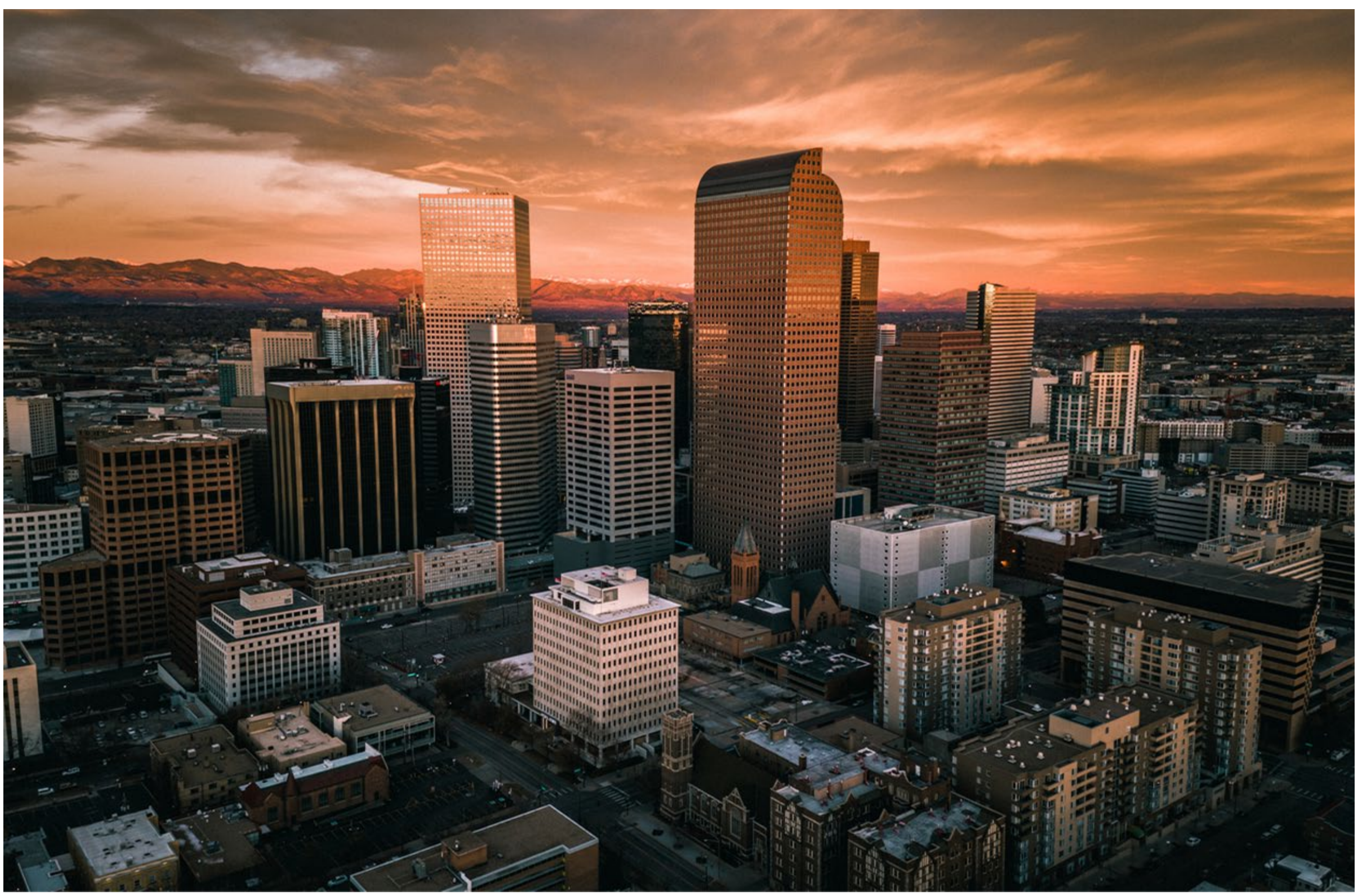
Selling Your Business: Key Considerations & Essential Players to Have On Your Deal Team

CFOx® CFO | Transaction | Accounting

GLC | ADVISORS & COMPANY

NEMES RUSH FAMILY WEALTH MANAGEMENT

AXIS BUSINESS LAW



Meet the Players

Selling your business can be complex, but having the right team in your corner makes all the difference. We're here to provide insights and guide you through this process.

