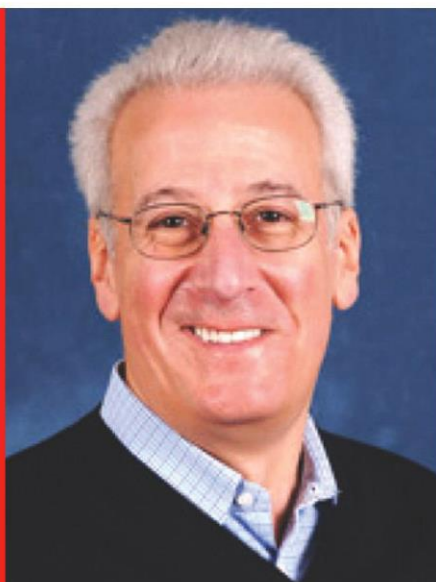


## PART 1

# Wage war against deal waste, inefficiency, friction

Deals are notoriously idiosyncratic, but the same Achilles heel plagues them all: it doesn't take much to derail them. Every deal has a different culprit. Sometimes negotiations succumb to structural flaws or irreconcilable economic impasses. But too often the death knell is needlessly sounded by addressable shortcomings: flawed strategies and tactics, torpedoed by bad interpersonal dynamics and ill-conceived communication patterns.



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### Strategies that work

Successful dealmakers understand that the longer a deal takes, the less likely it is to close. So they wage war against ever-present enemies: inefficient/inflammatory communications and overly-burdensome documents.

The best negotiators actively run transactions to drive toward closing. Though their styles and tactics differ, they are universally great listeners, with high emotional quotients and genuine empathy. They accept that both sides of a negotiating table have legitimate needs that must be recognized and satisfied for there to be a deal.

Instead of trying to win every point, they employ deceptively simple tactics:

- Seek trust and build on common interests.
- Distinguish “wheat” from “chaff.”
- Fight only over issues with meaningful monetary impact relative to transaction size and price.
- Leave only the most narrow set of material issues to resolve.

At every turn, great dealmakers seize control and fight against the major barriers to closing:

- Passage of time.
- Miscommunication and ambiguity.
- Unnecessary interpersonal deal friction.

What truly matters? All issues are not equal-weighted in importance. Great dealmakers confidently distinguish “nice to haves” from “need to haves.”

Transactions close when counterparty rapport and mutual confidence is

established and transaction momentum builds. Personal relationships matter. As trust rises, less guarded information flows more freely, creating dialogue and leading to positive results.

Once lost or reduced, trust and momentum are excruciatingly difficult to regain. Each unnecessary, ineffective, or ambiguous document or email wastes time, adds cost and degrades momentum and trust. They consume energy and deal goodwill, and provoke negative counterparty reaction.

### Some modest suggestions

In an M&A context, the transaction ecosystem inhabitants are buyer and seller (counterparties), and their respective agents (investment bankers, lawyers and accountants).

Counterparties sit on opposite sides of an increasingly metaphorical negotiating table. They share a need for a document codifying an agreed exchange of assets and currency, permitting transfer from seller to buyer, and demarcating and allocating counterparties' risks and rewards.

Only the M&A principals have sufficient power and leverage to affirmatively set a transactional “tone,” as well as establish guidelines (including human dynamics) for all counterparties and their agents. The principals can mutually establish the deal's “rules of the road.” Buyer and seller can and should demand transaction documents designed to facilitate (not frustrate) dealmaking.

Deal negotiation is most effective if:

- All documents and written communications minimize ambiguous, confusing, inconsistent or irrelevant material.
- Direct bilateral communication is maximized.

Ineffective tactics and communication can undermine even the greatest of strategies. ●

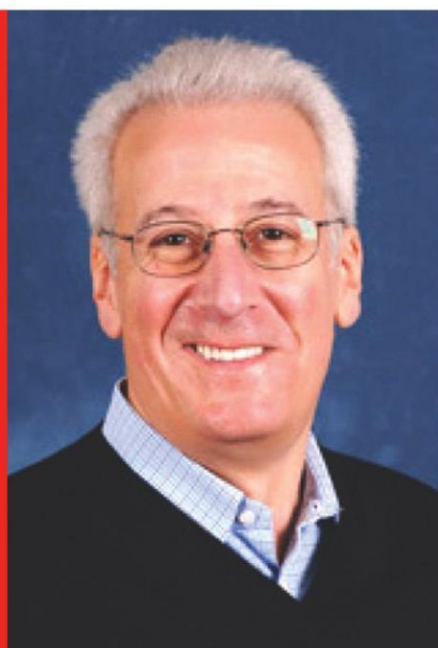


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## PART 2

# Wage war against deal waste, inefficiency, friction

Acquisitions proceed most easily if all deal participants are informed directly by the buyer and seller (the counterparties) that the deal principals share the goal of closing quickly and with minimum friction. Some friction can't be and shouldn't be avoided. Every issue is *not* win-win. That said, *lots* of friction is unnecessary; the unintentional byproduct of a poorly conceived process.



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Ideally, negotiation is mutual education; focused exchanges of information, needs, views and value propositions. The definitive document should clearly and simply express the buyer's and seller's mutual expectations resulting from their informed negotiation process.

In a perfect world, Apple would design user-friendly acquisition agreements; easily navigable, visually intuitive and using everyday words. The buyer and seller should be able to understand "their" document (and respective business and financial consequences) without having a lawyer interpret it for them.

Too lofty an ambition for such complex subject matter? History suggests otherwise. Since 1998, public companies have complied with Securities and Exchange Commission "Plain English," six SEC-mandated rules that enormously improved the "readability" of public documents. They are:

- Short sentences.
- Everyday words.
- Active voice.
- Tables or bullet lists for complex material.
- No legal "jargon," highly technical business terms or double negatives.
- Using first person rather than third person.

The securities industry initially expressed misgivings and strongly resisted these rules. No one likes change. But after adoption, the industry immediately adapted and SEC documents became remarkably easier for non-corporate finance experts to understand.

Extending this approach to M&A transactions would:

- Shorten documents.
- Sharpen focus on the relevant.
- Minimize opportunities for disagreement.

The longer a document, the more there is to negotiate. This increases cost and friction, lengthening negotiations — and longer time periods reduce the probability of closing.

Put yourself in the recipient's shoes. Will a reader easily understand your email's context, content and requested action step? Effective communication can only be measured by what the recipient heard, read or retained. Judge yourself accordingly.

Emails promote hasty and ambiguous replies, extreme positions and sarcastic responses. All are self-indulgent and deal-destructive. Avoid them.

What's the best approach? Initially asynchronous digital document exchanges have value; but trading dueling drafts rapidly reaches a point of marginal utility. Email lacks physical, social and vocal clues critical to human connection, compromise and resolution.

The analog world quickly becomes more effective than digital. Many emails are best responded to by phone (quaint though that may seem to some). Real-time, synchronous conversations and meetings facilitate dialogue rather than asynchronous sequential monologue.

"Dialogue" means someone talks while someone listens; really listens. Listens without defense or judgment to understand and actively seek commonality rather than to deflect, rebut or distinguish. Deep, active, engaged listening is key to "hearing," communicating and successful negotiating. You can't listen to an email.

Finally, many of us were raised with the useful "KISS" principle: "Keep it Simple Stupid." Perhaps we should add an important "S" — KISSS: Keep it SHORT and Simple, Stupid. ●



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