Acquisition Entrepreneurship: One Solution to the Looming Business Succession Crisis

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ABSTRACT

In the coming years, there will be a growing supply of small businesses held by aging owners that need to execute a succession plan, transitioning the business to a new owner that can carry the business forward in future years. Unfortunately, very few of these Baby Boomer-led businesses have a plan for who will take over for the primary business owner when the time comes, creating an emerging leadership crisis. However, there is an underutilized acquisition strategy that allows for a motivated and skilled entrepreneur to team with a small group of investors to search for (and ultimately to purchase) an existing small business. This paper highlights these transactions, often referred to as *acquisition entrepreneurship* through *search funds*, as a viable way to connect retirement-age business owners with an entrepreneur ready and willing to take over the business. Additionally, this paper endorses two strategies for educating entrepreneurs and investor groups on acquisition entrepreneurship, with the goal of making these complex transactions more accessible and more common.

INTRODUCTION

As the Baby Boomer generation[1] ages, there is a growing supply of small businesses that are actively seeking to find new ownership. In fact, experts believe that $30 to $40 trillion of assets will change hands as the Baby Boomer generation leaves behind its wealth to its heirs.[2] Included in these assets are the 2.34 million small businesses owned by Baby Boomers.[3] Given that very few of these small businesses have a plan[4] for who will take the reins when the primary business owner

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1. Baby Boomers are commonly defined as having been born between 1946 and 1964. *By 2030, All Baby Boomers Will Be Age 65 or Older*, U.S. CENSUS BUREAU (Dec. 10, 2019), https://www.census.gov/library/stories/2019/12/by-2030-all-baby-boomers-will-be-age-65-or-older.html.
2. Andrew Osterland, *What the Coming $68 Trillion Great Wealth Transfer Means for Financial Advisors*, CNBC (Oct. 21, 2019, 9:01 AM), https://www.cnbc.com/2019/10/21/what-the-68-trillion-great-wealth-transfer-means-for-advisors.html ("With an estimated $30 trillion to $40 trillion in assets, [Baby Boomers] are the lifeblood of the financial advice industry and, over the next two decades, they are expected to pass much of their wealth on to their Gen X and millennial children.").
3. Andrew J. Sherman, *As Baby Boomers Retire, Main Street Could Face a Tsunami of Change*, CNBC (Dec. 10, 2019, 7:02 PM), https://www.cnbc.com/2019/12/10/as-baby-boomers-retire-main-street-could-face-a-tsunami-of-change.html.
4. *Id.*

exits the business, most of them will have an emerging leadership crisis in the coming years.

Thankfully, there is an underutilized acquisition strategy that allows for motivated and skilled entrepreneurs to team with a small group of investors to purchase an existing small business. From that point forward, the entrepreneur runs her new business as Chief Executive Officer, providing a new leader for a successful existing company that desperately needed one.[5] The process of acquiring a business in this fashion is commonly referred to as *acquisition entrepreneurship*.[6] This Article seeks to provide an outline of the legal aspects of these transactions, beginning with the entrepreneur's search for investment capital and a suitable business to purchase, and ending with the acquisition itself. Further, this Article calls on entrepreneurs, investors, educators, and others to expand the use of the search fund[7] model to encourage a higher volume of acquisition entrepreneurship in the coming years. By doing so, we can better ensure that our nation's small businesses continue to contribute to the economy of their local communities while building wealth for a future generation of entrepreneurs.

This Article proceeds in four parts. In Section I, I describe the looming business succession crisis. Then, in Section II, this Article discusses why entrepreneurship by acquisition can be one solution to this problem. In Section III, this Article provides a summary of the unique legal structure of these transactions, from search to acquisition. Finally, in Section IV, I provide some ways in which society can encourage the use of these transactions to help a higher volume of small businesses successfully transition ownership in the coming years.

I. THE LOOMING BUSINESS SUCCESSION CRISIS

There is a looming business succession crisis in the United States, as a significant portion of small businesses are owned by people who are nearing retirement age.[8] While this substantial subset of small business owners is closing in on retirement age, many of them do not have a plan in place to transition their company to the next generation of ownership.[9]

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5. For an excellent book that describes this process thoroughly, see RICHARD S. RUBACK & ROYCE YUDKOFF, HBR GUIDE TO BUYING A SMALL BUSINESS: THINK BIG, BUY SMALL, OWN YOUR OWN COMPANY (2017).