Check out several key considerations and expertise to help you prepare for the sale of your business, such as…

A Sell-Side Quality of Earnings (QoE) report. Typically performed by a Transaction Services Firm, this report is essential to assess your company's financial health and uncover potential issues early. This enhances credibility and ensures smooth negotiations.

Investment Bankers that will help navigate the complexities of selling a business. Preparation, creating competitive bidding environments, and finding the right buyer are all critical aspects an investment bank can handle and support.

Financial Planning & Tax Advisory services to maximize returns. Early planning and understanding tax implications are crucial for a successful sale.

Mergers & Acquisitions Law expertise includes reviewing contracts and ensuring legal compliance to mitigate issues, avoid delays, and maximize value.

If you are a business owner considering to sell, these players can offer expert advice and actionable steps for a successful transaction. We look forward to helping you!

Transaction Services/QoE

Michael DeSantis, CPA
Managing Director, CFOx
mdesantis@cfoxadvisory.com
248-914-5276

Transaction Services/QoE

John Greer
Senior Associate, CFOx
jgreer@cfoxadvisory.com
425-315-3175

Investment Banking

Michael Fleschner
Director, GLC Advisors & Co.
michael.fleschner@glca.com
303-479-3846

Financial Planning & Tax Advisory

Michael Nemes, CPA, CFP®
Financial Advisor, Nemes Rush Family Wealth Management
michael.nemes@nemesrush.com
248-653-6429

Mergers & Acquisition Law

Michael Mason
Managing Partner, Axis Business
mmason@axisbl.com
615-649-7726

Transaction Services/QoE

John Greer, Senior Associate, CFOx

Why Obtain a Sell-Side Quality of Earnings Report before 'Going to Market?'

Obtaining a Sell-Side Quality of Earnings ('QoE') report is a crucial step for business owners planning to sell their company. A QoE report provides a detailed analysis of a company's financial health, working capital, and net debt positions. The goal is to assess the quality, sustainability, and accuracy of your earnings <u>before</u> they are presented to potential buyers.

Uncovering Potential Issues Early

A Sell-Side QoE can uncover potential financial issues – the 'skeletons in the closet' – before they become deal-breakers. By identifying and addressing these issues early in the transaction process, the business owner can take corrective actions, thereby increasing the chances of a transaction occurring. This proactive approach can save transaction costs, limit surprises, and support a company's valuation.

Enhancing Credibility and Demonstrating Preparedness

A Sell-Side QoE enhances the credibility of the information presented to potential buyers by providing an independent, third-party verification of the company's financial statements. This transparency can lead to a smoother negotiation process and potentially higher bids, as buyers feel more confident in the accuracy of the financial data. When the selling process reaches the stage where serious buyers are engaged, the CFOx team will take the lead in guiding buyers through the QoE report, acting as an extension of your management team throughout the sale process.

Obtaining a Sell-Side QoE report also indicates to potential buyers that the seller is serious and well-prepared for the sale.

The company can become a more attractive target as it signals the seller has taken the necessary steps to ensure the financial information shared with the market is accurate and reliable. In addition, buyers tend to prefer to engage with sellers who are well organized and professional.

CFOx Experience

The CFOx Transaction Services team, combined, has worked on 500+ deals over the last 10+ years across nearly every industry. When performing buy-side financial due diligence, we often encounter unprepared sellers who are unaware of the importance of having a Sell-Side QoE report or do not fully grasp the comprehensive nature of the transaction process. It is essential for sellers to engage the right professionals early in the process to ensure a positive outcome and maximize the value of their business in a sale.

