

James Freund: 10 Rules of M & A Bargaining

By Geoffrey James

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One of the world's foremost experts on M&A negotiation is James C. Freund, author of multiple books on the subject, including "Anatomy of a Merger" (Law Journal Press, 1975), "The Acquisition Mating Dance" (Prentice Hall, 1987) and "Smart Negotiating" (Simon and Schuster, 2006). In an interview with BNET, Freund described 10 critical negotiating tactics:

1. Do your homework beforehand.

Collect and evaluate information on leverage, values, sale prices, competition and other factors that will have an effect upon the negotiation. Work out a defensive plan to protect sensitive information that the other side might inquire about but isn't entitled to know. Keep your eyes and ears open for additional helpful information that can assist you in the bidding process.

2. Set realistic expectations.

Determine your "aspiration" by combining an "objective" valuation of what you're acquiring (use an expert if necessary) and the "subjective" worth to you. Temper that aspiration with "feasibility," a combination of what your counterpart has in mind and the leverage of both parties. Reassess your expectations as the negotiating progresses and new information turns up.

3. Decide whether to "go first."

When it comes to price, you should know before bidding what deal you want and be able justify it as being realistic. Then, put your own number on the table to take control of the bidding and put your counterpart in your ballpark.

4. Give yourself maneuvering room.

An offer between 15 and 25 percent below what you're prepared to pay is a common tactic, but with a hot property, you might get closer to 10 percent. On nonprice issues, try to leave yourself some bargaining room, but make sure that you have a plausible rationale for the positions that you take.

5. Manage the price concession process.

Don't be afraid to make the first price concession, but don't make it at the same time as your initial bid, or you'll sacrifice credibility. When making price concessions, do so in a few meaningful strokes (rather than multiple small ones) and make sure that the absolute size of each subsequent concession decreases.

6. Manage the nonprice concession process, too.

Rank the nonprice issues in terms of significance and their likely importance to your counterpart. Determine plausible intermediate steps from the opening proposal to your expectation of where each issue will end up. Try to make your concessions do double duty – both resolving the matter in question and furnishing a trading point for some other issue.

7. Create and sustain credibility throughout the negotiation.

Support any positions you take with appropriate rationales. Be specific about facts and stay detached from the emotion of negotiations. Assess the reliability of what your counterpart says: The more significant the information, the more skeptical you should be.

8. Keep time on your side.

Be alert for clues that the other side is feeling heat to get a deal done. Conceal deadline pressure on your side by moving things along briskly at the onset. If your counterpart attempts to impose a deadline, test that it's real and reasonable.

9. Negotiate until the contract is signed.

Try to be the party that drafts the contract, and make sure that your interests are represented. In responding to controversial provisions in the other side's draft or introducing your own, consider doing so at a meeting where you can most effectively express your views and rationale.

10. Quit while you're ahead.

If the negotiation is going well and you've got most of what you want, don't keep negotiating endlessly. Close the deal before something negative unexpectedly crops up – like a surprising new quarterly report.
