M & A Nuggets: Beware the Four Corners Offense

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As the NCAA Basketball Tournament begins this week, it is appropriate to remember the “Four Corners Offense” and tie it to the merger process. The “Four Corners Offense” was popularized by the University of North Carolina in the 1960s and 1970s. The offense involved four of five players standing in the corners of the offensive half court with the fifth player dribbling in the middle, often for several minutes at a time. The result was a big slowdown of the game with no progress. Sellers of businesses devote substantial time, energy and resources to move a sale transaction to closing, but ultimately, are at the mercy of the purchaser. At the inception of the relationship between the potential seller and purchaser, all things are rosy. The purchaser lets the seller know how impressive the seller’s business is and how terrific of a fit the seller will be with the purchaser. As time unfolds during the merger process, sellers need to have an eagle eye for action or inaction by the purchaser that is not so obvious, but that indicates the purchaser intends to slow down the process, and which often results in the purchaser retreating from the transaction. Here are a few actions or inactions that should trigger concern:

- **Comment from Purchaser**: “One or two of our board (or investment committee) members are thinking about the pricing of the transaction or the current economic headwinds.”
  - Real Meaning: The purchaser’s decision making body is rethinking the transaction.
- **Inaction from Purchaser**: Purchaser’s counsel is silent on when the purchase agreement will be forthcoming.
  - Real Meaning: Purchaser has told its counsel not to prepare the purchase agreement because the purchaser is rethinking the transaction.
- **Comment from Purchaser**: “We are re-examining the valuation based upon current numbers.”
  - Real Meaning: The purchaser intends to lower the purchase price or not proceed.

The objective of seller and its counsel is to move the transaction along as fast as possible towards closing, but the above warning signs may indicate that the purchaser is deploying the “Four Corners Offense” and that the purchaser will withdraw. Being able to recognize this sooner rather than later will allow the seller to save a tremendous amount of time, energy and money and refocus on growing its business until such time as a purchaser with intent to complete a transaction arrives on the court ready to play and finish.