Transaction Services/QoE

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About Mike DeSantis

Mike is a Managing Director at CFOx. He is an ex-Big 4 CPA that has extensive experience servicing middle market clients with Transaction (M&A) and CFO services related engagements. Since co-founding CFOx, Mike has worked on over 250 client engagements across numerous industries including: construction, manufacturing, HVAC, roofing, plumbing, distribution, industrials, business services, healthcare, environmental services, consumer packaged goods ("CPG"), franchises, engineering & design services, and commercial landscaping, among others. He is primarily focused on providing financial due diligence and strategic advisory services to the firm's clients.

About John Greer

John is a Senior Associate in the Transaction Services team at CFOx, having joined the firm in June 2024. In this role, he assists in executing buy-side and sell-side transaction services engagements. John supports clients with a range of transaction-related services throughout the M&A process, including quality of earnings, net working capital and net debt analyses, and profitability analyses. Throughout his career, John has held various roles across the finance and accounting spectrum.

Timeline[1]

~3 to 5 Weeks

Services Offered[2]

Sell-Side/Buy-Side Quality of Earnings

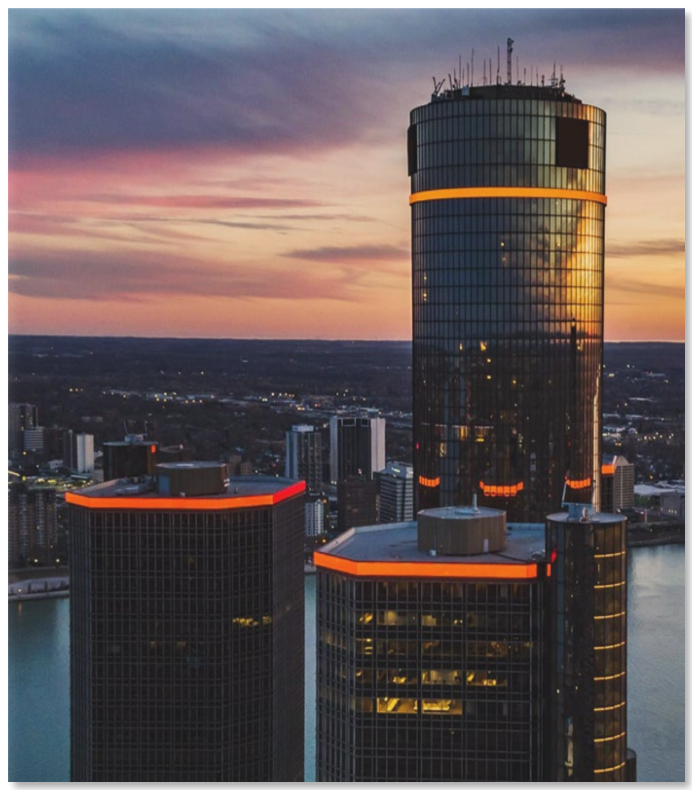
Pre-Transaction Support

Due Diligence Support

Tax Diligence

Cost[3]

~$20,000 to $50,000



1. *Time is fully dependent on the number of entities, accounting system, and size of business amongst other factors. A general timeline will be provided to the client once CFOx has been engaged for performance of services with defined project scope.*
2. *Please visit https://www.cfoxadvisory.com/ for a full list of our Transaction services as well as our full-service outsourced CFO and Accounting Services offering.*
3. *The cost presented above is based on a 'general scope' quality of earnings analysis. Price varies based on complexity of business, entities under diligence, and length of report needed by external parties (lenders/investors).*

Investment Banking

Michael Fleschner, Director, GLC Advisors

For founders and owners, selling a business is one of the most significant financial and strategic decisions in the life of their business. The process is emotional, highly complex, and time consuming. Investment bankers possess specialized knowledge and expertise that helps founders navigate the complexities of a transaction and achieve the best transaction outcomes. After advising founders and owners on selling their businesses for a collective 50+ years, our investment banking team has come up with a few truthful 'sayings' we find helpful to shed light on the transaction journey for our clients and set the stage for the road ahead.

'Keep your eye on the ball' – Selling a Business is a Full Time Job

Founders and owners often underestimate the time and effort required to sell a business. A sale process requires significant planning and time commitment (7-10 months on average) – which can be a distraction to running the business and maintaining performance. The right investment bank partner makes the process smoother and more efficient, allowing founders and owners to continue executing on growth and profitability.

