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Extend Exclusivity Period When an M&A Buyer Needs More Time

> 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 buyer asks to extend exclusivity because debt or equity is not ready, the seller is no longer deciding on a date. The seller is deciding on two clocks: a diligence clock (what the seller and buyer must deliver or approve) and a funding clock (what debt and equity providers must underwrite, approve and commit). This report gives a dated worksheet that keeps the clocks separate, so that a late data-room item, an investor who has declined and a conditional commitment nearing expiry are not treated as the same problem. It is educational process design, not legal advice and not a recommendation for any negotiation. Deal counsel must read the actual contract.

The sponsor-side counterargument is legitimate. A US law firm's October 2026 playbook says exclusivity of 60 to 90 days is typical and that sponsors should seek automatic extensions while both sides are working toward a closing (www.lplegal.com). It also says that if milestones are agreed, they should be contingent on the seller's timely delivery of diligence materials (www.lplegal.com). That is advocacy for one side, not a market benchmark. The worksheet therefore records seller-delivery dependencies as carefully as financing ones.

Evidence status matters more than the headline amount. A nonbinding memorandum of understanding between a sponsor and an equity provider is typically nonbinding in the sense that the equity provider is not committing funds (www.hklaw.com). A lender term sheet generally creates no financial or legal obligation (www.poynerspruill.com), while a commitment letter follows full underwriting and credit approval (www.poynerspruill.com) and typically carries an expiry date (www.poynerspruill.com). A "highly confident" letter is not a legally binding commitment to provide financing (practiceguides.chambers.com).

In the hypothetical example below, uses of $32M against identified sources of $30M leave a $2M arithmetic gap, and a separate $5M of the equity is only nonbinding interest. A further $7M of lead equity awaits an investment committee vote, so about $14M of the $32M has no signed commitment behind it. A debt commitment expiring on day 70 and an investor vote on day 75 do not line up with a day 60 expiry merely because a 20-day extension reaches day 80. Published data on exclusivity length are thin: one law-firm database reported that about 6% of exclusivity deals in 2021 ran 61 days or more, versus nearly 40% in 2022, with no sample size stated (www.goodwinlaw.com). No named dataset retrieved for this report measures how often extensions are requested or granted. The worksheet therefore allows "unknown" and assigns each missing item to an owner accountable for obtaining the evidence.

Introduction and Background

Facts and figures below are stated as of November 2, 2026 unless a source date is given.

A letter of intent (LOI) sets out headline terms and is typically not legally binding between the parties (resourcehub.bakermckenzie.com). Certain provisions are commonly stated to be binding, and exclusivity is usually among them (www.koleyjessen.com) (www.mintz.com). Exclusivity, also called a no-shop, restricts the seller from soliciting, encouraging or negotiating offers from third parties (resourcehub.bakermckenzie.com). The exclusivity period often drives the diligence and negotiation timeline, and it is not uncommon for the parties to extend it later (www.wyrick.com).

This report addresses a narrow situation: the LOI is signed, the clock is running, and the buyer has asked for more time because equity, debt or both are not ready. The buyer is often an independent sponsor, meaning a deal sponsor without a committed fund that assembles equity and debt for each transaction. Holland & Knight describes the usual sequence: the sponsor "soft-circles" equity before or alongside the LOI, then finalizes economic and governance terms with its equity provider after signing (www.hklaw.com). A sponsor that has not soft-circled equity before the LOI risks running out of time to close before exclusivity expires (www.hklaw.com).

The report does not help a seller choose a buyer, and it does not explain independent sponsors in general. Competitor guidance already supplies broad buyer checklists, for example questions about which stage the equity raise has reached (www.acquiry.com). The contribution here is different: an extension-specific change log, an evidence-expiry view, a list of unresolved conditions and a record of the seller's own dependencies. Terms used throughout: QoE means quality of earnings report; HSR means Hart-Scott-Rodino premerger notification; ECL means equity commitment letter; IC means investment committee; MOU and IOI mean memorandum of understanding and indication of interest.

