**M&A Letters of Intent (LoI): Strategy Basics**

**LoI:** A letter of intent is a negotiated document signed by the principal parties that outlines the basic terms (both binding and non-binding) of a proposed transaction.

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Once an LoI is signed, power shifts away from the seller.

Most LoIs include exclusivity obligations that remove any competitive element from the sales process. As such, the buyer will generally gain the upper hand. Sellers are usually in a stronger position in bull markets.

Sellers may retain some leverage in a number of ways, including:

- keeping the length of the exclusivity period short
- establishing transaction milestones that, if not met by the buyer, immediately terminate the LoI
- more detailed provisions addressing transaction terms generally
- stronger confidentiality, non-solicitation, and non-hire provisions with longer survival periods
- payment of a break-up fee to the seller if no agreement is reached

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Once an LoI is signed, power shifts toward the buyer.

Because the LoI buys the buyer time to perform due diligence and because it can be difficult to renegotiate terms, the buyer gains leverage by including as few specific terms as possible. Bear markets are typically more favorable to buyers.

Buyers may want to consider including terms such as:

- choosing a purchase price that is a range or a multiple of earnings
- specifying that the purchase price and the structure are subject to due diligence findings
- requiring that the purchasing price and other terms are based on the seller’s continued performance in line with current forecasts
- providing that the acquisition agreement contain “customary” provisions, covenants, and warranties (rather than itemizing an exhaustive list)
- a longer exclusivity period with stronger obligations