'You didn't build it overnight, and you can't sell it overnight' – Preparation Strengthens Negotiation Position and Maximizing Value

Selling a business demands rigorous pre-process preparation and planning to tell a 'must have' story to the market. An investment bank-led sale process leverages thorough upfront diligence and preparation to create a competitive bidding environment driving significant interest from buyers.

Having multiple offers strengthens sellers' negotiating position on buyer diligence findings, final business and legal terms, and purchase price. Ultimately, a competitive process led by an investment bank yields purchase price outliers.

'A game where you hold all the cards' – Creating Options and Finding the Right Future Partner

An investment bank-led sale process enables access to a wide range of potential buyers (both strategic and financial) – increasing the number of structure and price options available to founders and owners. Most importantly, the sale process materially improves the likelihood of finding the right buyer and partner that aligns with sellers' vision, values, and post-transaction goals – which can include taking care of employees, being a good steward of brand and reputation, and supporting local communities. The right investment bank partner performs thorough buyer vetting to ensure parties have the financial capability, operational alignment, and strategic characteristics that complement the seller's goals and values.

Investment Banking

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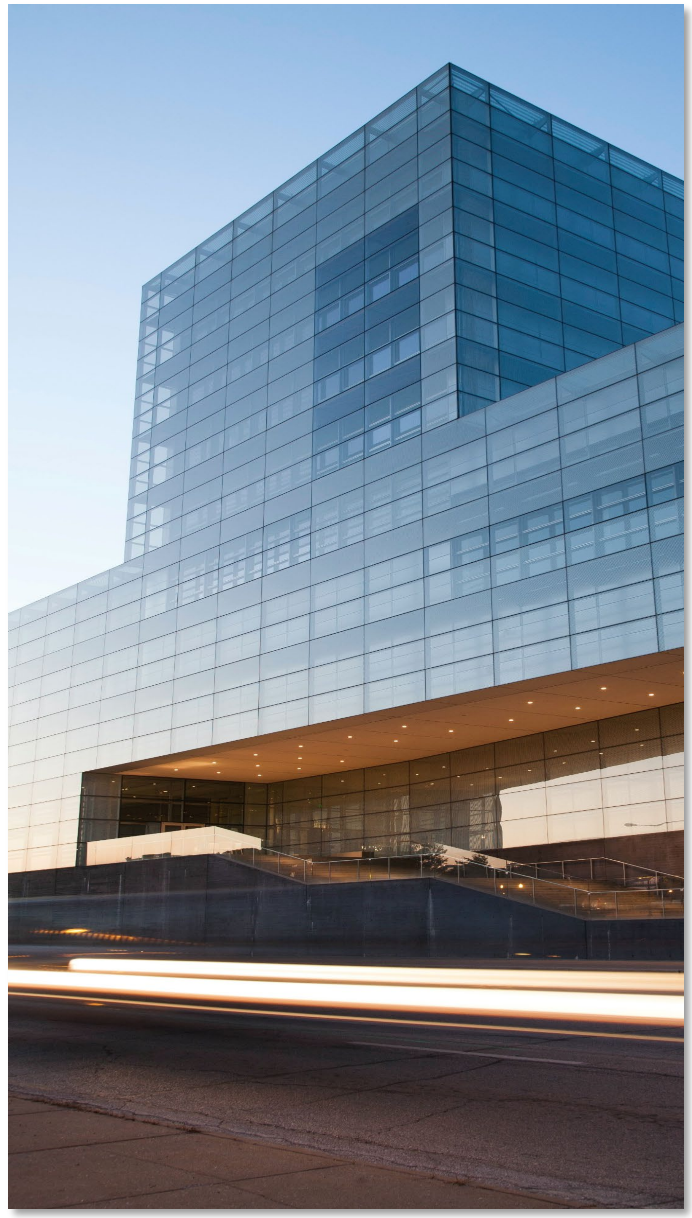

'The deal is not done until the money is in the bank' – Reducing Diligence Risk and Increasing Closing Certainty

For sellers, creating certainty of closing is nearly as valuable as maximizing value in transactions. Buyer diligence continues to be more scrutinizing, invasive, and takes longer to complete in today's market. The right investment bank partner proactively mitigates these risks by conducting ongoing financial and business review, preemptively addressing potential issues, and fielding buyer questions in a positive light – increasing the likelihood of a successful close and shortening the length of a transaction.

