

Changing M&A Advisors After a Failed Sale: Relaunch Plan

Laurent Capital is an independent M&A advisory firm headquartered in San Jose, California. It advises owners of founder-owned, family-owned and sponsor-backed B2B companies on sales, acquisitions and recapitalizations.

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Executive Summary

When a lower middle market sale stalls, owners often assume that dismissing the advisor resets the paper. The contract usually separates several things: advisor exclusivity, the engagement term, termination, a **tail** (the post-termination period in which a fee can still be earned) and the event that triggers the fee. Practitioner commentary notes that termination starts the tail clock (calcounselgroup.com), and that an auto-renewing letter may keep the tail from starting until the owner affirmatively terminates (nysba.org) (maples.com). These are drafting questions for each agreement, not settled law.

Tail lengths in published guidance are opinions, not market data. One attorney reports tails of 6 to 24 months after termination (jmdorsey.com), and a law firm says it has generally limited tails to one year (www.taftlaw.com). A second fee is a real possibility, not an inevitability: one firm warns that a seller could end up paying two fees if a replacement is hired without addressing parties the first advisor introduced (www.cavitch.com), and recommends seeking an exclusion or reduced fee in the second engagement (www.cavitch.com).

The hypothetical arithmetic here shows order of magnitude only. At a hypothetical **\$30 million defined transaction value**, an old 2% fee (\$600,000) and a new 2.5% fee (\$750,000) would total **\$1,350,000** before any exclusions, offsets or credits. Neither rate is market practice. SEC-filed letters range from a **six-month tail** (www.sec.gov) to a **two-year tail** (www.sec.gov), with fee triggers that attach in part at signing (www.sec.gov) or, as commentary describes it, routinely at closing (maples.com).

Stalled processes are common enough to justify a worksheet. In a 2026 Pepperdine survey of **43 investment bankers**, a **median 32%** of engagements did not result in a closed transaction (digitalcommons.pepperdine.edu). In a July 2026 Axial survey of 79 dealmakers, **57% named** valuation expectations as the single biggest reason deals failed to close in the first half of 2026 (www.axial.net). The report offers a dated calendar, a buyer-by-buyer register and a comparison of three paths (continue, end and wait, or appoint a replacement while a tail survives) for use with transaction counsel. It recommends no path. This is general education, not legal, tax, investment or accounting advice.

Introduction and Background

A stalled sale is not a single event. Buyers go quiet, a letter of intent (LOI) lapses, a buyer retrades the price, or the owner runs out of energy. The decision this report addresses comes next: whether, when and how to engage a replacement advisor without creating overlapping obligations. The unresolved question is how the old tail, a new engagement and revived buyers interact when a process restarts. Advisor selection and fee schedules are separate topics and are not covered.

Two kinds of exclusivity are easy to confuse. **Buyer exclusivity** is the no-shop period in an LOI; one law-firm guide says such periods commonly span **30 to 60 days** after the LOI is signed (resourcehub.bakermckenzie.com). **Advisor exclusivity** is the engagement letter's promise that the advisor is the only one the owner will use. Commentators describe it as usual (maples.com), and one notes that letters often require all offers, solicited or not, to be referred to the banker (www.cavitch.com). A lapsed buyer LOI does not end advisor exclusivity.

"Terminate" can mean different things: termination for convenience, termination for the advisor's breach, expiry of a fixed term and non-renewal can each carry different tail consequences. Pillsbury's engagement-letter guidance says that if the company terminates without cause, the tail then applies (www.pillsburypropel.com). Nothing in the sources supports the idea that terminating out of dissatisfaction removes a tail; commentary treats the absence of a success fee after for-cause termination as something to seek in the letter (maples.com).

The evidence base is narrow. The published guidance is law-firm and bar commentary, often illustrated with financings or restructurings. Engagement letters filed with the Securities and Exchange Commission (SEC) show how clauses read in practice, but most are older and each reflects one negotiation. Survey data come from Pepperdine, Axial and the American Bar Association (ABA), each with a stated sample. Where a point depends on state law, the report defers to counsel.

The publisher, Laurent Capital, is an independent M&A advisory firm in San Jose, California, that takes sell-side mandates for owners of B2B companies of roughly \$5 million to \$150 million in revenue. It is not a law, tax or accounting firm and is not a licensed attorney or tax adviser. Readers should weigh this report accordingly. It helps an owner prepare questions for counsel; it contains no model clause.