6. Richard S. Ruback & Royce Yudkoff, *Buying Your Way into Entrepreneurship*, HARV. BUS. REV. (Jan.-Feb. 2017), https://hbr.org/2017/01/buying-your-way-into-entrepreneurship ("[T]here is another career path that has become increasingly popular in recent years: buying and running an existing operation—or what we call *acquisition entrepreneurship.*").

7. For purposes of this article, *search fund* is defined as an entity formed for the purposes of (1) seeking capital from outside investors to fund a search for a business to acquire; (2) conducting a search for a business to acquire; and (3) ultimately, acquiring a business to operate on a going-forward basis.

8. Sherman, *supra* note 3.

9. According to a survey by Wilmington Trust, 58% of business owners have not created a specific succession plan, including 47% of business owners aged 65 and over.

This is where a significant societal problem lies—poorly handled transitions of leadership in small businesses are a leading cause of business failure. For example, the Family Business Institute has studied the success rate of family-held small businesses when transitioned from generation-to-generation and found that "only 30% of these organizations last into a second generation, 12% remain viable into a third, and 3% operate into the fourth generation or beyond."[10] However, some small businesses are facing worse odds when it comes to business survival because the business owner's children have no interest in taking over the business. This leaves aging business owners with a set of complex questions to navigate—including who will take over as the leader of the company once they have decided to move on from the enterprise. Given the difficulty of answering those questions, paired with the owner's love of operating their business, succession planning is often placed on the back burner. Unfortunately, this leaves many small businesses at risk of being without a leader that is able and willing to carry the business forward in the coming years.

II. ACQUISITION ENTREPRENEURSHIP AS A SOLUTION

Small business owners looking to sell their business have a few common options. They may look to their management team to purchase the company through a management buyout transaction.[11] In cases where company management is unable or unwilling to purchase the company, or the business owner is the only existing company management, the business owner may turn to their employees to purchase the company through a leveraged Employee Stock Ownership Plan transaction.[12] For business owners who will need to place their business on the open market, hiring a business broker can provide the seller with a selection of potential buyers from outside the company.[13]

WILMINGTON TRUST CORP., THE POWER OF PLANNING 4 (2017), https://www.wilmingtontrust.com/repositories/wtc_sitecontent/PDF/The-Power-of-Planning.pdf.

10. Claudio Fernández-Aráoz, Sonny Iqbal, and Jörg Ritter, *Leadership Lessons from Great Family Businesses*, HARV. BUS. REV. (April 2015), https://hbr.org/2015/04/leadership-lessons-from-great-family-businesses.

11. DELOITTE, ANATOMY OF A MANAGEMENT BUY-OUT 2, https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/deloitte-private/ca-en-14-2672t-anatomy-of-a-management-buy-out-aoda.PDF (last visited Mar. 15, 2021) ("A management buy-out is the acquisition of a business by its core management team, usually (but not always) in coordination with an external party such as a credited lender or P[rivate] E[quity] fund.").

12. *See, e.g.*, Michael S. Knoll, *Samuel Zell, the Chicago Tribune, and the Emergence of the S ESOP: Understanding the Tax Advantages and Disadvantages of S ESOPs*, 70 OHIO ST. L.J. 519, 523–24 (2009) ("ESOPs can be used to achieve a range of purposes. The most common use of an ESOP is to purchase the shares of a closely held company from a departing owner. In such circumstances, an ESOP is a way for the departing owner to cash out, maintain control of the company for a period of time, and arrange for succession.").

13. *See* Richard Parker, *A Big Decision when Selling a Business – Do It Yourself or Hire a Broker?*, FORBES (Sept. 8, 2016, 12:21 PM),

An issue presented by the above list of options is that sellers, when they are without insiders who are willing to purchase their companies, often have a difficult time finding a willing and able buyer who they trust to run their businesses successfully in the future. After all, small business owners often put decades of hard work and sacrifice into growing their businesses, so they typically care about the business's continued success upon their departure. Given this goal, one desirable type of buyer is an *acquisition entrepreneur*.