The GLC Experience

At GLC Advisors & Company, we are passionate about the businesses and founder-owners that hire us to advise them on their strategic decisions and events. Our transaction teams pride themselves on being a true partner before, during, and after the sale of our clients' businesses. By providing senior-level expertise and unconflicted advice to leading companies and their shareholders over several decades, our firm has successfully completed 900+ transactions and are leading experts on running sale processes and achieving outlier outcomes.

About Michael Fleschner

Michael Fleschner joined GLC in 2016 and has completed numerous business services and industrials advisory assignments including sell-side and buy-side M&A, financings, valuations, and fairness opinions. Mr. Fleschner is the recipient of numerous industry recognition and achievement honors including the 14th Annual Emerging Leaders Award by The M&A Advisor (the award recognizes professionals under 40 who have reached a significant level of success in their careers and made notable contributions to their industry and community) and the GenXYZ – Colorado Top 5 Professional Award.

Financial Planning & Tax Advisory

Michael Nemes, CPA, CFP®, Financial Advisor, Nemes Rush

Proper planning can increase the total return for you and your heirs on the sale of your business by potentially reducing your income and/or estate tax liability.

It is crucial to start the planning process as early as possible with your financial advisor and CPA. Once the sale is in process, it may be too late to effectively implement certain planning strategies.

Income Tax Planning

One of the basic planning questions is "what are you selling?" Are you selling the company's assets or the company's stock? Asset sales are generally taxed differently than stock sales, depending on the type of entity.

There are two general types or characters of income for tax purposes: capital gains and ordinary income. In 2024, capital gains have a maximum tax rate of 20%, whereas ordinary income has a maximum tax rate of 37%. Whether income is capital or ordinary depends on what is being sold.

The purchase price allocation (PPA) is how the proceeds from the purchase are distributed across the company's assets for tax purposes. The PPA is agreed upon by the buyer and seller and determines the character (capital vs. ordinary) of the income. Therefore, both parties should pay close attention during the PPA negotiation.

You should also consider your desire for any retained interest in the company. Be aware that a buyer may require that you to retain (roll over) a portion of your interest in the company. The retained (rolled over) equity may not be subject to tax at the time of the initial transaction, depending on the structure, which may allow you to defer some tax until the rolled over equity is sold at a later date.

State Tax Planning

State taxes are an often-overlooked item that can present both significant issues and key planning opportunities.

For example, does your company operate in multiple states? If so, have you considered how a gain on the sale would be apportioned to those states? Going a step further, have you properly filed tax returns in those states? A buyer's due diligence process often includes a detailed examination of state tax liabilities and related filings.

Financial Planning & Tax Advisory

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Many states implemented pass-through entity (PTE) tax elections at the state level in response to the federal tax deduction limit of $10,000 on state and local taxes (SALT). If the PTE election is made, the company is choosing to be subject to state tax at the entity level rather than individual owner level. This entity level tax is deducted on the company's federal tax return and, therefore, should not be subject to the $10,000 SALT limit. The deadline to make PTE elections varies by state and should be closely reviewed with your CPA.

In recent years there has been an influx of residents to states such as Florida and Texas, which do not have a state income tax. We recommend speaking with your CPA well in advance of a possible transaction if you're considering a state residency change.

Estate Planning

The Tax Cuts and Jobs Act of 2017 (TCJA) effectively doubled the estate tax exemption, which is the amount of assets an individual can give to their beneficiaries during their lifetime or at their death before incurring estate tax.

Assets in your estate greater than the remaining lifetime exemption could be subject to estate tax at 40%. The 2024 lifetime exemption amount is $13,610,000 per person or $27,220,000 for a married couple. However, the TCJA's increase will sunset at the end of 2025 unless Congress acts to extend it. Without extension, the lifetime exemption may be cut roughly in half.