Key Changes When a Second Advisor Enters

Five changes follow when a process restarts with a new advisor. Each turns on contract language the owner and counsel must read.

Change 1: One "end date" becomes several separate dates

An owner who says "the old engagement ended in March" may be describing any of several events. Commentary suggests a term of 6 months to a year (www.venable.com), ending on a set date or rolling into a month-to-month arrangement. Axial says most agreements renew automatically on a monthly basis until canceled (www.axial.net).

Mayer Brown's deck on private-placement letters recommends written notice of any termination because it sets the date on which the tail begins (www.mayerbrown.com), and flags whether a deal announced during the tail but closing after it should trigger the fee (www.mayerbrown.com). SEC-filed letters show varied answers. One tail runs from the termination of the term (www.sec.gov), another from expiration or termination, whichever is later (www.sec.gov), and a third allows termination effective on the first day of a month (www.sec.gov). Depending on the clause, the end of the tail can move by weeks.

Table 1 sets out a calendar on expressly hypothetical dates: termination effective **June 30 of Year 1**, a stated 12-month tail ending June 30 of Year 2, a signing on June 15 of Year 2 and a closing on July 31 of Year 2, plus invented dates for the exclusivity expiry, notice and replacement engagement. It does not describe any actual engagement.

Table 1. Operative-date calendar (Hypothetical Example, invented dates)

Event	Hypothetical date	Question the agreement must answer	Alternative readings
Advisor exclusivity term ends, renews monthly	March 31, Year 1	Does exclusivity end with the term or only on termination?	Commentary says exclusivity continues until termination (www.venable.com).
Written notice of termination delivered	May 31, Year 1	Effective on delivery, after a notice period, or at a month start?	One law firm proposes a 30-day period (www.pillsburypropel.com); one filed letter allows month-start effectiveness (www.sec.gov).
Termination effective	June 30, Year 1	Does the tail start at notice, at effective termination or at the later of expiry and termination?	Written notice may fix the commencement date; another letter uses the later date (www.sec.gov).
Old advisor's list of introduced buyers due	July 10, Year 1	Is a list required, by when, and what if it is late?	One attorney suggests a list within 10 days after termination (jmdorsey.com).
Replacement engagement signed	August 15, Year 1	Which buyers does the new letter cover or exclude?	Commentary advises seeking an exclusion or reduced fee for previously introduced parties.
Definitive agreement signed	June 15, Year 2	Does signing inside the tail trigger a fee?	A signing-based tail would be met (June 15 precedes June 30); one filed letter's tail turns on a definitive agreement signed within it (www.sec.gov).
Stated tail ends	June 30, Year 2	Is the tail measured to signing, announcement or closing?	Compared with the signing and closing rows.
Closing	July 31, Year 2	Must the deal close inside the tail?	A closing-based tail would not be met. One attorney advises limiting the tail to deals that close within it (spzlegal.com).

With every other fact identical, a signing trigger would be met in the hypothetical and a closing trigger would not. This report does not decide liability under either reading; definitions, amendments and governing law would all matter. The calendar's value is that every date must be stated, sourced to a document and assigned to someone who can confirm it.

Change 2: The buyer, not the process, becomes the unit of analysis

A restart revives buyers the old advisor contacted, brings in buyers the owner already knew and adds buyers neither advisor has approached. Pillsbury says the tail should apply only where the bank introduced the company to the buyer through an executed non-disclosure agreement (www.pillsburypropel.com). Taft says it has typically limited the tail to buyers introduced during the engagement (www.taftlaw.com), and the New York State Bar Association (NYSBA) suggests limiting covered deals to counterparties to whom the bank at least facilitated an introduction (nysba.org). Axial describes tail buyers as those who received information, expressed interest and signed a confidentiality agreement (www.axial.net).

The proposals differ: introduced, contacted, signed an NDA, held a meeting, or received information. One filed letter covers parties contacted or introduced by the bank (www.sec.gov); another limits a financing tail to investors who had a virtual or in-person meeting (www.sec.gov). Venable observes that a tail is frequently applicable only to specified potential buyers (www.venable.com), which is why a contact record matters; one practitioner advises documenting banker contacts for the tail period (www.vcexperts.com).