Acquisition entrepreneurs have historically been recent MBA graduates[14] or experienced professionals with the desire to run their own business and the management skills to convince investors to back their search for (and eventual purchase of) an existing small business.[15] Due to this high level of experience and skill, they are desirable buyers of the small businesses discussed above.

Acquisition entrepreneurs begin by seeking investment for (or self-funding) a search fund, which typically takes one to two years of full-time effort.[16] Once the acquisition entrepreneur has found a desirable business to purchase with a willing seller, they will engage in more typical deal processes like (1) completing due diligence; (2) making a purchase offer through a letter of intent; (3) raising debt and equity to fund the purchase price; and (4) negotiating the deal terms with the seller.[17] Once the deal is complete, the acquisition entrepreneur, along with their investors, take over operations of the small business. In Section III of this Article, I explain the legal issues and processes surrounding the typical acquisition by one of these entrepreneurs. There are many nuances that are unique to these particular deals.

III. The Structure of the Transaction

In this Section, I will describe an entrepreneur's acquisition of a small business in detail. I will focus on the first stage of the process, where an acquisition entrepreneur decides to search for a small business to acquire and works to line up the requisite investment to finance the search fund enterprise. From there, this Section will describe the acquisition process more generally, with the goal of highlighting aspects of these transactions that differ substantially from the typical acquisition.

A. Preparing for the Search and Forming a Search Fund

When preparing to launch a search, an acquisition entrepreneur has a few key legal tasks to complete. The first and most obvious task is to form an entity to hold

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https://www.forbes.com/sites/richardparker/2016/09/08/a-big-decision-when-selling-a-business-do-it-yourself-or-hire-a-broker/?sh=648f1cde65ad.

14. In fact, many top business schools have courses on entrepreneurship by acquisition, including Harvard Business School and the Wharton School at the University of Pennsylvania. *See Field Course: Entrepreneurship through Acquisition Application Only*, HBS Course Catalog, https://www.hbs.edu/coursecatalog/6452.html; *MGMT 811: Entrepreneurship Through Acquisition*, The Wharton School, https://apps.wharton.upenn.edu/syllabi/2017C/MGMT811001/.

15. *See* Ruback & Yudkoff, *supra* note 5, at 29, 66–67.

16. *Id.* at 46.

17. *See generally* Ruback & Yudkoff, *supra* note 5.

the search fund's assets and liabilities.[18] From there, acquisition entrepreneurs must decide whether they will search with a business partner (which requires some sort of detailed operating agreement[19]) and whether they will need additional help from interns[20] to conduct a successful search.

Additionally, it is imperative for an acquisition entrepreneur to have adequate capital to account for expenses related to the search, which can last upwards of two years and cost more than $1 million.[21] Given these costs, many hopeful acquisition entrepreneurs find that self-funding their search while covering living expenses for that period of time is financially unrealistic.[22] One way to overcome this obstacle is to seek investment capital at this stage in the process.[23]

Acquisition entrepreneurs typically initiate the investment-seeking process by having an attorney draft an offering memorandum,[24] which serves as a first step to ensure the fundraising enterprise is compliant with relevant securities law.[25] From there, the acquisition entrepreneur will leverage their professional network to have conversations with investors with the goal of finding a small group of interested investors with which to negotiate investment terms.[26]

Lastly, the acquisition entrepreneur finalizes the terms of the investment in the search fund enterprise with the investor group. A key term typically included at this stage is the opportunity for each investor to invest more capital in the company that is ultimately acquired by the acquisition entrepreneur once the specific company to be acquired has been identified.[27] Additionally, investors generally reserve the right

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18. Search fund experts recommend a limited liability company (LLC) structure at this stage due to the pass-through tax treatment of the enterprise. *Id.* at 54.

19. *Id.* at 55.