Two cautions frame everything that follows. First, a buyer without committed funds is not automatically a worse buyer. One law-firm alert says a fundless sponsor should not automatically be regarded as a less certain buyer (www.reedsmith.com); that alert is UK-framed and is used here only for that general point, not as US legal authority. Second, this report cannot say whether any specific commitment is enforceable or sufficient. That depends on the documents, the governing state law and the transaction, and it is a question for deal counsel. This report is not legal, tax or accounting advice, is not a lender's or broker-dealer's communication, and nothing here substitutes for those professions.

Key Changes an Extension Request Introduces

Change 1: One expiry date becomes two clocks

Read the exclusivity clause first. The questions are concrete: Is the expiry a date certain or a number of days from signing? Does it extend automatically, by written agreement or by notice? What ends it: signing a definitive agreement, written termination, or a breach? A no-shop provision should specify an expiration (www.jenner.com), and buyers often try to build in automatic extensions to avoid having to ask (www.mintz.com). Mintz advises a seller that does agree to an automatic extension to limit it to one (www.mintz.com). One practitioner formulation is a 60-day period that is then automatically extended unless

one of the parties terminates the LOI in writing (www.frontieribc.com). The legal effect of an amendment, and of an informal email extension, is not something the sources reviewed here settle. Whether the LOI's own amendment clause and state law control is a question for counsel.

The seller should not assume that fairness doctrines will fill gaps: the implied duty of good faith is very limited at the preliminary negotiation stage (resourcehub.bakermckenzie.com). The contract language is the protection.

The second clock is the funding timeline. Reed Smith observes that the acquisition, equity raise and debt financing often run in parallel (www.reedsmith.com), so one extension date can sit on top of several different expiry dates: a lender's accept-by and close-by dates (www.poynerspruill.com), an investor's approval date and a seller's own delivery dates. If these are not written next to each other, an extension can be long enough on paper and still useless in practice.

Change 2: The question becomes "what changed since the LOI"

At LOI signing the seller accepted a set of assumptions: which capital sources were named, what approvals remained and what the buyer said it needed from the seller. An extension request is a signal that at least one assumption moved. The change log should reconstruct the baseline from the LOI, the buyer's presentations and any funding representations, then list each change with a date. Sponsor-side commentary suggests why a change may be legitimate: a capital provider may have changed terms, or the sponsor may need flexibility if the provider does (the sponsor's term sheet with its provider should address whether the sponsor can end exclusivity if the provider changes terms) (www.lplegal.com). The log records each change without characterizing it.

Language in the LOI is worth rereading too. Acquiry flags wording such as "subject to raising equity" as language to probe (www.acquiry.com). The point is not that such language is improper but that it fixes where funding risk sits. Where the LOI is silent, the extension is the first opportunity to ask for what sellers typically see at signing of a definitive agreement: copies of commitment letters. Market practice is for a buyer to hold a lender commitment letter before signing (www.cravath.com), and targets are customarily given the equity and debt commitment letters to review (www.stblaw.com).

Change 3: Evidence classes replace the word "financed"

Buyers often say funding is "lined up." The worksheet replaces that with an evidence class, a label for the document in hand and what it does not show. The labels are classifications of paper, not ratings of the buyer. *Table 1* below summarizes them.

Evidence class	What it typically is	What it does not show by itself	Questions for counsel and the confirmer
Verbal interest	An investor or lender says it likes the deal on a call.	Any written terms, amount or approval.	Who spoke, when, and is there any written follow-up?