Three buyer histories need separate treatment:

- **Old contacted buyer.** Approached by the old advisor, perhaps after signing an NDA or receiving a confidential information memorandum (CIM). Coverage depends on the covered-party definition and the evidence of contact.
- **Owner-known excluded buyer.** Known to the owner before the old engagement. Sellers can sometimes provide a list of excluded buyers, though some bankers resist (www.cavitch.com); another source suggests a lower fee for a buyer that contacted the company before the banker was engaged (www.forbes.com). Excluded investors should be scheduled in the letter (www.mayerbrown.com), and without a schedule, the owner's recollection may carry little contractual weight.
- **New buyer.** Approached by neither advisor. The old tail should not be engaged on its face, but the new letter's scope and any indirect contact through an old buyer still need review.

None of the sources reviewed sets a standard for treating a buyer's affiliates, portfolio companies or co-investors as the same party, and this report suggests no rule. If a buyer returns through a different entity, a consortium or a sponsor portfolio company, counsel must read the covered-party and affiliate language. *Table 2* is the register an owner can build; its rows are illustrative (Hypothetical Example).

Table 2. Buyer-by-buyer register (Hypothetical Example)

Legal entity	Affiliates to confirm	Introduction or contact evidence	Old coverage	New proposed coverage	Trigger date	Unresolved interpretation	Counsel owner
Buyer A LLC (strategic acquirer contacted by old advisor)	Parent, sister companies, acquisition vehicle	NDA date, CIM delivery record, call notes	Possibly covered if the old letter reaches contacted or introduced buyers (www.sec.gov)	Exclusion or reduced fee to request	Termination effective date; signing or closing per old letter	Does an affiliate bid count? Is a partial sale covered?	Owner's M&A counsel
Buyer B Holdings (owner's pre-existing contact)	Co-investors, management	Owner emails predating old engagement	Depends on any excluded-parties schedule	Carve-out to propose	Date of first documented contact	Is there a schedule? Did the old advisor later contact it?	Owner's M&A counsel
Buyer C Partners (new sponsor-backed buyer)	Portfolio companies, fund vehicles	First outreach by new advisor	Outside old tail if no earlier contact; confirm	Covered by new letter	First new-advisor contact	Any indirect old-advisor contact?	New advisor and counsel

The register is only as good as its evidence column. If the old advisor's records are incomplete, the owner's own correspondence may be the only proof of first contact. Separate old and proposed coverage columns make gaps (a buyer in neither letter) and overlaps (a buyer in both) visible before the new letter is signed.

Change 3: Two definitions of a covered transaction meet

NYSBA says the transactions that entitle the banker to compensation are typically broadly defined (nysba.org), and Venable states that the definition determines the amount from which the success fee is calculated (www.venable.com). Thompson Coburn describes a banker-favorable formulation, any transaction in which the sellers or the company receive any proceeds (www.thompsoncoburn.com), and recommends narrowing it to the sale of the entire business or all of its equity (www.thompsoncoburn.com). A Weil paper says to limit the definition because a tail extends it after a failed process (www.weil.com).

For a restart, a recapitalization, minority investment or partial sale that was never plan A may fall inside the old letter, the new letter or both. Mayer Brown's deck notes that a minority sale involves a sale of securities of the company, which can bring a bank in as placement agent (www.mayerbrown.com). Several related questions determine whether a trigger is met:

- **Unsolicited buyers.** Letters often require referral of all offers, solicited or not; whether a post-termination approach falls in the tail depends on the introduction language.
- **Contingent consideration.** Commentary suggests the fee on escrowed or deferred amounts be paid only when shareholders receive them (www.forbes.com), and Taft notes that the fee on an earnout can be calculated and paid when received (www.taftlaw.com). One filed letter instead makes fees on escrowed amounts payable upon establishment of the escrow (www.sec.gov). Two letters on one sale could treat the same escrow differently.
- **Fee base.** Whether the base is enterprise value or equity value should be identified in both letters, because a different base changes the arithmetic below.

Change 4: Procuring cause gives way to express triggers

Owners sometimes assume the advisor who actually brought the winning buyer is the one entitled to be paid. That is a default rule from commission law, and it can be displaced. The sources below on the default rule come from real estate brokerage and employment-commission commentary rather than M&A engagement-letter authority, so how a court would apply it to an investment-banking mandate varies by state and is a question for counsel. A real estate commission primer calls the broker's agreement the obvious starting point in a procuring cause analysis (rejournal.com) and states the default that a commission is earned when the broker submits a ready, willing and able purchaser (rejournal.com). A commentary adds that parties can condition payment on something other than procuring the sale, in which case the doctrine becomes irrelevant (www.mondaq.com), and describes it as nothing more than a default (www.mondaq.com). A Weil paper advises specific language if the bank need not be the procuring cause (www.weil.com).