20. Interns can provide useful aid in completing some of the more tedious tasks related to the search, such as sourcing potential businesses for sale and conducting preliminary due diligence on target businesses. However, hiring interns, especially when they are unpaid, can require a careful legal analysis on the part of the acquisition entrepreneur. *See* David L. Gregory, *The Problematic Employment Dynamics of Student Internships*, 12 NOTRE DAME J.L. ETHICS & PUB. POL'Y 227, 242–43 (1998) ("Exploitation of unpaid student interns may have immediate, adverse, legal ramifications. Unpaid student internships may be employer violations of the federal Fair Labor Standards Act of 1938, regulating minimum wage and overtime compensation.").

21. *See* RUBACK & YUDKOFF, *supra* note 5, at 63.

22. *Id.*

23. *Id.*

24. *Id.* at 67. *See also* CONSTANCE E. BAGLEY & CRAIG E. DAUCHY, THE ENTREPRENEUR'S GUIDE TO LAW AND STRATEGY 161 (CENGAGE LEARNING, 5th ed. 2012) (stating that "a private placement memorandum is both a selling document and a disclosure document, its primary purpose is to disclose both the benefits and the risks of the investment and to disclose all material information regarding the company, in keeping with the company's obligations under the federal and state securities laws").

25. *See* RUBACK & YUDKOFF, *supra* note 5, at 67. *See also* Bagley & Dauchy, *supra* note 24, at 173–77 (describing relevant securities law exemptions from registration for private placements of securities).

26. *See* RUBACK & YUDKOFF, *supra* note 5, at 68–69.

27. *Id.* at 69. Of course, at this stage in the transaction, the investors have invested in the search fund entity itself, not a specific company to be acquired in the future.

to receive the initial profits of the acquired venture (until their invested capital is returned) plus a yearly return in the neighborhood of 6%–9% before the acquisition entrepreneur receives any return on their investment.[28] Also of importance, the investors reserve the right to not invest further in the acquired company. However, that search fund investor will still own a portion of the acquired company because, in all cases, the individual investment in the search fund itself converts to an equity stake in the acquired company, usually at a preferred rate when compared to the later rounds of investment.[29] If no company is ultimately acquired by the acquisition entrepreneur (and there is no money left in the search fund), the investor simply loses the capital invested in the search.[30] Once these investment terms are finalized and the investment round is closed, the acquisition entrepreneur begins their search for a business to acquire, which is covered in the next subsection.

B. Beginning the Search, Making an Offer, and Completing the Deal

Once the acquisition entrepreneur has closed the search fund, they can begin their search for a company to acquire in earnest. For many, the first step in this effort is to begin working with business brokers, who will hopefully give the acquisition entrepreneur access to a steady stream of prospect companies[31] in exchange for a broker fee paid by the seller at the closing of the acquisition.[32] Of course, as the acquisition entrepreneur evaluates potential businesses to purchase, they are conducting preliminary due diligence on these target companies, mainly using financial data and other information sourced from brokers.[33] Sometimes, this includes confidential information provided to the acquisition entrepreneur by the seller, prompting the need to sign a nondisclosure agreement.[34] This effort of sourcing and evaluating target businesses, with the goal of finding a business to acquire, can take months.

Once an acquisition entrepreneur identifies a business they would like to acquire, the deal structure and related tasks are very similar to those of the typical sale of a small business. The acquisition process typically begins through a formal Letter of Intent (LOI) written by the buyer to the seller, which outlines proposed deal terms

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28. *Id.* This is typical of other investments in entrepreneurial ventures too. *See, e.g.*, Michael A. Woronoff & Jonathan A. Rosen, *Effective vs Nominal Valuations in Venture Capital Investing*, 2 N.Y.U. J.L. & BUS. 199, 208 (2005) ("Venture capital preferred stock (like most preferred stock) typically contains a liquidation preference. This preference entitles the holder of preferred stock, upon liquidation (which typically includes a sale of the company), to receive some specified value before holders of junior securities receive anything. The preference thus establishes a minimum return for the investor before junior stakeholders share in the liquidation value of the enterprise.").

