

I'm a Potential M&A Buyer; Should I Focus on Buying Stocks (Equities) or Buying Assets?

August 29, 2024

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When an M&A buyer is looking into a target company, they're faced with the decision whether to buy stocks (the equities) or acquire assets. But what's the difference?

A stock purchase involves the purchase of the selling company's stock *only*. Simply put: the buyer acquires all of the outstanding stock of the target company directly from the target company's stockholders, including the assets, rights, and liabilities. The buyer then steps in the shoes of the selling stockholders (switches places). Stock purchases are generally straightforward transactions. Both parties sign a Stock Purchase Agreement (a sales agreement used to transfer and assign ownership in a corporation) and any other related documents that outline the terms of the deal, and the sellers then transfer their stock to the buyer.

It seems simple enough, right? For the most part. There are risks, such as unknown or undisclosed liabilities of the target company. Again, when you purchase the stock, you become the stockholder; thus, nothing at the company level changes (save perhaps change of control issues). Operations remain intact as do all risks and liabilities. In addition, stock sales generally have favorable tax treatment for sellers.

But what if you don't want to buy everything and/or you want to limit your risk exposure? You might then be more interested in an asset purchase.

An asset purchase is an agreement between a buyer and seller to acquire a company's assets. This means: the buyer *only* acquires the assets, rights, and liabilities it *identifies and agrees* to acquire and assume. Assets can be both tangible, such as offices and equipment, and intangible, such as intellectual property and corporate name. Asset purchases are a good option if you're looking for more flexibility and don't want to pay for unwanted assets. Further to that point, it means less risk of assuming unknown or undisclosed liabilities. Asset purchase transactions are generally more favorable to a buyer and at times less favorable to a seller.

Some buyers may be deterred by asset acquisitions because they're more complex than stock purchases. The buyer has to spend time identifying the assets it wishes to acquire/assume. By doing so, the buyer may potentially overlook an important asset required to run the business it's acquiring. Asset purchases have more formalities and documents since they require a separate transfer for each of the identified assets and liabilities of the target company. They may also require more third-party consent since the contracts assumed by the buyer are likely to contain anti-assignment clauses (which prevents either party the ability to assign tasks to a third party without the agreement of the non-assigning party).

Whether you're considering a stock purchase or an asset purchase, it's always best to discuss it with an M&A attorney first. Selecting the form of the transaction is a key consideration when targeting the purchase of a business. There are many

variables to consider as to why a transaction is set as a stock purchase versus an asset purchase.

Originally posted on 9/9/2020, no content changes.