The consequence for a restart: the identity of the advisor who finds or closes the buyer may not determine who is paid. An express tail trigger in the old letter can apply even where the replacement did all later work, and an express trigger in the new letter can apply to a buyer the old advisor introduced. These sources address real

estate or employment commissions, not M&A engagements, and state law varies, so they support a drafting point, not a legal conclusion.

Writing requirements add a layer. New York General Obligations Law section 5-701 provides that covered agreements are void unless they or some note or memorandum of them are in writing (codes.findlaw.com), and its subsection (a)(10) addresses a contract to pay compensation for services rendered in negotiating the purchase or sale of a business (codes.findlaw.com). This report does not interpret that statute or any other state's. Counsel must consider governing law and any amendments, emails or informal arrangements with either advisor.

Change 5: Three paths, three different exposures

Table 3 compares three paths without recommending one. They are not mutually exclusive in time.

Table 3. Three paths compared (no recommendation)

Dimension	Continue with the old advisor	Formally end and wait	Appoint a replacement while a tail survives
Advisor exclusivity	Remains until termination	Ends on effective termination; check auto-renewal	Old exclusivity must end first; a new exclusive letter can conflict with it
Old tail clock	Not started while the term continues	Starts per notice and effective-date mechanics	Running; may overlap the new term
Fee exposure	One success fee, plus retainer and expense terms	Old tail only, if a covered buyer signs or closes inside it	Potentially old tail and new success fee on one buyer unless excluded, credited or reduced
Buyer communications	Single channel; old record continues	Owner handles inbound approaches; letters often require referral	Two contact records to reconcile in the register
Owner needs to know	Whether the term is about to expire or renew	Notice clause, effective date, tail definition, list-delivery duty	All of the above plus the new letter's exclusion, credit and trigger terms
Open questions for counsel	Are scope or fee terms amendable?	What does the idle period cost?	Can the new letter carve out, credit or defer a fee tied to the old tail?

The table ranks nothing. Each path has a trade-off that depends on facts the owner has and this report does not:

- **Waiting** can reduce overlap but leaves the process idle.
- **A replacement** can restart sooner but inherits whatever the old letter says about its tail.
- **Continuing** avoids overlap but does not address what caused the stall.

Implementation Considerations and Process Changes

What each professional needs to reconcile the obligations

An owner cannot reconcile two advisors' obligations alone. The following is a preparation aid, not a legal checklist.

- **Owner's M&A counsel.** The signed letter, every amendment and extension, termination notices with proof of delivery, invoices and payments, and emails discussing scope, fees or buyer lists.
- **The new advisor.** The old letter's covered-party and transaction definitions, the dated buyer register, any contact list from the old advisor and the owner's proposed excluded-party schedule.
- **The CFO or controller.** Retainers paid and whether the letter credits them, expenses billed against any cap, and the fee base.
- **Tax and accounting advisers.** The expected deal form and contingent consideration, because fees on escrows and earnouts may fall due on different dates.

Inventory the old engagement first

Collect the letter, amendments, notices, invoices, outreach records and NDAs. NYSBA advises ending stale engagements promptly and in strict compliance with the termination clause (nysba.org), so confirm how notice must be delivered (to whom, by what method, effective when), since an informal email may not satisfy the clause. One firm advises that the owner be able to terminate at any time if a tail exists (calcounselgroup.com).

A buyer-list duty, if present, belongs in the inventory. One attorney suggests requiring a list of introduced purchasers within 10 days after termination (jmdorsey.com), and model language in Forbes commentary has the banker supply a weekly updated list of qualified buyers (www.forbes.com). Where the letter has no such duty, the owner may need to request the contact record, and whether the old advisor must provide it is a contract question.

Reconcile scope, credits, exclusions and fee triggers

Counsel can compare the old and proposed letters on covered transactions, covered parties, triggers, credits and expenses. On credits, Thompson Coburn says any fee should be credited against any other fee the bank can earn (www.thompsoncoburn.com), and a small initial flat fee may be credited against the success fee. Filed letters show a retainer credited against the first success fee (www.sec.gov).