29. *See* RUBACK & YUDKOFF, *supra* note 5, at 69–70. *See also* John F. Coyle & Joseph M. Green, *The SAFE, the KISS, and the Note: A Survey of Startup Seed Financing Contracts*, 103 MINN. L. REV. HEADNOTES 42, 45–46 (2018) (discussing discount rates for convertible note investors during subsequent financing rounds).

30. *See* RUBACK & YUDKOFF, *supra* note 5, at 66.

31. *Id.* at 96.

32. *Id.* at 105.

33. *Id.* at 104.

34. *Id.* at 112.

such as (1) the offer price; (2) the transaction structure;[35] (3) the amount of debt the seller will finance on behalf of the buyer;[36] (4) the timing of the closing; (5) any possible employment of the seller post-closing (or alternatively, any related noncompetition agreement);[37] and (6) the buyer's agreement to keep transaction-related information confidential.[38] Legally speaking, LOIs serve as a handshake agreement regarding most of the enumerated transaction terms, meaning that most terms expressed in the LOI are not legally binding to the parties.[39] Instead, by signing an LOI, the parties are agreeing to an initial set of deal terms that are subject to change based on new information learned through the remainder of the deal process.[40]

Once the LOI is signed, the parties will work diligently to finish the sale. The first step in that process is confirmatory due diligence, where the buyer utilizes their attorneys and accountants to confirm the key information they have assumed about the target company[41] prior to making the offer to purchase the company.[42] Based on what the acquisition entrepreneur learns during this due diligence process, they may (1) decide to proceed with the deal; (2) look to change key provisions of the deal; or (3) decide to walk away from the purchase.[43]

Assuming the transaction moves forward, the acquisition entrepreneur then needs to line up financing to fund the purchase price, which may come from a traditional

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35. Typically, small business acquisitions use one of two common transactional structures: a stock sale or an asset sale. Merger structures are common in other contexts, but less common in acquisition entrepreneurship transactions. *See* Kevin Conboy, *Diagramming Transactions: Some Modest Proposals and a Few Suggested Rules*, 16 TRANSACTIONS: TENN. J. BUS. L. 91, 98 (2014) (describing an asset sale and a stock purchase as two of four main types of business transaction structures); *see also* RUBACK & YUDKOFF, *supra* note 5, at 261 (mentioning the asset purchase agreement as a common type of purchase agreement used in these transactions).

36. *See infra* note 45.

37. *See* RUBACK & YUDKOFF, *supra* note 5, at 268–70 (describing that it is common for a buyer to want the seller to work for the company during a brief transition period post-closing). In these cases, an employment agreement and other contracts may be appropriate to govern the ongoing relationship between the parties.

38. *Id.* at 201.

39. *Id.* at 200.

40. *Id.*

41. Due diligence is a time-consuming process where the purchaser and their agents review volumes of key documentation related to the seller's business, like contracts with employees, vendors, and customers. *See generally* Xuan-Thao Nguyen, *In the Name of Patent Stewardship: The Federal Circuit's Overreach into Commercial Law*, 67 FLA. L. REV. 127, 132 (2015) ("Conducting an asset purchase is frequently time-consuming because teams of business and legal advisors often must engage in extensive due diligence prior to the closing of the deal.").

42. *See* RUBACK & YUDKOFF, *supra* note 5, at 209.

43. *Id.* at 227–28.

bank loan,[44] seller financing,[45] investor equity,[46] or most likely, a combination of these three options. Depending on the specific facts of the transaction, any one of these three methods of financing the deal might make up a larger portion of the overall purchase price. For example, a buyer will be more likely to line up a large loan from a bank if the business they are purchasing has significant assets that can serve as collateral to the loan.[47] Alternatively, a seller that is desperate to sell the business is more likely to provide seller financing—meaning that the seller will receive some of the purchase price now (through the bank loan and investor capital) and receive the rest later (with interest) through a promissory note.[48] Of course, acquisition entrepreneurs need to be cognizant of how much capital will be needed to service any debt they have taken on, as well as the investor's preferred returns, once the small business has been acquired. Otherwise, turning a profit and building wealth for themselves could be challenging.