Evidence class	What it typically is	What it does not show by itself	Questions for counsel and the confirmer
Written nonbinding interest	A sponsor and equity provider memorialize terms in an MOU or IOI, which is typically nonbinding in the sense that the equity provider is not committing funds (www.hklaw.com). It may carry binding items such as equity-provider exclusivity on funding rights for an agreed period (www.hklaw.com) and expense reimbursement for the sponsor (www.hklaw.com).	Committed capital, or any right of the sponsor or seller to call on the investor.	Which clauses bind whom? Does the binding exclusivity run to a date beyond the extension?
Lender term sheet	A summary of proposed financing terms; parties are generally under no financial or legal obligation to each other (www.poynerspruill.com).	Credit approval.	Has the credit committee approved, and where is that documented?
"Highly confident" or engagement letter	An institution states confidence it can arrange financing, which is not a binding commitment (practiceguides.chambers.com); an engagement letter has financing sources use best efforts to arrange a financing without committing to provide it (akingump.com).	A funding obligation.	Is a commitment letter expected, and by what date?
Signed commitment with conditions	A lender commitment letter issued after full underwriting and credit approval (www.poynerspruill.com), with limited conditions (practiceguides.chambers.com), which may include no material adverse change (www.poynerspruill.com) and an expiry (www.poynerspruill.com). An equity commitment letter may be conditioned, for example on closing conditions being met and debt being funded at closing, as in one public-company take-private filing that is an illustration rather than a lower-middle-market norm (www.sec.gov).	That conditions will be met, or that the commitment runs through the actual closing date.	Are the conditions tied to seller inputs? What is the expiry relative to the extended exclusivity date and the outside date?
Cleared funding (worksheet label)	A funds-holder or counsel confirms in writing that the amount is available at closing and the conditions to funding are satisfied or waived.	Nothing further if confirmed; otherwise treat as unverified.	Who is the confirmer, and what date does the confirmation carry?

The table does not rank a buyer category; it stops sums from being added across classes. A sponsor with an MOU and a conditional debt commitment holds two different documents with different counterparties, conditions and expiry dates. "Cleared funding" is a worksheet convention, not a legal term, and the sources reviewed do not define it. Here it means documentary proof, such as a written funds confirmation from the lender, fund administrator or escrow agent that the amount is available at closing. This class is rarely available at the extension stage, so most sources will sit in a lower class.

Change 4: The sponsor's counterargument is part of the analysis

Levenfeld Pearlstein's playbook for independent sponsors argues for flexibility. Sponsors should seek automatic extensions while both parties are working toward a closing (www.lplegal.com), avoid hard exclusivity milestones (www.lplegal.com), and, if they agree to any, make them contingent on the seller's timely delivery of diligence materials (www.lplegal.com). Reed Smith adds that fundless sponsors may require exclusivity before investors will incur diligence costs (www.reedsmith.com).

This is a fair argument and the worksheet accommodates it. If the buyer's missing items wait on seller inputs, a hard milestone could penalize the buyer for the seller's delay. The logic also runs the other way: if the seller has delivered everything and the investor has not voted, an automatic extension shifts the whole risk of waiting to the seller. These articles are sponsor-side commentary, not market data. Reed Smith recommends that sellers link exclusivity to evidence of a credible bid, investor engagement, an indicative financing package and an agreed timetable (www.reedsmith.com), and that binding equity and debt commitments, where possible, be delivered at signing (www.reedsmith.com); it is UK-framed commentary, not US authority.

Change 5: Seller leverage is greatest at the moment of the request

An exclusivity extension is a request for something the buyer does not hold as of right (unless an automatic extension exists). The seller can therefore ask for something in return. Sources describe several trades without agreeing on any: milestones inside the exclusivity period such as diligence completion or a draft purchase agreement by a set date (www.axial.net); one or two milestones that unlock further exclusivity as each is met (www.stout.com); a short period that extends automatically only if the buyer delivers a draft purchase agreement (www.hirschlerlaw.com); and extension conditioned on price and key terms confirmed in writing, remaining milestones dated and perhaps a deposit (www.impetusgroupllc.com). An advisor commentary adds a seller expense recovery clause, said to prevent buyers from engaging in an LOI unless fully committed (www.stout.com). Where the buyer's own burden is equity, an older practitioner article notes that the seller may ask for a milestone, such as a signed term sheet from an equity sponsor, before extending (www.frontieribc.com). That article is old and is cited for the structure, not for current practice.

Leverage has limits. A seller that has been slow with documents has a weaker case for refusing, and the ledger described below makes that visible to everyone.

Implementation Considerations and Process Changes

The two-clock worksheet

The worksheet has two sections that share one calendar. Clock A tracks diligence delivery and approvals. Clock B tracks debt and equity underwriting and commitments. Every row has a date, an owner and an evidence date, and every cell may read "unknown" with a named person responsible for obtaining the evidence. No row is scored, and the sheet produces no probability of closing.