On expenses, Pillsbury advises capping reimbursement and requiring company consent above the cap (www.pillsburypropel.com), while Taft notes that reimbursement is required whether or not a closing occurs (www.taftlaw.com). Expense and fee terms may also survive termination: Mayer Brown's deck says fee, expense reimbursement, tail and indemnity provisions typically survive (www.mayerbrown.com). The new advisor's expense cap is a separate line from the old advisor's and should not be netted against it.

Notice, governing law and dispute venue

Mayer Brown's recommendation of written notice to set the commencement date applies here, and NYSBA warns that an auto-renewing letter's tail does not begin until the company affirmatively terminates (nysba.org). If the old letter was never formally terminated, the tail may not have started, and exclusivity may still be

running. That is a reason to read the letter carefully, not to assume the favorable reading.

A Cornell Legal Information Institute entry describes a forum selection clause as naming the court and location where the parties want a legal dispute decided (www.law.cornell.edu). Governing-law choices vary from letter to letter, so the old and new letters may be governed by different laws. Counsel should confirm this before treating any commentary as applicable.

Confidentiality, NDAs and the relaunch handoff

Buyer confidentiality does not reset when an advisor changes. The term of an M&A NDA can be critical (legaledge.dwlaw.com), NDAs typically provide for return or destruction of confidential information (legaledge.dwlaw.com), and standstill agreements have set expiration dates (legaledge.dwlaw.com). One law firm describes employee non-solicit periods as typically **18 to 24 months** (www.faegredrinker.com), and a filed form NDA runs **five years** (www.sec.gov).

Who holds the rights under the old advisor's NDAs is a structural question. A law-firm article says confidentiality agreements are generally enforceable only by their parties (www.gfrlaw.com). One filed form NDA is enforceable by the company and its successors and assigns (www.sec.gov), while another bars assignment (www.sec.gov). NDAs differ, so the answer must come from the actual documents. Ownership of the old advisor's teaser, CIM, model and data room is likewise governed by the letter; the sources reviewed gave no verified general rule, and the owner should not assume a right to reuse them.

The handoff checklist before outreach resumes:

- **Documents.** Letters, amendments, notices, NDAs, the buyer register and known inbound approaches.
- **Buyer communications.** An owner-side rule for inbound calls, because letters often require referral of unsolicited offers.
- **Confidentiality.** Which NDAs remain in force, whether destruction was certified and whether any standstill has expired.
- **Financial refresh.** Update the numbers and examine the reasons for any buyer's backout before outreach resumes (www.offitkurman.com).

Advisor registration is a question to ask

An owner changing advisors may want to confirm the replacement's regulatory status. **Section 15(a)(1)** of the Securities Exchange Act of 1934 makes it unlawful for a broker or dealer to effect securities transactions unless registered under subsection (b) (www.law.cornell.edu). **Section 15(b)(13)** provides that an "M&A broker" shall be exempt from registration (www.law.cornell.edu), subject to exclusions such as receiving, holding, transmitting or having custody of the funds or securities (www.law.cornell.edu), and its eligible-company definition is met by an EBITDA test (under **\$25 million**) or a gross-revenue test (under **\$250 million**) (www.law.cornell.edu), among other conditions; the statute provides for periodic adjustment of the dollar figures. The SEC's registration guide lists finding buyers and sellers of businesses among activities that may involve registration (www.sec.gov). A FINRA rule filing says firms have relied on the M&A Brokers Exemption (www.finra.org) and describes a model where an exempt deal goes through one affiliate and others through a registered broker-dealer affiliate (www.finra.org). Owners should ask counsel to confirm the replacement's basis for the specific transaction.

Data Analysis and Evidence

Why processes stall

The 2026 Pepperdine Private Capital Markets Report, in its investment banker survey of 43 respondents, reported that a median 32% of engagements did not result in a closed transaction (digitalcommons.pepperdine.edu) and that the most commonly reported pricing gap on failed deals was **11 to 20%** (digitalcommons.pepperdine.edu). Respondents report on their own books and the sample is small, so the figure is a signal, not a population rate.