Once the acquisition entrepreneur is confident that they have lined up sufficient financing to close the deal, the purchase agreement can be negotiated and signed by the parties.[49] While the basic transaction structure should already be agreed upon through the previously signed LOI, other key deal terms are determined at this stage in the transaction. For example, parties will determine key items like (1) which representations and warranties[50] each party will make; (2) the amount of cash to be held back from the transaction for escrow and setoff purposes; and (3) the specific terms of any seller financing.[51] Once the purchase agreement is negotiated, drafted, and signed, the deal is closed, and the acquisition entrepreneur takes over the business. Our seller has successfully sold their company.

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44. *Id.* at 232–43 (describing the loan options available to acquisition entrepreneurs through banking institutions, including asset-based loans, cash-flow loans, and Small Business Administration (SBA) backed loans).

45. *Id.* at 243–44 (stating that sellers typically take a promissory note from the buyer to account for 20%-25% of the total purchase price, paid with interest over a term of four or five years post-closing).

46. Much like acquisition entrepreneurs must seek investors and agree to terms with those investors to launch the search fund, the entrepreneur often does a second round of raising capital at this stage in the transaction. *Id.* at 247–50. The legal components of this process are like those described above with respect to raising the search fund. *See supra*, Section III.A.

47. *See* RUBACK & YUDKOFF, *supra* note 5, at 234.

48. *Id.* at 243–44.

49. *Id.* at 261.

50. *Id.* at 265. *See also* Javon Johnson, *An Epidemic of Workplace Sexual Misconduct: The Birth of the Weinstein Clause in Merger and Acquisition Agreements*, 52 TEX. TECH L. REV. 377, 381 (2020) ("The representations and warranties section of an M&A agreement includes specific and broad representations that are written with the purpose of identifying liabilities, which include past, present, and future liabilities. Warranties are utilized to contractually indemnify parties from the identified liabilities. Essentially, representations and warranties are promises made by the buyer and seller regarding their businesses' 'key facts.'").

51. *See* RUBACK & YUDKOFF, *supra* note 5, at 267–68 (describing common seller financing terms).

IV. Methods for Expanding the Use of These Transactions

Over the coming years, the United States can expect to see a surge in small businesses looking for new ownership.[52] Given the high level of education, experience, and management skill held by many acquisition entrepreneurs, they serve as excellent candidates to purchase successful small businesses. This Section contemplates how we can encourage more entrepreneurs to become acquisition entrepreneurs by searching for an existing small business to purchase. More specifically, I have identified two main areas in which entrepreneurial ecosystems[53] can place their focus to encourage acquisition entrepreneurship. These areas are (1) working to expand education on acquisition entrepreneurship through university curriculums and (2) encouraging local angel investor groups to invest in search funds and acquisitions as an alternative to startups. In this Section, I will briefly outline both proposals.

A. Educational Programming

We can expand the number of entrepreneurial individuals who pursue the acquisition entrepreneurship pathway by providing access to educational opportunities through a larger number of business schools and potentially law schools too. Currently, acquisition entrepreneurship is taught at top business schools like Harvard Business School,[54] the Wharton School of the University of Pennsylvania,[55] and Stanford Graduate School of Business.[56] The courses at these institutions introduce the acquisition entrepreneurship pathway to budding managers. Additionally, these schools have invested in auxiliary programming in the acquisition entrepreneurship arena, allowing for students to connect with potential investors, service providers, and other resources that can help them launch a search post-graduation.[57] However, these courses and resources are scarce outside of top

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52. *See* Sherman, *supra* note 3.

53. Here, we define an entrepreneurial ecosystem as "[a] network of people supporting entrepreneurs, and the culture of trust and collaboration that allows them to interact successfully. The speed at which talent, information, and resources move through the ecosystem can affect entrepreneurs at each stage in their lifecycle." *See Entrepreneurial Ecosystem Building Playbook 3.0, Glossary and Resources*, THE KAUFFMAN FOUNDATION, https://www.kauffman.org/ecosystem-playbook-draft-3/glossary-and-resources/; *see also* David Nows, *Supporting Rural Entrepreneurship with Legal Technology*, 17 N.Y.U. J.L. & BUS. 391, 396–407 (2021) (comparing resources available to entrepreneurs in rural and urban areas).

