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IOI vs LOI in Private Deals: Binding Terms and Timing

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Where IOI and LOI sit in the process

An indication of interest (IOI) and a letter of intent (LOI) are both written offers made before a definitive purchase agreement exists. They answer different questions. The IOI tells a seller, usually early and usually in competition with other bidders, whether a buyer is worth letting further in. The LOI tells both sides whether a specific deal is worth the cost of confirmatory diligence and drafting a purchase agreement. Short definitions are in the glossary (indication of interest, letter of intent); this article covers practice and where the law attaches.

In a banker-run process, the usual sequence is:

1. **Teaser.** An anonymised one- or two-page summary goes to a buyer list.
2. **NDA.** Interested buyers sign a confidentiality agreement.
3. **CIM and management materials.** Buyers receive the confidential information memorandum and, sometimes, a model or data extracts.
4. **IOI round.** Buyers submit non-binding indications, often against a bid letter that specifies the format and deadline.
5. **Second round.** A short list gets management meetings, a data room and more detailed diligence.
6. **LOI (or final bid with a markup of the seller's draft agreement).** The seller picks one buyer, typically granting exclusivity.
7. **Confirmatory diligence and definitive agreement.** Quality of earnings, legal diligence, financing commitments, then signing and closing.

In a directly sourced deal, where the buyer reached the owner without an intermediary, steps 1 to 4 compress. There is often no formal IOI round: the buyer may send a short written indication after one or two calls, or skip straight to an LOI once the owner shares financials. How owners are reached before that first written number is covered in proprietary deal flow.

This is market practice, not law, and varies by intermediary and deal size.

IOI vs LOI side by side

Common U.S. practice, not law; the binding effect of any document depends on its words and governing law.

Dimension	IOI	LOI
Purpose	Earn a place in the next round; signal value and credibility	Lock in price, structure and key terms before expensive work
Who usually asks for it	Sell-side adviser, via a process letter	Buyer proposes; seller negotiates; in auctions, sometimes the seller's draft
Number of recipients	Many buyers, one seller	One buyer, one seller
Price	Often a range, on stated assumptions	Usually a point value, plus adjustment mechanics
Structure	Assumptions (cash-free, debt-free, normal working capital; asset or equity purchase)	Specified: consideration mix, rollover, seller note, earn-out, escrow or insurance approach
Diligence	List of remaining areas	Scope, timetable and conditions for confirmatory diligence
Financing	Sources of funds described	Sources described in more detail; sometimes evidence of commitments
Exclusivity	Rarely	Commonly requested, for a defined exclusivity period
Binding terms	Usually none, or confidentiality only	Usually "non-binding except" a short list (see below)
Length	Often 1-3 pages	Often 3-10 pages

What a good IOI states, and what to avoid

An IOI is read by someone triaging a stack of them. The sell-side adviser wants to know three things: is the number credible, can this buyer close, and what will this buyer try to change later. A useful IOI answers each directly.

State:

- **Value, with the basis.** A range is normal at this stage, but anchor it: the metric (for example adjusted EBITDA as presented in the CIM), the period, and the main assumptions (cash-free, debt-free, a normalised level of working capital).
- **Structure assumptions.** Asset or equity purchase; whether the buyer expects the seller to roll equity or carry a note; any earn-out. If the number depends on structure, say so.
- **Sources of funds.** Committed fund, deal-by-deal equity, SBA or senior debt, seller financing. Independent sponsors and searchers should be specific; vague equity claims get discounted.
- **Key diligence areas.** The handful of items that could move the price: customer concentration, owner dependence, working capital seasonality, licences.
- **Approvals and timeline.** Internal approvals still required, expected time to an LOI and to close.

Avoid:

- **False precision.** A point value to the thousand on the basis of a CIM reads as either naive or a placeholder that will be re-traded.
- **Unstated adjustments.** If the range already assumes add-backs will be disallowed, say which; otherwise the gap will surface at LOI and look like a re-trade.
- **Conditions that swallow the offer.** "Subject to satisfactory diligence, financing and board approval" with no detail tells the seller nothing.
- **Wording that reads as binding.** State that the IOI is non-binding, and have counsel check the wording.

Illustrative IOI excerpt (fictional)

> *Illustrative only. Fictional parties.*
>
> Brightwater Partners is pleased to submit this non-binding indication of interest for 100% of the equity of Halden Fluid Controls, Inc. Based on the materials provided, including adjusted EBITDA of $4.1 million for the twelve months ended June 30 as presented in the CIM, we indicate an enterprise value of $24 million to $27 million on a cash-free, debt-free basis with a normalised level of net working capital to be agreed. We expect to fund the transaction with equity from our existing investor group and senior debt; we would invite management to roll up to 20% of their equity. Our remaining diligence focuses on the top-three customer contracts, the 2025 inventory write-down and the owner's role in key accounts. We expect to deliver a letter of intent within three weeks of a management meeting and to close within 75 days of signing it. This letter is not an offer capable of acceptance and creates no binding obligation.