Clock B (funding) columns, one row per source:

- **Financing source:** the named obligor and instrument (senior lender, equity provider, co-investor, seller note, rollover).
- **Amount needed and amount evidenced:** two separate numbers, never netted.
- **Document and date:** the specific paper, with signature date.
- **Evidence class:** one of the six labels in Table 1; binding status is marked "for counsel to confirm."
- **Conditions:** each condition listed, with whether it depends on a seller input.
- **Approval status:** credit committee or investment committee decision, with date or "unknown."
- **Expiry:** commitment expiry date and what happens after it.
- **Buyer next action and date:** the specific step.

- **Responsible professional and confirmer:** who will provide or verify the evidence.
- **Evidence date:** when the seller's side last saw the paper.

Clock A (diligence) columns, one row per deliverable or approval:

- **Item and owner:** seller, buyer, lender, insurer or third party.
- **Requested, promised and delivered dates:** three separate fields.
- **Dependency:** which funding condition or approval it unlocks.
- **Status:** open, delivered, delayed with reason, or unknown.

The separation of three failure types is the sheet's main design choice. A **failed data-room dependency** means a deliverable on Clock A is late, and the response is to fix the delivery. An **investor declining** means a Clock B source has been withdrawn, and the response is to replace the capital or reprice, not extend. A **conditional commitment nearing expiry** means the paper exists but its life ends before the process does, and the response concerns renewal, timing and cost.

The Clock A items are not unusual, but they are often on the seller's side. One CPA-firm estimate puts a QoE at four to six weeks from start to finish (www.bpm.com), and it begins with source information such as monthly financial statements that come from the company (www.bpm.com). A law firm adds that the pace of an in-depth buyer review depends on how well prepared and responsive the seller is (kahnlitwin.com), and that delivering requested information promptly is critical to avoiding delay (kahnlitwin.com). Lenders add their own requests: asset-based lending timing is described as highly dependent on diligence requirements such as field exams and appraisals (www.bankatfirst.com), and field exams rely on the company's reported information (www.sfnet.com). If the financing is SBA-backed, an SBA information notice states that SOP 50 10 8.1 becomes effective October 1, 2026 and applies to all applications issued an SBA loan number on or after that date, while SOP 50 10 8.0 continues for applications submitted through September 30, 2026 (legacy.sba.gov); the lender must request and engage the business valuation in a change of ownership (www.withum.com). R&W (representations and warranties) insurance, if used, starts its underwriting clock only once the underwriter has substantially complete third-party diligence reports (www.mcdermottlaw.com), and the speed of the process is generally dictated by how quickly requested information is provided (www.vanbridge.com).

Third-party consents and regulatory items sit on both clocks. Change-of-control clauses let a counterparty terminate, modify or renegotiate on an ownership change (cmmllp.com); making a counterparty's consent a closing condition gives it knowledge of the deal and leverage over timing (www.potomaclaw.com). On regulatory timing, the FTC states that the 2026 HSR size-of-transaction threshold is $133.9 million (www.ftc.gov), that the threshold in effect at closing governs reportability (www.ftc.gov), and that the initial waiting period is 30 days (15 for a cash tender offer or a bankruptcy) (www.ftc.gov). Whether HSR applies to a particular deal is a question for antitrust counsel.

The event ledger: delivered, promised, changed

The ledger is a dated list of events with three columns: delivered, promised and changed. Each entry records the date, who made the statement, what the evidence is and who received it. Generic entries: "Seller delivered monthly financials through September on day 14"; "Buyer promised lender credit approval by day 40"; "Equity provider's terms changed on day 38." The ledger serves two purposes. It shows whether the delay is

concentrated on one side, and it prevents the discussion from turning on recollection. The seller's own delivery history belongs in it. A ledger that shows seller lateness is not a reason to refuse an extension, but it is a reason to link any extension to seller deliveries by date and to be candid about what remains open.

Three scenarios (Hypothetical Examples)

Table 2 below walks through three extension scenarios. Each is a pattern of evidence, not a prediction. They are illustrative and label what the ledger would show, what to ask for and what contract questions to bring to counsel.