Axial's July 2026 survey of **79 lower middle market dealmakers** (40 buyers and investors, 39 sell-side advisors) found 57% naming valuation expectations as the single biggest reason deals failed to close in the first half of 2026 (www.axial.net). Timing and process fatigue doubled **from 8% to 16%** (www.axial.net), while diligence findings fell from 25% to 10% (www.axial.net). Among advisors, **51% said** more deals that did not close as intended were going on hold (www.axial.net), and the share seeing a growing gap between owner expectations and buyer willingness to pay rose from 24% at the start of 2026 (www.axial.net). An earlier Axial survey of 107 participants put valuation expectations first for 2025 failures, at **28.3%** (www.axial.net), with **48.7%** of advisors saying more deals were paused than fell apart (www.axial.net). Axial's respondents are its members.

Paused deals matter for this decision because they can be revived with buyers who remain in the register.

Timing and structure

Pepperdine's broker survey of 49 respondents found median months from listing to close beginning at 7.5 months for deals under \$499K (digitalcommons.pepperdine.edu) and median time from LOI or offer to close beginning at 2.5 months (digitalcommons.pepperdine.edu). These are broker data on smaller deals and may not fit a \$5 million to \$150 million revenue company, but they suggest a tail measured in months can span much of a restart. Investment bankers in the same report named seller financing and rollover equity as the most common deal-closing tools (digitalcommons.pepperdine.edu), which can change the fee base. The Exit Planning Institute reports that its 2023 survey found 75% of business owners intended to transition within 10 years (exit-planning-institute.org).

The ABA's 2025 Private Target Deal Points Study analyzed **139 definitive acquisition agreements** (www.americanbar.org) and found that use of earnouts decreased from 26% to 18% (www.americanbar.org). SRS Acquiom's 2025 quick reference reports that **41% of 2024 deals** signed and closed simultaneously (35% in 2022 and 37% in 2023) (media.taftlaw.com), so most had a gap between signing and closing, and a median earnout potential of **31% of the closing payment** in 2024 (media.taftlaw.com). The ABA sample is public-buyer deals and the SRS sample is deals using SRS Acquiom services, so neither represents the whole lower middle market. They matter because a gap between signing and closing is where a signing trigger and a closing trigger diverge.

Contract terms in the guidance and filed letters

Published tail guidance is not market statistics. The ranges below are attributed opinions and filed examples:

- **Tail length (commentary).** Up to two years (www.venable.com); 6 to 24 months (jmdorsey.com); twenty-four months typical (www.axial.net); one year, and ideally not more than six months (www.vcexperts.com).
- **Termination (commentary).** Terminable at any time if a tail exists (calcounselgroup.com).
- **Term (commentary).** 6 to 9 months, terminable only for breach (www.cavitch.com).
- **Tail length (filed letters).** One-year tails (www.sec.gov), a two-year tail (www.sec.gov) and a six-month tail (www.sec.gov).

The variation is the finding, and an owner should not assume any tail length is standard. Triggers vary too: one filed letter pays half the fee upon execution of a definitive agreement (www.sec.gov), a 2026 merger filing describes \$1,000,000 of an advisor fee payable upon announcement (www.sec.gov) with the remainder contingent on consummation (www.sec.gov), and Axial advises avoiding fees triggered by agreements like LOIs (www.axial.net).

Overlapping-fee arithmetic (Hypothetical Example)

The numbers below are invented to show structure. Neither rate is market practice or a benchmark. Assume a defined transaction value of \$30,000,000, an old fee rate of 2% and a proposed new rate of 2.5%.

- **Old fee.** 2% of \$30,000,000 is \$600,000.
- **New fee.** 2.5% of \$30,000,000 is \$750,000.
- **Both applied, no exclusion, offset or credit.** \$600,000 plus \$750,000 is \$1,350,000.
- **Old tail not engaged** (for example, a closing trigger with closing after the tail ends). The new fee alone is \$750,000.
- **New letter excludes the buyer** and the old tail applies. The old fee alone is \$600,000, provided the exclusion was agreed in advance.
- **Credits.** A credit of the old fee against the new would reduce the combined figure by the credited amount; whether the new advisor agrees is a negotiation point.

Retainers and expense caps are tracked separately. If the old advisor received a hypothetical **\$50,000 retainer** that the letter credits against its success fee, the \$600,000 fee would be **\$550,000** in cash at closing, but total cost remains \$600,000. Adding both the \$50,000 and the \$600,000 double counts it. An uncredited retainer is an additional cost, and each advisor's expense reimbursement is its own line. The goal is one total-cost figure, a column per advisor and a note on what is credited.