The range is tied to a stated metric and period, and the diligence list names the issues that would move value.

What an LOI usually binds and what it does not

Most private company LOIs follow a "non-binding except" pattern. The economic terms (price, structure, conditions, timetable) are expressly non-binding, and a short list of provisions is expressly binding. In common practice the binding list includes:

Provision	Usually binding?	Why it binds
Purchase price and structure	No	Depends on diligence and the definitive agreement
Conditions to closing	No	Same
Exclusivity / no-shop	Yes	Buyer's consideration for spending money on diligence
Confidentiality	Yes (or refers to the existing NDA)	Protects information exchanged during diligence
Expenses (each side bears its own; sometimes a reimbursement)	Yes	Allocates cost if the deal fails

Provision	Usually binding?	Why it binds
Access to information and management	Often	Makes exclusivity useful
Non-solicitation of employees	Often	Protects the seller if the buyer walks
Governing law, termination, no third-party rights	Yes	Makes the binding provisions enforceable and finite
Agreement to negotiate in good faith	Sometimes, and consequential	See Delaware section below

Two drafting points matter more than the template.

A label does not end the analysis. In *SIGA Technologies v. PharmAthene*, the term sheet at the centre of the dispute was unsigned and carried a footer reading "Non Binding Terms" on each page. The Delaware Supreme Court nonetheless found that the record supported the trial court's conclusion that, by incorporating that term sheet into later signed agreements, the parties had committed to negotiate toward a licence on substantially similar economic terms (SIGA v. PharmAthene, Del. 2013). The obligation came from express language in the signed agreements, so the words of every document that references an LOI count.

Exclusivity needs edges. A no-shop without a fixed end date or termination trigger can trap a seller. Common edges are a fixed number of days, a seller right to terminate if the buyer re-prices, and a clear statement of what "solicit" covers.

Delaware and the duty to negotiate in good faith

The leading Delaware authority is *SIGA Technologies, Inc. v. PharmAthene, Inc.*, decided by the Delaware Supreme Court en banc on May 24, 2013 (No. 314, 2012). Three passages matter for anyone drafting an LOI.

The obligation is enforceable. The court "reaffirm[ed] that where parties agree to negotiate in good faith in accordance with a term sheet, that obligation to negotiate in good faith is enforceable" (SIGA, slip op.).

Expectation damages are available on a finding. Where the trial judge finds, on a supported record, "that the parties would have reached an agreement but for the defendant's bad faith negotiation," the judge may award expectation damages, meaning the benefit of the deal that was never signed, not just wasted costs (SIGA, slip op.).

Type II preliminary agreements. The court drew on federal decisions interpreting New York law, which recognise a "Type II" preliminary agreement where parties "agree on certain major terms, but leave other terms open for further negotiation." Such an agreement does not guarantee a final contract, because good-faith differences on open issues may prevent one, but it bars a party from "renouncing the deal, abandoning the negotiations, or insisting on conditions that do not conform to the preliminary agreement" (SIGA, slip op. and n.85).

On remand the Court of Chancery held PharmAthene entitled to lump-sum expectation damages (Del. Ch. Aug. 8, 2014) and awarded $113 million; on December 23, 2015 the Delaware Supreme Court affirmed (*SIGA v. PharmAthene*, 132 A.3d 1108 (Del. 2015)). A non-binding label did not stop a nine-figure judgment.

What this means in practice:

- **"Non-binding" and "negotiate in good faith" pull in opposite directions.** A binding good-faith covenant tied to the LOI's terms can expose either party that later insists on materially different terms.
- **Re-trades need a documented basis.** A price change after diligence is ordinary; keep the findings that justify it.
- **Governing law matters.** SIGA applies Delaware law; other jurisdictions may differ.

Outcomes turn on the specific language and trial record; have deal counsel draft and review both documents. This is not legal advice.

Antitrust and disclosure hooks

Two regulatory regimes can attach to the LOI rather than waiting for the definitive agreement.

HSR premerger notification. For acquisitions large enough to require a Hart-Scott-Rodino filing, the rules permit notification on an affidavit "attesting that a contract, agreement in principle, or letter of intent to merge or acquire has been executed," together with the filer's good-faith intention to complete the transaction (16 CFR 803.5(b)). The current published text adds that if the executed agreement is not the definitive agreement, the affidavit must attest that a dated document with sufficient detail about the scope of the entire transaction has also been submitted (16 CFR 803.5(b)). After filing, parties "must wait 30 days (15 days in the case of a cash tender offer or a bankruptcy)" unless the agencies grant early termination (FTC), and the filing thresholds "are updated annually."