Scenario	What the ledger would show	Evidence to request	Options to discuss with counsel
A. Seller documents late	Buyer's requests were sent on time; seller deliveries slipped; lender and investor have conditioned approval on the QoE or on consents.	Dated request list, delivery dates, and lender or investor confirmation that the stated items are the only blockers.	Day-for-day extension limited to the delay; milestones contingent on seller delivery (www.lplegal.com); a seller catch-up plan with named owners; confirmation that no new request categories are added.
B. Lender underwriting incomplete	Credit approval pending; commitment papers not yet signed or signed with open conditions; expiry earlier than the proposed new exclusivity date.	The commitment letter or term sheet, conditions list, expiry date, and the lender's confirmation of the remaining steps. Alignment of the debt commitment with the purchase agreement drop-dead date and conditions is a common structuring goal (download.pli.edu).	Short extension with a lender-approval milestone; a right to end exclusivity if approval is not delivered by a set date (www.acquiry.com); an agreed process for renewing the commitment. Longer-dated commitments can bring costs such as ticking fees and forced allocations (akingump.com).
C. Lead investor replaced	The original equity provider has withdrawn or changed terms; a new source is at the verbal or nonbinding class; the sponsor's own agreement with the provider may govern what it can do (www.lplegal.com).	The new provider's identity, class of evidence, IC timeline, and whether sponsor and provider have signed anything binding (www.hklaw.com).	Treat as a material change: a narrowly defined extension tied to a signed commitment or term sheet from a named source; a revised evidence date; or allow exclusivity to expire as the contract permits.

The scenarios differ in who can cure the problem. In A, the seller holds part of the cure. In B, the lender's timetable controls and the question is whether the paper's life matches the process. In C, the evidence has been reset, so a seller may treat the request as a new decision: an equity source that has regressed from "signed commitment with conditions" to "verbal interest" cannot be counted at its previous amount.

Alternatives to discuss with counsel

An extension request does not have a binary answer. The sources reviewed describe a spectrum of structures that a seller and deal counsel may consider; none is a recommendation and none is suitable for every deal.

- **A narrowly defined extension:** a specific end date tied to named events, rather than "until the parties sign." Counsel should raise any extension request with the owner well before the end date, not on the last day (www.impetusgroupllc.com).

- **Revised evidence dates:** instead of lengthening the period, set intermediate dates for the lender's credit approval, the investor's vote, or a signed commitment. A short initial period with a right to end exclusivity if capital-partner confirmation is not delivered by set dates is one version (www.acquiry.com).
- **Agreed cure mechanics:** if seller delivery is the cause, the extension runs only for the delay, and each side has a notice and cure period. Written-termination mechanics, as in the automatic-extension formulation above, give each side a defined event to react to (www.frontieribc.com).
- **Consideration for the extension:** price and key terms confirmed in writing, dated milestones and a possible deposit (www.impetusgroupllc.com); expense reimbursement to the seller (www.stout.com). A break fee is not common in LOIs and, where used, is generally negotiated into the definitive agreement (resourcehub.bakermckenzie.com).
- **Reverse termination fee and financing outs at the purchase agreement stage:** a reverse termination fee is paid by the buyer if specified events, which may include financing failure, prevent closing (www.gibsondunn.com). In a "pure option" structure, it gives the seller an option to walk away on terms agreed in advance (www.gibsondunn.com). A US purchase agreement with a pure financing condition lets the buyer decline to close if financing is not available on specified terms (download.pli.edu), and financing conditions fell out of favor as sellers increasingly refused to assume financing risk (www.proskauer.com). These structures are relevant to the next negotiation, not the extension itself, but the extension is the moment to ask what the buyer will offer at signing.
- **Expiry as the contract permits:** if exclusivity ends, the seller may regain freedom to speak with others, subject to confidentiality, notice and any surviving provisions. A seller may remain restricted from shopping the deal even after negotiations go cold (mcdonaldhopkins.com), so expiry should be documented and the surviving clauses checked. A hard end date is a common seller protection (aegislaw.com).

