The LOI Illusion: Why the Purchase Price Isn't the Most Important Number in Your Deal



November 2, 2026
By Michael N. Mercurio

In an acquisition, the letter of intent (LOI) can feel like a victory lap. A buyer puts a number on the table, the seller can see the finish line, and both sides are eager to announce they have a deal. But for the seller, the LOI is not a ceremonial step before the "real" documents. It is often the moment when leverage begins to shift to the buyer.

This is the LOI illusion: the purchase price appears like the deal, while the terms surrounding it are what determine how much value the seller receives, when that value is paid, and what the seller must do to earn or keep it. Remember, two offers with the same headline price can produce dramatically different outcomes.

The Price Garners the Attention, but the Terms Control the Outcome

Business owners naturally concentrate on valuation. After years building a company, the price feels like the most concrete measure of what that work is worth, and buyers know that. A strong headline number can make the rest of the LOI seem secondary or premature. It is neither of those things.

The LOI sets the framework for the rest of the transaction. Although many of its provisions may be described as nonbinding, changing a negotiated term later can prove difficult. Once the seller has signed the LOI, stopped talking to other potential buyers, and opened the company to diligence, there is a swing in leverage to the buy side. The buyer now has more information, more time, and more negotiating power. What seemed to be negotiable prior to exclusivity may become a condition to closing afterward.

Exclusivity Can Change the Power Balance

An exclusivity or "no-shop" provision in an LOI prevents the seller from soliciting or entertaining other offers for a stated period. Buyers want this protection before they invest heavily in diligence and documentation. So, the issue is not whether this is a reasonable condition, but rather how much the seller gives away and what the buyer must do in return.

A 30-day period tied to specific diligence and drafting milestones is quite different from a 90-day period that extends automatically. If the buyer can slow the process, reopen settled issues, or walk away with little consequence, the seller could find themselves months down the road with a disrupted business and no competing bidders. Therefore, exclusivity should be long enough to support a disciplined process but short enough to preserve pressure on the buyer to perform.

Working Capital Can Quietly Reprice the Deal

A purchase price is typically subject to adjustments, and working capital is one of the most common. The parties agree on a target amount the business is expected to deliver at closing. If actual working capital falls below that target, the purchase price

could be reduced dollar for dollar. If the target or accounting methodology is wrong, a seller can lose meaningful value even though the headline price never changes.

The LOI must address how the target will be established, which accounting principles will apply, and how unusual or seasonal items will be handled. Definitions also matter here. Cash, debt, transaction expenses, customer deposits, deferred revenue, and accrued bonuses can shift between categories depending on the drafting, and those classifications can materially affect the seller's proceeds.

An Earnout Does Not Equal Cash at Closing

Earnouts are a way to bridge a valuation gap, but they also shift risk back to the seller. A buyer may offer an attractive total price while making a substantial portion contingent on future revenue, EBITDA, or other performance metrics. That means the real value of that promise depends on much more than the target itself.

Before treating an earnout dollar the same as a dollar at closing, the seller should press for clarity on the following:

- The exact metric, measurement period, and accounting rules
- Who will control the business during the earnout period
- Whether the buyer can change budgets, staffing, pricing, or sales strategy
- How acquisitions, shared expenses, and corporate overhead will be treated
- What happens if the business is resold, or the seller is terminated
- How disputes will be resolved and who will have access to the supporting records

If those issues are left for the definitive agreement, the parties may discover they agreed on an earnout in theory, but not in practice.

Rollover Equity Comes with a Second Deal

When a seller rolls part of the proceeds into the buyer's platform, that equity is often described as an opportunity for a "second bite at the apple." And in some cases, that may be true. However, rollover equity should be seen for what it is: an investment, not cash. The seller is making a second deal at the same time the first one closes.

The seller must understand what security is being received, where it all sits in the capital structure, and how it can be diluted. Governance rights, information rights, future capital calls, transfer restrictions, drag-along provisions, and the buyer's exit strategy will all affect the value of the rollover, as does the tax treatment. A percentage on a term sheet means little without the rights and economics attached to it.

Post-Closing Obligations Can Outlast the Celebration

A seller's relationship with the business may continue long after the wire arrives. The LOI may introduce employment or consulting requirements, transition services, restrictive covenants, indemnification exposure, escrow or holdback arrangements, and obligations tied to customer or employee retention. Each one of these affects the seller's freedom, risk, and access to the purchase price.

The details cannot all fit into an LOI, but the major economic and personal commitments should not first appear later in the purchase agreement. If a buyer expects the owner to remain for three years, roll significant equity, guarantee performance, or accept a broad noncompete, those expectations belong in the conversation before the exclusivity period begins so they can be appropriately considered.

The LOI is Your First Real Negotiation

The LOI is not just a preliminary document that remains simple so the parties don't lose their momentum. While simplicity does bring value, ambiguity does not. The goal is not to negotiate every line before diligence begins, but to establish enough clarity on the issues that drive value, certainty, and post-closing risk.

A disciplined pre-LOI process usually involves the following:

- Build the team early. Bring legal, financial and tax advisers into the process before the business terms harden.
- Identify the nonnegotiable. Decide which issues matter most to the owner beyond valuation, including certainty, timing, continued employment, employee treatment and a clean exit.
- Pressure-test the economics. Model realistic downside scenarios for adjustments, earnouts and rollover value instead of relying on the buyer's best-case presentation.
- Make exclusivity earn its keep. Tie the no-shop period to a credible timeline, prompt diligence and measurable progress toward definitive documents and financing.

While the purchase price may open the door, the LOI determines the path forward. Owners who focus only on the biggest number on the page may sign away leverage in favor of dollar signs. But those who prepare early and negotiate up front put themselves in a far better position to protect both the value they built and the life they expect after closing.