An owner may consider making a gift of a portion of their company to a trust or family member if they're contemplating selling in the next few years. The value of the company for purposes of the gift is determined by a third-party qualified appraisal. The third-party appraisal may include discounts to the company's value for factors such as a "lack of marketability" (not easily sold) or "minority interest" (lack of control). Therefore, we generally recommend separating the gifting process from the sale process as much as possible as the values may be different.

About Michael Nemes

Michael Nemes, CPA, CFP® is a financial advisor specializing in financial and tax planning for high-net-worth families, including their trusts, estates, and related entities. Michael practiced as a CPA for more than a decade with Big Four and regional accounting firms in Detroit, Chicago, and Denver. He is a Michigan State University graduate, where he earned both his B.A. and Master's in Accounting.

Mergers & Acquisitions Law

Michael Mason, Managing Partner, Axis Business Law

Engaging in a Sale Transaction[1]

Making the decision to engage in a sale transaction can be an exciting and stressful time for an owner. As you embark on the process, it's helpful to understand what steps you can take to mitigate issues, avoid unnecessary delays and maximize value. Below are some legal areas to consider as you navigate towards a sale.

Key Contracts

A buyer will want to review all agreements you may have with key stakeholders to ensure that you have adequate contractual protections in place to protect its investment. Key stakeholders may include employees, vendors, customers, landlords and other similar parties that have a direct impact on your business. Provisions such as non-competition, confidentiality, assignability, change-of-control, intellectual property procurement, "most-favored nation" and similar will be top of mind as they review. The sooner you start to inventory and review these agreements; the sooner you can identify any weaknesses and work to remedy before presenting to a buyer.

Compliance with Laws

Every business is subject to a host of laws and regulations applicable to it. A key focus of a buyer's review will be to confirm you have operated in a legally compliant manner, including whether your business and its employees comply with laws applicable to it and them. It's a good idea to take stock of what is required, identify any deficiencies and to take steps to resolve prior to engaging a buyer. A failure to address could result in a buyer backing away from a transaction or a significant reduction in your purchase price (after considerable time, money and effort have been expended).

Mergers & Acquisitions Law

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Confidentiality

Prior to engaging a third-party to assist with the sale of your company, it is a good idea to enter into an agreement to ensure that confidential information you provide to them (including the fact you are considering a sale) is prohibited from further disclosure by such third-party. To address this, parties normally enter into a non-disclosure agreement ('NDA') which restricts a third-party from disclosing your confidential information absent your consent. Premature disclosure can be detrimental to your sale so it's prudent to ensure you have adequate legal protection prior to dissemination.

About Axis Business Law

The sale of your business is a once-in-a-lifetime opportunity to monetize a valuable asset and secure the continued success of your enterprise. At Axis Business Law we have assisted buyers and sellers in the negotiation and closing of hundreds of successful transactions. Our extensive experience provides a unique perspective to help minimize the stress that accompanies a transformational transaction and ensure your interests are well-protected.

About Michael Mason

Michael Mason is the founder of Axis Business Law and focuses his practice on corporate law, mergers and acquisitions, and other general business matters. Prior to opening Axis Business Law, Michael worked for several large law firms in Chicago, including DLA Piper LLP and Katten Muchin Rosenman LLP, where he specialized in the purchase and sale of businesses and related legal matters. He has also served as general counsel for several private equity-sponsored companies, advising businesses on day-to-day matters that arise as companies grow in size. Today, he uses his unique experience to represent buyers and sellers of businesses and professional practices and assists business owners with matters adjacent to these transactions, including labor and employment, real estate, contractual, and other business-related and general counsel-oriented legal issues.

1. Information provided in this article does not, and is not intended to, constitute legal advice; instead, all information, content, and materials are for general informational purposes only. No reader or user of this article should act or refrain from acting on the basis of information on this site without first seeking legal advice from counsel in the relevant jurisdiction.

Thank you!

Selling your business can be complex, but having the right team in your corner makes all the difference. We hope you found this both informative and valuable.

If you are preparing to or considering to sell your business, reach out to us. We are here to assist you!

Our Contributors

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