As of October 28, 2026, the FTC's current-thresholds page lists the adjusted size-of-transaction threshold under Section 7A(a)(2)(B)(i) as $133.9 million, effective February 17, 2026 (FTC, current thresholds). It also lists $535.5 million and size-of-person figures of $26.8 million and $267.8 million; how they combine is for antitrust counsel.

The filing form itself is in flux. A federal district court vacated the HSR form that took effect on February 10, 2025 on February 12, 2026; after the appeals court denied a stay on March 19, 2026, the agencies began accepting filings on the earlier form, while still accepting the new one if filers choose it (FTC Premerger Notification Program). The eCFR text of 16 CFR 803.5(b) still carried the 2024 "dated document" sentence on October 27, 2026. Antitrust counsel should confirm which form and which version of the affidavit rule apply on the filing date.

Form 8-K for public acquirers. A buyer that is an SEC registrant, such as a listed strategic acquirer or a public portfolio company making an add-on, must consider Item 1.01. It requires disclosure of entry into a "material definitive agreement" not made in the ordinary course, defined as an agreement providing for obligations "that are material to and enforceable against the registrant," or rights material to and enforceable by it, "whether or not subject to conditions" (SEC Form 8-K, Item 1.01). A wholly non-binding LOI is generally not that, but the binding provisions of an LOI (a break fee, a reimbursement obligation, exclusivity) are where securities counsel will look.

How many IOIs become LOIs

There is no public dataset that counts IOIs and LOIs across private company sales. The closest published evidence is a survey. Gompers, Kaplan and Mukharlyamov surveyed 79 private equity investors with combined assets under management of over $750 billion (NBER Working Paper 21133, 2015). In that 2015 working paper, per hundred opportunities considered, "the average PE investor deeply investigates fewer than 24, signs an agreement with fewer than 14 and closes on only 6." The same paper reports that, by the respondents' account, almost 36% of closed deals were "proactively self-generated," 33% were investment-bank generated and 8.6% came from deal brokers.

Read those figures with three caveats:

1. **They are self-reported averages** from fund investors, not transaction records. The authors note they assume responses are accurate.
2. **"Signs an agreement" is not defined as an LOI** in the passage quoted. It may include LOIs, definitive agreements or both.
3. **The sample is institutional PE**, published in 2015 (later published in the *Journal of Financial Economics*). Search funds and independent sponsors work different funnels, often with a much larger owner-outreach top.

In that survey, more than half of signed agreements did not close. An LOI is a midpoint, not a finish line, and the exclusivity, expense and good-faith terms decide who bears the cost of the half that fail.

Track your own stage conversion and the reason for every drop (price, structure, diligence, seller withdrew, lost to another bidder) rather than borrowing a benchmark; the pipeline stages article sets out entry and exit definitions for each stage.

Checklist: before you send either document

Illustrative working checklist. Adapt with deal counsel.

Before an IOI

- [ ] NDA signed and its non-solicit and term understood
- [ ] Metric, period and source of the EBITDA or SDE figure you are pricing written down
- [ ] Adjustments you already doubt listed, with the reason
- [ ] Value expressed as a range, with the assumptions that define it
- [ ] Structure assumptions stated (asset vs equity, rollover, note, earn-out)
- [ ] Sources of funds named, at the level of specificity you can evidence
- [ ] Three to six diligence items that could move value identified
- [ ] Timeline to LOI and to close stated, with internal approvals
- [ ] Non-binding statement reviewed by counsel

Before an LOI

- [ ] Price stated with adjustment mechanics (working capital target method, cash and debt definitions)

- [ ] Consideration mix and any seller financing, rollover or earn-out terms
- [ ] Key conditions: financing, third-party consents, licences, key-employee terms
- [ ] Exclusivity length, extension and termination triggers
- [ ] Binding vs non-binding list explicit, provision by provision
- [ ] Decision on whether to include a good-faith negotiation covenant, made with counsel
- [ ] Expense allocation and any reimbursement or break fee
- [ ] HSR analysis: is the size-of-transaction test met at the current threshold?
- [ ] If the buyer or counterparty is a public registrant: 8-K analysis flagged
- [ ] Evidence file of every diligence finding that could justify a price change

Docket's Triage, Scout and Audit agents turn a buyer's criteria into sourced answers with retained pages, which is the evidence an IOI's assumptions and an LOI's diligence list can be built on.

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Source links

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

1. https://cases.justia.com/delaware/supreme-court/314-2012.pdf?ts=1462313822
2. https://courts.delaware.gov/opinions/download.aspx?ID=209710
3. https://cases.justia.com/delaware/supreme-court/2015-20-2015-0.pdf?ts=1451912740
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