54. *See* HBS COURSE CATALOG, *supra* note 14.

55. *See* THE WHARTON SCHOOL, *supra* note 14.

56. *See Entrepreneurial Acquisition*, STANFORD BULLETIN, https://explorecourses.stanford.edu/search (search in search bar for "STRAMGT 543: Entrepreneurial Acquisition") (last visited June 5, 2021).

57. *See e.g.*, *What We Do*, HARVARD BUSINESS SCHOOL ENTREPRENEURSHIP THROUGH ACQUISITION CLUB, http://hbsetaclub.com/what-we-do (stating that the club's mission is to "[e]ducate the HBS community about Entrepreneurship through Acquisition, and provide potential searchers with the network and resources needed to succeed").

business programs, leaving the entrepreneurship through acquisition pathway open to only a select group of entrepreneurs.

Given the volume of small businesses that will be seeking new, entrepreneurial owners in the coming decade, the time is now for business schools to expand programming in this area. Business schools that predominantly serve their local region have an opportunity to build out (1) courses for their students, (2) local connections to willing investors and service providers, and (3) a rolodex of local small businesses that are available for sale. Essentially, these business schools could serve as the training ground for new acquisition entrepreneurs in the local ecosystem.

Law schools, especially those with excellent reputations,[58] could also consider providing their students access to acquisition entrepreneurship programming. Acquisition entrepreneurship could provide an alternative career path for law students that would allow them to use the analytical thinking skills acquired while in law school.[59] Given the technical nature of launching a search fund, acquiring a business, and running its day-to-day operations, lawyers have many of the skills necessary to be successful acquisition entrepreneurs. Law schools could help future lawyers become search fund entrepreneurs by teaching the technical aspects of these transactions.

For example, law school courses focused on mergers and acquisitions could analyze search fund purchases of small businesses. Corporate finance courses could break down the search fund model as a unique way to purchase an existing business. Business and entrepreneurship-focused clinical offerings could allow law students to aid search fund entrepreneurs with a discrete portion of the acquisition entrepreneurship process.[60] Lastly, law schools could dedicate an entire course to acquisition entrepreneurship, using it to introduce students to a significant number of legal issues that regularly appear in business transactions. Given this wide variety of options, expanding these educational opportunities to law students could be a useful strategy for increasing the number of qualified acquisition entrepreneurs.

B. Encouraging Local Investors to Invest in Search Funds and Acquisitions

Most acquisition entrepreneurs enter their search process without the necessary funding to acquire a small business. Given this reality, finding a small contingent of

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58. For example, 7% of the class at Harvard Law School worked in non-legal jobs post-graduation, including 4% in business-oriented roles in 2019. *See Harvard University: Jobs*, LAW SCHOOL TRANSPARENCY REPORTS, https://www.lstreports.com/schools/harvard/jobs.

59. A study following graduates of the 2000 bar exam post-graduation found that 9% of all graduates were no longer practicing law three years after graduation. That number swelled to 24% when graduates were surveyed 12 years post-graduation. *See* Debra Cassens Weiss, '*After the JD' Study Shows Many Leave Law Practice*, ABA JOURNAL (Apr. 1, 2014, 6:50 AM), https://www.abajournal.com/magazine/article/after_the_jd_study_shows_many_leave_law_practice.

60. It would be difficult for a law school clinic to serve as counsel for an entire search fund life cycle, given the semester-to-semester turnover in students those clinics experience. However, clinics could provide free counsel to acquisition entrepreneurs on discrete portions of the search fund process, which could be a valuable learning tool for students.

investors willing to support the entrepreneur's search (and ultimately invest in the business acquired) is critical. This subsection describes the merits of an investment in a small business with growth potential and identifies existing investor groups that might be willing to enter this space.