Implications and Future Directions

A restart is a coordination problem before it is a marketing problem. The register and calendar do not remove uncertainty, but they turn it into questions for counsel: which dates are fixed, which depend on interpretation, and which buyers sit in which letter. A new letter might address overlap by exclusion, credit or reduced fee, but a replacement is not obliged to accept any of these, and owners should not assume a second fee can be avoided.

For CFOs and corporate development teams, the lesson is documentary: an engagement file has an expiry. An auto-renewing letter, an undelivered notice or a missing buyer list can each change the answer. The survey data suggest valuation gaps and fatigue, not only advisor performance, contribute to stalls, so a new advisor does not fix a pricing gap, and examining the reasons for a buyer's backout (www.offitkurman.com) comes first.

There are limits. No source reviewed gives a verified rate at which tails produce second fees or how often affiliate questions arise, and the drafting guidance is largely practitioner opinion. The M&A broker exemption is recent (a FINRA filing refers to the period after **March 29, 2023** (www.finra.org)), and its effect on how advisors are engaged may continue to develop. Treat this as a snapshot as of October 2026.

Frequently Asked Questions (FAQs)

Can an owner change M&A advisors, or switch advisors mid-process?

Often the letter lets the owner terminate, but how and with what consequences depends on its terms. One law firm's guidance proposes that the letter be terminable on **30 days'** written notice (www.pillsburypropel.com). Switching mid-process raises the tail, buyer-list and confidentiality issues above, and counsel should read the letter before notice is sent.

A business sale failed: what should the owner do next?

Separate the diagnosis from the contract. Identify why the process stalled (the surveys cited point to valuation gaps, fatigue and diligence), inventory the old engagement, build the calendar and register, and take them to counsel before choosing among the three paths. Whether to relaunch, wait or not sell is the owner's decision.

How does an owner relaunch a business sale after it fails?

A relaunch needs refreshed financials, a documented buyer history and a clear position on the old tail. Confirm which NDAs remain in force and who may enforce them (www.gfrlaw.com).

How does an owner fire an investment banker who is selling the company?

Follow the termination clause; NYSBA's advice to end stale engagements promptly and in strict compliance applies. Terminating for dissatisfaction does not by itself eliminate a tail: if the company terminates without cause, the tail then applies (www.pillsburypropel.com). Whether a for-cause right exists, and what counts as cause, is a drafting question.

What are tail provisions in an M&A advisor's engagement letter?

A tail is the post-termination period in which the advisor is still entitled to be paid (maples.com). Taft says it exists to stop a seller avoiding a fee by delaying a transaction until after the termination date (www.taftlaw.com); Axial adds that it precludes a client from terminating immediately before close (www.axial.net). Length, covered parties and triggers are negotiable, according to Taft.

Does a tail fee still apply after termination of an engagement letter?

It can, if the letter says so and its conditions are met. Whether a fee is owed on a particular deal depends on the covered-party definition, the trigger and the dates.

Why do lower middle market deals fall through?

Surveys cite valuation expectations (57% in one Axial survey of 79 dealmakers (www.axial.net)), timing and process fatigue, and diligence findings. Pepperdine's advisor survey is summarized above.

Can an owner hire a second sell-side advisor after a failed sale process?

Nothing reviewed prohibits it, but a surviving tail may overlap. Cavitch's warning about paying two fees, and its suggestion to seek an exclusion or reduced fee for parties the first advisor introduced, are described above. Whether a second fee is owed depends on the agreements and the buyer's history.

Conclusion

A stalled sale leaves dated obligations as well as buyers. The old letter may still hold exclusivity, a tail, expense terms and survival clauses, and the new letter creates its own. Conflict, if any, comes from how the two define covered transactions, buyers, triggers and credits, and from dates the owner may not have written down. The calendar and buyer register surface those points before a second mandate is signed.

Three paths are available: continue, end and wait, or appoint a replacement while a tail survives. Each has trade-offs, and the report chooses none. Owners should avoid two assumptions: that dismissal erases a tail, and that a second fee is inevitable. Both depend on the documents, the governing law and the specific buyers. A transaction lawyer who has read both letters is the right audience for these worksheets. Laurent Capital, the publisher, is one of the advisors an owner might speak with; it is not a law firm, and owners needing legal advice on an engagement letter should consult M&A counsel first.

Source links

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