Confidentiality and communications

"Keeping other buyers warm" during an extension is not blanket permission to breach exclusivity. A no-shop restricts soliciting and negotiating, and also restraints on sharing non-public information with parties other than the buyer, and typically obliges the seller to ensure its agents do the same (resourcehub.bakermckenzie.com). Respecting exclusivity is described as a core component of negotiating in good faith (launch.wilmerhale.com). Two practical points follow. First, if the LOI includes a duty to notify the buyer of inbound approaches, one law firm recommends narrowing it so that the identity and terms of the other party are not disclosed (www.offitkurman.com). Second, no wider communications plan is a substitute for the actual clause: counsel should read what the seller may say, to whom and when.

Who confirms the evidence

The sources reviewed describe which documents are delivered (commitment letters customarily go to the target (www.stblaw.com), and sellers in sponsor deals often require commitment letters signed simultaneously with the definitive agreement (corpgov.law.harvard.edu)), but none prescribes a method for confirming funds without circulating sensitive investor bank statements. This report treats the method as an open question for counsel. The worksheet's "confirmer" column asks: Who may confirm (the lender, a fund administrator, the

buyer's counsel)? What exactly: existence, amount, conditions or availability at closing? On what date? Can the seller's counsel receive the confirmation directly, without investor account details? A seller's right to enforce an equity commitment, often by specific performance, depends on how the letter is drafted (www.mintz.com).

Data Analysis and Evidence

Hypothetical funding ledger and calendar (Hypothetical Example)

All amounts and days below are deliberately hypothetical. They are not typical terms and not a suggested extension length. They illustrate arithmetic and sequencing, nothing else. Uses of funds total $32M: $30M purchase consideration, $1M transaction costs and $1M liquidity, excluding any seller rollover. *Table 3* below shows the ledger and a sensitivity block.

Line	Amount	Hypothetical evidence class and date	Comment
Total uses	$32M	Not applicable	$30M consideration + $1M costs + $1M liquidity
Senior debt	$18M	Signed commitment with conditions; commitment expires day 70	Conditions include QoE delivery and no material adverse change
Lead equity	$7M	Written term sheet; investment committee vote on day 75	Not yet a signed commitment
Co-investor equity	$5M	Written nonbinding interest only	Not committed funds
Identified sources	$30M	Mixed classes	$18M debt + $12M equity
Arithmetic gap	$2M	Unidentified source	$32M uses less $30M identified sources
Nonbinding portion of identified sources	$5M	Written nonbinding interest	A separate item from the $2M gap
Gap plus nonbinding interest	$7M	No written commitment of any kind	$2M gap + $5M nonbinding interest; before any condition on the other $25M is considered
Not backed by a signed commitment	$14M	Gap, nonbinding interest and uncommitted lead equity	$2M gap + $5M nonbinding interest + $7M lead equity (term sheet, vote not yet held)
Sensitivity 1: consideration reduced to $28M	Uses $30M; identified sources $30M; gap $0	Nonbinding $5M still unchanged	Price change is a negotiated outcome, not assumed
Sensitivity 2: debt falls to $15M	Uses $32M; identified sources $27M; gap $5M	Nonbinding $5M unchanged	Debt amount can change at underwriting
Sensitivity 3: both changes	Uses $30M; identified sources $27M; gap $3M	Nonbinding $5M unchanged	No expected return is calculated

The central point is that three numbers are different things. The $2M gap is arithmetic: uses exceed identified sources. The $5M is a conditional or non-binding component inside the identified $30M: it is not part of the gap, but the amount that still has no committed provider. The $25M left after removing the nonbinding $5M is not "cash available"; it is $18M of conditional debt plus $7M of equity that has a term sheet and an unheld vote. In total, $7M of the $32M requirement (the $2M gap plus the $5M of nonbinding interest) has no written commitment of any kind, and the $7M of lead equity is not yet committed either, so about $14M of the $32M has no signed commitment behind it even before conditions on the $18M of debt are considered. The sensitivity rows show that a lower price can close the arithmetic gap while leaving the nonbinding amount untouched, and a lower debt amount widens the gap. Neither calculation values the business or estimates returns.

The hypothetical calendar shows why a 20-day extension does not solve the sequencing:

- **Day 60:** exclusivity expires under the LOI as originally signed.
- **Day 70:** the debt commitment expires, 10 days after original exclusivity.
- **Day 75:** the investment committee votes on the lead equity, 5 days after the debt commitment has lapsed.
- **Day 80:** a 20-day extension would end here, 5 days after the vote and 10 days after the debt commitment expiry.

