



The role of a dealership broker or advisor in a buy sell

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By Joseph S. Aboyoun, Esq.

One of the threshold questions when pondering the sale of your store is whether to include a broker or advisor in the process. Of course, this factor adds to the transactional costs of your deal. Does the broker/advisor bring sufficient value to off-set such cost and yield an even higher dividend? Let's explore some of the considerations in making this important decision.

Broker or No Broker?

Initially, you need to evaluate whether you need the services of a broker/advisor at all. Some deals have the expected prospects. For example, a single-point dealer in a particular market would be the logical target of the larger dealer group or groups in that market, especially if the group's platform does not include your particular franchise. Alternatively, you may have had preliminary discussions over the years with particular prospects. Or, you are fully aware of a dealer that has desired your franchise for years.

Does one require the assistance of a broker or advisor in such instances? There are a few factors to consider:

- The first and foremost is confidentiality. Obviously, you can't just pick up the phone and call the local dealer/prospect. You can't be seen dining with the prospect. The need for an intermediary is paramount.

- Who else is on your team? Do you have an experienced automotive accountant or attorney? Certainly, one of these can act as the co-between to conduct discreet discussions and, ultimately, negotiations.
- How desirable is your deal? Needless to say, if you are the only Toyota or Mercedes-Benz dealer in your market, the prospects will be lining up to talk to you. Conversely, if your dealership does not hold a premier franchise, you may need the additional assistance that a broker/advisor can bring to the table.

Consult with your regular advisors and develop a preliminary market plan. Then, you can effectively assess whether you believe that a broker/advisor should be engaged.

Who to Engage?

If you decide to proceed with a broker/advisor, the focus then shifts to the selection of the right company. As with all professionals, whether it is a lawyer, an accountant, or an IT consultant, careful thought must be given to his/her credentials. The broker/advisor must have extensive automotive experience. Beyond that, here are some additional considerations:

- Do you select a national-based firm or someone more local and familiar with your market?
- Which firm is more likely to have access to the best prospects for your dealership?
- What is the track record of the broker/advisor? Upon discreet inquiry (preferably by your accountant or lawyer), you can ascertain whether the broker/advisor under consideration has been successful in attracting qualified buyers or less than satisfactory. Perhaps even more important is the ability of the broker/advisor to formulate and conclude the deal. I have seen too many times a broker/advisor who sits back after the prospect is brought in and leaves the ultimate outcome of the deal to your lawyer or, worse, you. Obviously, you must ask for references and check each reference about the track record.
- What does the broker/advisor bring to the table? Many have superb contacts and credibility with the public company retail groups, large private platforms, equity funds, and family offices. A select few have the ability to process the deal very effectively, from the handling of the critical, initial negotiations to the drafting of a comprehensive Letter of Intent to the processing of franchise approval (including assistance in completing the franchise application) to closing preparation and the ultimate closing.

What's the Commission?

There is nothing standard about the commission or fee to be paid to the broker/advisor. It *is*/ways negotiable and wide-ranging. It is generally a percentage of the ultimate price. Of course, the percentage goes down as the price goes up – i.e., a sliding scale approach. For example, a 6% commission on \$1,000,000.00 deal might make sense. A commission on a \$30,000,000.00 deal could be as low as 2%. Obviously, you should avoid pricing a commission so low as to leave the broker/advisor with little motivation. It is up to you and your lawyer to negotiate the optimum rate.

Other considerations include the following:

- What is commissionable? Generally, the rate only applies to the price for blue sky and fixed assets. It should not apply to inventory items (i.e., vehicles and parts).
- It also typically applies to real estate, if included in the deal. If so, it is important that the broker-advisor be licensed for such a transaction.
- What about rents to be received from leasing your facility to a buyer? There is no hard and fast rule. This is completely negotiable as to whether to include the rents at all or to limit it to a specific number of lease years to be included. You must also decide whether it extends to

the ultimate purchase of the property by the buyer years later (e.g. pursuant to an option to purchase negotiated in the original deal).

Other Considerations

- What about the duration of the engagement (listing)? A term of 90 to 180 days is customary. Anything shorter is likely to be ineffective. If it is longer, there is little motivation for the broker/advisor to move on your deal right away.
- Exclusions are a critical factor. If you have been negotiating with particular prospects, these must be excluded from the engagement and the obligation to pay a commission. The savvy broker/advisor may push back on this on the basis that it might be his/her marketing that ultimately brought your prospect to the table. The logical compromise is a reduced commission for a deal involving an excluded prospect.
- The tail provision in these engagements should not be overlooked. This is a period of time after the original term expires during which the broker/advisor can earn a commission if a deal concluded within this timeframe. A period of one year is customary.
- The governing law/venue provision of the engagement agreement should not be overlooked. In many, the broker/advisor chooses its own state. This could be problematic if a commission or other dispute develops and the broker/advisor files suit in a court or arbitration thousands of miles away (or you are forced to do the same). Both the governing law and the forum for the dispute should be the state where your dealership is located.

The decision to retain a broker/advisor in your deal is both significant and multi-faceted. It deserves almost as much consideration as the deal itself.

Joseph Aboyoun is a partner at Aboyoun & Heller, LLC in Pine Brook, N.J. He can be reached at 1-973-575-9600 or jaboyoun@aboylaw.com and www.aboyounheller.com

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