



IFA Sale Transaction Process

This document outlines what to expect during a sale or purchase process for an FCA regulated entity. It is not exhaustive; all transactions have their individual challenges that may need to be overcome for a successful conclusion to be achieved. What follows is a guide to the more obvious stages involved, what might be expected and how long these might typically take in terms of timings.

Stage 1 - Preparation for Sale

The vendors work with Catalyst Partners to attend to any issues that should sensibly be addressed prior to the production of an Information Memorandum (IM Document). Timing of this stage will depend upon what is identified as requiring attention. For example, addressing any outstanding compliance requirements, or the preparation of data required for the build of the IM Document.

Stage 2 – Information Memorandum (IM) Document

Ideally, this should be prepared such that it provides a detailed overview of the company and its trading results. It should offer sufficient information for a prospective buyer to form an opinion about the company, its directors and employees. It should describe the company's culture and vision, as well as outlining the objectives being sought from the sale by the shareholders. Too much information renders the document too long and it may not be read. Too little and Catalyst Partners will have to field lots of additional questions, or potentially buyers will show little or no interest at all.

Catalyst Partners will provide you with a detailed list of what is required for the preparation of the IM Document.

Stage 3 – Choice of Recipients

Catalyst Partners will identify prospective buyers that are likely to be a match. Issues under consideration include, but not limited to: size, location, culture, reputation, appetite for acquisitions. This stage can be achieved in a matter of days, longer if some research is required into the prospective acquirers. Having an open-minded approach may yield buyers that may first have been dismissed.

Stage 4 – Approach

From the detail in the IM Document, Catalyst Partners will prepare a "Teaser", a one-page anonymised document that gives the key features of the business. This will go under a project name, which should be agreed at an early stage in the process.

Acquirers that respond to the teaser requesting a copy of the IM Document will then be sent a Non-Disclosure or Confidentiality Agreement (NDA) that must be signed and returned before the IM is released.

The IM Document is issued with a covering letter from Catalyst Partners setting out the timeline of events, what we expect to see in the offer and any other specific points that need to be highlighted, according to the needs of each sale. The idea is that all potential offers arrive at a prescribed time so that they may be evaluated together. Without this there is a real risk that potential acquirers are left frustrated if they are left waiting an unreasonable time for their outline offer to be considered. The letter may also indicate when a response to any offer will be given.

Stage 5 – Queries and Offers

Catalyst Partners will handle any queries or requests for extra detail, but in general a detailed IM Document will have anticipated most of the key points.

Potential acquirers would usually request a meeting with the vendors prior to making any offer and the timeline will have provided for these meetings. Sometimes there may be additional information requests that present themselves at these meetings, but if not, an offer will usually follow the prescribed timeline, if one is to be made.

Stage 6 – Offer Analysis

The offers received should address the issues requested by Catalyst Partners and illustrate the source of funds, timescales, resources and other aspects. Sometimes the offer is made straight into the format of an outline Heads of Terms (HOT). In larger or more complex transactions, a detailed offer letter may be a precursor for the Heads of Terms.

The offers or Heads of Terms would typically be analysed by vendors and Catalyst Partners and at this stage to include their preferred lawyer. The offers are usually prioritised, although it is likely that a preferred buyer is chosen to take to the next stage.

The Heads of Terms is a letter of intent, the culmination of the discussion undertaken so far and setting out the *intention* to contract the sale and purchase. It is prepared by the lawyers acting for the acquirer and will need to be reviewed and agreed by the vendor's lawyer. It should be remembered that this is the *intent* to contract - the full detail of the transaction and accompanying warranties, indemnities and disclosures will eventually be contained in the full Sale and Purchase Agreement (see below).

Stage 7 - Due Diligence

Assuming legal advisers have agreed the HOT and that this has now been signed by both parties, it would be normal to commence the diligence process. Larger acquirers will have their own in-house specialists, although some and certainly the smaller acquirers will look to use an external resource.

By this stage there is a financial commitment by the acquirers, so it is very important to have some certainty that vendors wish to progress to a conclusion, all reasonable matters considered.

There will be a large amount of data to be provided and typically the acquirer's lawyer will set up a virtual data room where the requested information may be placed. The data room is fully encrypted and secure and as this is obviously sensitive and confidential information, both parties agree in advance who, other than the legal teams, will have access to the data room.

To begin the process, a lengthy document is usually offered to the vendor by the acquirer with a full range of detailed questions. Vendors and their advisers will agree which personnel are required to

tackle the various headings and requirements. This can be a lengthy and sometimes frustrating process. Vendors often wonder why certain information is required and larger acquirers often wonder why certain information is not immediately to hand! The job of Catalyst Partners at this stage is to adjust queries with the agreement of the acquirer if they are unnecessary or inappropriate for the size of the business.

Apart from making information available, it is usual to undertake meetings as well. These may include visits to vendor's premises by tax or legal teams undertaking diligence, sometimes over several days. This is a big commitment if the smaller vendor is also running their business as well and does not have colleagues to support the work to be undertaken.

Additionally, further meetings with the vendors may be required to consider options relating to running the business post-acquisition. These could include meetings to discuss staff retentions, exit terms, premises, investment process, client/adviser continuity and a range of other matters as required.

The diligence process can take anything from three or four weeks for a very small business, through to several months for a large transaction involving a more complex organisation with considerable detail.

Stage 8 – Sale and Purchase Agreement

The Sale and Purchase Agreement (SPA) is drafted by the acquirer's legal team and presented to the vendor's legal team as a first draft. This is the key document that sets out the acquisition terms, including the price, expectations, warranties and indemnities. The vendor's lawyer will analyse the draft, share it with his clients (with or without comments or a meeting) and commence negotiations with the other party on amending the document. Both parties are seeking the best outcomes for their respective clients, so there is always some give and take, leading, usually, to many versions of the document protracted over a few weeks.

The vendor's lawyer will seek a meeting with his client if it is felt that there are issues in the SPA that cannot be overcome with compromise. However, it is required by the legal profession that the vendor's lawyers meet with his client to explain, in full, the warranties and indemnities contained in the SPA. The vendor's lawyer will draft the disclosure letter, which usually accompanies the SPA. This is when the vendor can raise and discuss with the lawyer any concerns there may be and for the lawyer to answer any queries and explain the rest of the process.

Stage 9 – Disclosure Letter

This document is prepared by the vendor's lawyer. Just as the SPA has set out the terms and warranties and indemnities, the Disclosure Letter provides the vendor with the opportunity to identify any exceptions to the warranties required by the acquirer in the SPA. The buyer will usually agree that the seller will not be liable for a breach of warranty where the matter giving rise to the breach was disclosed in the disclosure letter. It is therefore an important document for the vendor and requires careful consideration, with full guidance being given by the lawyer.

Stage 10 – Exchange and Completion

Both parties are likely to have an objective date for completion, which is usually sent out in the Heads of Terms. However, first it will be necessary to apply to the FCA for change in control authorisation, which can take weeks or even months. Some acquirers may wish to apply to the FCA early in the process to improve the timeline for approval so that exchange and completion may be achieved simultaneously, which is certainly preferable. Clearly this can only be done with the agreement of both parties and when the transaction has reached a position of some certainty. A small and straightforward transaction may imply a shorter timeline with the regulator, but this is not always so as it may depend on their caseload at the time of application.

Therefore, it may be necessary to have different dates for exchange and completion, pending regulatory approval. On exchange of contracts without simultaneous completion, the acquirer will require certain undertakings to be met by the vendor. These will be a range of points, but one example would be not to commit to any capital spending that would not be part of the normal running of the business. It is not in the interests of either party to have a protracted period before full completion.