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LAW

Five Questions With: Michael Sweeney

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Michael Sweeney is founding shareholder and head of the business-law practice at Duffy & Sweeney. With the market constantly changing, times are booming for mid-market sellers of private businesses. This favorable climate is impacted by the tax rate in effect until the end of 2012, banks lending money against cash flow again, by private equity awash in cash that must be deployed, and by sellers who waited through the last cycle of opportunity and now see the window is open again.

PBN: What is happening in the midmarket right now?

SWEENEY: We are seeing a high level of mid-market mergers, sales and acquisitions. As general counsel to a large number of successful New England- and U.S.-based privately held businesses, our firm is seeing many clients achieve successful "exits" again following the near shutdown of sale activity in late 2008 and 2009. The current valuations, which are predominantly based on the cash flow of the business, are higher, reflecting both the increased demand from buyers and the availability of debt financing (bank loans) to supplement the buyer's equity. Debt was, basically, unavailable after the late 2008 Lehman Brothers crisis and Great Recession that followed.

PBN: Is this a good time to buy or sell a business?

SWEENEY: It, of course, always depends on the specific business but, in general, yes. [President George W.] Bush's tax cuts that are set to expire after 2012 favor sellers today with lower capital gain tax rates. There are also many estate tax planning opportunities for sellers that may not survive once Congress reforms the tax code next year. Buyers may access capital at historically low interest rates, which allows better leverage and more buying power.

PBN: Are baby boomers starting to cash out?

SWEENEY: Most family-owned businesses do not survive past the first generation. For entrepreneurial founders from the baby boom, and even later, generations who have no "family" succession plan option, a sale of the business on their watch can be the most effective way to control the family legacy and monetize the business so the proceeds can be invested with less risk and more diversity.

PBN: What kind of activity are you seeing from private equity folks and strategic buyers?

SWEENEY: Lots of it and very competitive. We often see multiple bids for the same business from both private equity firms and the strategic buyers. This means the strategic end buyers need to compete with the investment funds who want to ultimately buy, build and resell the same companies down the road to the larger strategic buyers. This competition favors sellers with strong cash flows in growth businesses.

PBN: How long are deals taking to close compared to five or 10 years ago? Why is that change happening?

SWEENEY: It depends, yet with most sellers we represent, the goal is always to move fast to closing once the decision to market the company is made. It is hard to manage a company and devote the amount of time and resources demanded by a sale process. The right team of experienced advisers and advance preparation can make a huge difference in the process. Knowledgeable, experienced advisers help sellers manage the process and their expectations of the market, which ultimately leads to successful closings.



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"MOST FAMILY-OWNED businesses do not survive past the first generation," said Michael Sweeney, founding shareholder and head of the business-law practice at Duffy & Sweeney.