An extension to day 80 would cover the vote date, but exclusivity would then run 10 days past the day-70 lapse of the debt commitment, so the commitment would need renewal or extension to cover the whole extended period. If the debt commitment is not renewed or extended, the process would be asking the investor to vote on a transaction whose debt is no longer committed. A real worksheet would also ask when closing is actually expected, since exclusivity typically ends at signing of a definitive agreement while funding must be valid through closing, which may be later still. Confirm that every funding source remains valid through the actual closing date and satisfies any extension condition. Commitment expiry is commonly tied to the acquisition agreement's termination date (akingump.com) or outside date (akingump.com), and how long the borrower will need the commitments is a recognized planning factor (practiceguides.chambers.com).

What the published data do and do not show

Quantitative material on this topic is limited, and its limits matter more than its headline numbers.

- **Exclusivity length, qualitative ranges.** Practitioner ranges differ. Baker McKenzie says exclusivity in a US LOI will commonly span 30 to 60 days after signing (resourcehub.bakermckenzie.com); Mintz says sellers should generally be willing to agree to a short window, typically 30 to 45 days (www.mintz.com); Levenfeld Pearlstein describes 60 to 90 days as typical (www.lplegal.com). None states a sample or method. Acquiry's FAQ states plainly that there is no standard (www.acquiry.com).
- **Exclusivity length, one named dataset.** Goodwin's Private Equity Deal Database showed that in 2021 only about 6% of deals involving exclusivity had a duration of 61 days or more (www.goodwinlaw.com); in 2022 nearly 40% did (www.goodwinlaw.com). The article does not state the number of deals, so the percentages should not be generalized.

- **Signing-to-closing time.** Goodwin reported, from its own Deal Terms Database, that the time between signing and closing in private equity M&A deals increased 64% from 2023 to 2024 (www.goodwinlaw.com), and said sellers are more inclined to conduct broader auction processes before granting exclusivity (www.goodwinlaw.com). The database's sample size and the absolute number of days are not given, so treat the 64% as Goodwin's own unaudited figure.
- **LOI-to-close distribution.** GF Data tracked private-equity-backed companies with total enterprise value between $10 million and $500 million (middlemarketgrowth.org). Its published analysis says a three-month closing window proved dominant over the period (middlemarketgrowth.org) and that almost 30% of tracked deals closed 12 months or more after the date of letter of intent (middlemarketgrowth.org). That sample is by enterprise value, not revenue, and measures LOI to closing, not extensions.
- **ABA deal-points study.** The American Bar Association's 2025 Private Target Deal Points Study covers 139 definitive acquisition agreements (www.americanbar.org) with purchase prices from $25 million to $900 million (www.americanbar.org), and 42 of the deals signed and closed simultaneously (www.americanbar.org). These figures describe the study sample only and do not measure how often exclusivity extensions are requested or granted.
- **Not found.** No named, dated dataset with sample and method was found for how often exclusivity extensions are requested or granted, how long they run, the completion rate of independent-sponsor deals, or sponsor fees. This report therefore makes no claim about them and does not attach a probability of closing to any buyer type.

A note on age and fit: several legal sources used here are older (an older practitioner article, an older financing-provisions paper, 2017 conference slides) or concern public-company or sponsor-led deals. They are cited for structures and definitions, not current market frequency.

Implications and Future Directions

For sellers, the immediate implication is procedural. An extension request is easier to evaluate when the seller can show what has been delivered, what was promised and what changed, so the ledger is best prepared before the request arrives. Goodwin's observation that sellers are more inclined to conduct broader auction processes before granting exclusivity (www.goodwinlaw.com) suggests more diligence and funding questions may be asked before the LOI; if they are not, the request may be the first time the seller sees the full funding picture.

For buyers and sponsors, the sponsor-side argument for flexibility will remain a standard position, and the worksheet is a way to engage with it. A dated sheet with named confirmers gives a seller a reason to agree to a narrower extension, and it shows where the seller's own deliveries are holding up lender or insurer timelines.

