Perhaps.

But no more than the strategy a calculating seller should put in motion.

**To wit, we present the seller's playbook.**

**Step 1:** Engage an intermediary that has experience doing transactions in your space.<sup>1</sup>

**Step 2:** Prepare an offering memorandum designed at every step to promote financial performance, growth opportunities, and the company's risk profile, because they are the building blocks of valuation.

**Step 3:** Identify an array of buyers, each of whom might have different strategic interests in acquiring your company to increase the likelihood of finding that one buyer that can't live without you.

<sup>1</sup> And yes, we know you're saying to yourself, "Of course they're going to recommend that; it's what they do for a living. I've run a successful business and have negotiated countless contracts and deals. I know what must be done to get a good deal."

And you would be right, except

- whether you should be presenting last year's revenues, next year's projections, trailing 12, or annualized six months,
- how to manage that not-so-great billing audit you just went through,
- when it's best to come out with a price, or let the market decide,
- how to find that one buyer that would pay a premium to land your company,
- how to communicate with buyers based on their individual negotiating tendencies,
- whether you should ask for an expression of interest, a letter of intent, or both,
- deciding how many buyers should be let in the data room,
- what should be considered in determining the right amount of escrow, how long it should be held, and at what intervals it should be released,
- how to establish a working capital target that doesn't bite you in the end,
- how to craft the optimal mix of indemnification provisions, time and dollar limits, and baskets,
- and, oh yeah, you have to run your business.

<sup>2</sup> This is not just a throwaway line. By telling the seller they will be in your area next week, whether it's true or not, the buyer is subtly communicating that they may be interested in acquiring one of your competitors. This may be just enough to nudge the seller towards engaging for fear of losing an opportunity.

**Step 4:** Orchestrate a process with multiple buyers, with an end goal of securing multiple letters of intent from each at the same prescribed date, and then use this market intelligence to plot out a deliberate series of counter-offers that will surface the very best proposal.

As an aside, know that as much as buyers love proprietary deal flow, they hate to compete against others in an auction. So, every communication must be done with a deft hand to keep buyers engaged without triggering "deal fatigue."

**Step 5:** Use the process to identify viable back-up offers in order to retain some negotiating leverage once you are under a "no-shop" provision. Because when it comes to getting through a quality of earnings assessment, clinical audits, reps and warranties, indemnification, escrow, working capital, and more with your deal intact, it's easier to bluff with a full house than a pair of deuces.

**Step 6:** Keep the pressure on. Close as quickly as possible. And be ready to go to one of your back-ups if your lead buyer begins to falter.

So now you know why buyers make unsolicited queries, how they undercut the primary strategies sellers can deploy to maximize value, and how sellers can be seduced to play along.

But the question remains, how should you respond to an unsolicited query?

Unless you coincidentally are about to launch a strategically orchestrated process, in which case you can simply fold the buyer in, the answer is oh-so-simple.

Goes something like this.

"I'm flattered by your interest, but we are not ready to consider a sale at this time. Be assured, however, that when we are, we will certainly consider you as a potential suitor."

Then, after the oh-so-skilled buyer responds, "I certainly understand. That said, I'm planning to be in your area next week.<sup>2</sup> Why don't we grab a cup of coffee so we can get to know each other better?"

You have the discipline to politely decline.

Now, unsolicited queries from mergers and acquisitions advisors?

That's a different story.

Wink.



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