The Unwritten Rules of Midmarket Dealmaking

A veteran of midsized deals says his market is populated with bright people and unwritten protocols

Nimble is a word that best describes Jon Herzog, a partner in Goodwin Procter's Private Equity Group.

"We are laser-focused on the middle market, and for us this includes most forms of growth equity deals," he says. "You have to be flexible in this space, because there are so many types of deals. Investors and entrepreneurs often do minority deals. In many cases, these deals involve liquidity or leverage, and often substantial, profitable companies. On the other side of what is a broad spectrum, you will see very large and complex leveraged buyouts from any of a range of sellers-existing private equity sponsors, founders, or larger companies looking to divest a division."

Herzog says that these deals have several things in common. Personal relationships are very important. In the middle market, the parties to the transaction are the owners of the assets involved; they are smart, they are entrepreneurial, they are practical and direct, and they come from all regions of the country and the world. You need to know how to relate to these principals and help make the relationship between the entrepreneurs and the investors work.

It is also critical to know what is "market" in these deals. There is a set of principles that generally applies in midmarket deals, for M&A, debt financing, rollovers, and management incentive equity. Because middle-market players come from so many different backgrounds, and because the space combines both minority and majority deals, it is important to know where the issues, or the "rules," usually come out and how they shift as market conditions change.

Goodwin's Private Equity Group operates across a broad range of middle-market deals on any given day. With a full-service team of more than 100 lawyers, the practice covers the full life cycle of middle-market clients' investments across industries including technology, life sciences, FinTech, financial services, consumer, healthcare, and food-from fund formation to exit.

"The rules and norms of middle-market dealmaking aren't published anywhere–you simply have to be a practitioner to interpret and effectively use them on behalf of your clients," says Herzog. "These rules involve a combination of market knowledge and often a particular style that is hard to articulate but, at a minimum, is the opposite of what I call an arrogant, scorched-earth style."

The latter point is notable. Owners of growth companies have tons of options, and there is an ocean of capital that wants to own and partner with them. And the highest bidder does not always win, unlike (most) deals in the public markets. So if you, as a lawyer, cannot provide an extra edge for your client in terms of market knowledge, personal chemistry, and contacts in the contest to woo entrepreneurs and the project of building companies with them, at best you are fungible and at worst you are a millstone around their necks.

Jon Herzog, a partner in Goodwin Procter's Private Equity Group, focuses his practice on company and investor-side merger and acquisition transactions, growth and venture capital investments, and the representation of both emerging and mature private companies, with a sub focus on search fund deals.

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Herzog functions best while competing and collaborating with some of the smartest minds in the industry.

"What makes my practice so rewarding is the ability to build strong relationships with clients, who are some of the brightest people I've ever met," he says. ■

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