For regulatory timing, confirm current figures when the deal is live: the HSR threshold in effect at closing governs reportability (www.ftc.gov), so a price adjustment can move a deal across a reportability line and add a regulatory clock to Clock A. Antitrust counsel should confirm. SBA lending rules also changed on October 1, 2026 (legacy.sba.gov), which matters only if SBA financing is in the structure.

Where a seller wants help coordinating the two clocks, one option is an independent M&A advisor working alongside deal counsel. An advisor can keep the ledger and calendar, but enforceability, tax and lending questions belong to counsel, tax advisors and lenders. Another option is for deal counsel and the seller's CFO to run the worksheet themselves.

Frequently Asked Questions (FAQs)

Should a seller agree to extend a no-shop period when the buyer needs more time?

The sources reviewed give no universal answer. Sponsor-side commentary favors automatic extensions while both sides work toward closing (www.lplegal.com); seller-side commentary favors limiting any automatic extension to one (www.mintz.com) or tying extensions to conditions (www.impetusgroupllc.com). The answer depends on the ledger. Counsel should review the contract.

What if the buyer asks for an exclusivity extension because of financing?

Ask which class of evidence exists for each source (Table 1), when each expires and what conditions remain. A term sheet generally creates no obligation (www.poynerspruill.com); a commitment letter follows full underwriting and credit approval (www.poynerspruill.com). Then compare each expiry with the proposed new exclusivity date and the realistic closing date.

What proof of funds should be requested before extending?

Commitment letters are customarily delivered to the target (www.stblaw.com), and Reed Smith suggests linking exclusivity to evidence such as investor engagement and an indicative financing package (www.reedsmith.com). No single "proof of funds" form is prescribed; the worksheet asks for document, date, conditions and confirmer. Whether a bank statement is appropriate is a question for counsel.

Can an extension include a break fee or reverse termination fee?

A break fee is not common in a US LOI and is generally negotiated into the definitive agreement (resourcehub.bakermckenzie.com). An extension can instead carry a deposit or expense recovery (www.impetusgroupllc.com) (www.stout.com). A reverse termination fee, paid by the buyer if specified events such as financing failure prevent closing (www.gibsondunn.com), is more typical of a definitive agreement; counsel should advise whether it fits an extension.

How long are exclusivity periods in lower middle market deals?

Practitioner ranges vary (30 to 60, 30 to 45 and 60 to 90 days in the sources above), with no common sample or method (resourcehub.bakermckenzie.com) (www.mintz.com). One named dataset shows a shift toward longer periods between 2021 and 2022 (www.goodwinlaw.com). Use these as context, not as benchmarks for a specific deal.

What are the risks when a buyer is raising equity to close an acquisition?

The risks are timing and status, not buyer type. A nonbinding MOU or IOI does not commit the equity provider (www.hklaw.com), a conditional commitment can expire before the process ends (www.poynerspruill.com), and equity may be conditioned on debt funding (www.sec.gov). The evidence classes and dates make these visible.

Conclusion

An exclusivity extension request is a chance to replace general statements with dated evidence. The worksheet in this report separates the diligence clock from the funding clock, uses evidence classes instead of ratings, allows "unknown," and assigns each missing item to a named owner accountable for obtaining it. It treats the sponsor's case for flexibility as a legitimate counterargument, and it treats a seller's own delivery delays as part of the record.

The hypothetical example shows why dates and classes must be read together. A $2M arithmetic gap, a separate $5M of nonbinding interest, a further $7M of lead equity still awaiting its vote, a debt commitment expiring on day 70 and an investor vote on day 75 do not resolve themselves because a 20-day extension reaches day 80. The seller's choices, to extend, to renegotiate milestones or to let exclusivity expire as the contract permits, all depend on the actual document wording, the governing state law and the facts, which deal counsel must assess. This report is educational process design and does not recommend a course for any particular negotiation, estimate a probability of closing or rank a category of buyer.

Source links

Links cited in this article, in order of first appearance. Full addresses are provided for readers using extracted text.

1. https://www.lplegal.com/content/competing-above-your-weight-modern-independent-sponsor-playbook
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