Investing in existing small businesses is inherently different than investing in startups. In the world of startup investing, a fundable venture is one that offers the potential for high growth.[61] Thus, startup investors regularly diversify their portfolio by investing in many different ventures[62] with the understanding that most will fail, but also with the hope that a handful will be a rousing success.[63] Alternatively, investing in an existing small business can be a low-risk investment, assuming that the acquisition entrepreneur does a good job of identifying a small business that is enduringly profitable.[64] Thus, investing in existing small businesses should be appealing to certain classes of startup investors (like angel investors), albeit as a part of a different, less risky asset class held in a well-diversified portfolio.[65]

Additionally, acquisition entrepreneurs are likely to have success when approaching angel investors in their local community. This is because these local groups of angel investors typically serve two main roles in the startup investment space. First, they provide much needed capital to entrepreneurs with a scalable (or

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61. *See* GUY KAWASAKI, REALITY CHECK: THE IRREVERENT GUIDE TO OUTSMARTING, OUTMANAGING, AND OUTMARKETING YOUR COMPETITION 27 (THE PENGUIN GROUP 2008) ("[D]on't confuse fundability with viability. Only a few thousand companies a year raise venture capital. These companies are "fundable" in the sense that they have fooled a venture capitalist into believing that they can achieve sales of at least $100 million per year within five years. . . . Many . . . companies are perfectly viable; they simply aren't fundable, because they probably won't achieve sales of $100 million/year, which is what venture capitalists are looking for.").

62. *See e.g.*, Alejandro Cremades, *How Angel Investors and Angel Groups Work*, FORBES (Sept. 25, 2018, 10:01 AM), https://www.forbes.com/sites/alejandrocremades/2018/09/25/how-angel-investors-and-angel-groups-work/?sh=4626ed8576dc (mentioning that angel investor groups come together for many reasons, including the desires to lower their risk in making investments in startups and to increase the diversification of their investments in startups).

63. *See* Alejandro Cremades, *How Venture Capital Works*, FORBES (Aug. 2, 2018, 8:16 AM), https://www.forbes.com/sites/alejandrocremades/2018/08/02/how-venture-capital-works/?sh=7fcda3b61b14 ("Start-ups are a very risky type of asset class and nine out of 10 will end up failing. For that reason, VCs will go for those companies with the potential of giving them a 10x type of return so that it can help them with the losses of other companies inside their portfolios. If you are not able to project these kinds of returns, a VC might not be the route to follow for financing.").

64. *See* RUBACK & YUDKOFF, *supra* note 5, at 79 (stating that searchers "should look for what may seem to be a *dull* business: one that has the same customers from year to year and is growing slowly – a business that is what we call *enduringly profitable*"); *see also id.* at 82 ("Buy a high-growth business, and you'll work harder, face a bigger risk of failure, and pay more for the opportunity. Low growth, in contrast, means low risk. And low risk is great because it is your money at stake.").

65. *See* KAWASAKI, *supra* note 61, at 27 ("Venture capitalists are not trying to help you build a nice $10 million business. However, angel[] [investors], friends, fools, and family might think this is a whopping success.").

viable) business idea.[66] Second, these investors typically have an interest in giving back in some way, whether it be through mentoring an inexperienced entrepreneur or providing capital to a local business.[67]

Acquisition entrepreneurs can meet these criteria quite easily. First, an acquisition entrepreneur that has identified an enduringly profitable business can offer a safer yet profitable class of investment to angel investors. Second, and more importantly, acquisition entrepreneurs can offer the same opportunity for investors to give back to their local community by providing capital to a small business and mentoring the entrepreneur that is leading the business. This could be an especially appealing investment opportunity in local economies where small businesses employ a large percentage of workers.

Here, angel investors could have the opportunity to save a small business that contributes significantly to the local economy but desperately needs new ownership. The missing link to making these investments more common is education. Currently, local angel investor groups are unlikely to be aware of the acquisition entrepreneurship opportunity, given that only hundreds of successful searches have taken place globally.[68] However, local entities like universities, startup accelerators and incubators, and other, less formal organizations like meet-up groups can take the lead on educating investors about these emerging investment opportunities. In doing so, entrepreneurial ecosystems can help angel investors become aware of less-risky investments that achieve their three main objectives: (1) turning a profit, (2) mentoring the next generation of entrepreneurs, and (3) helping the local economy.

V. Conclusion

There will be a growing supply of small businesses led by Baby Boomer owners that need to find new ownership in the coming decades. Unfortunately, very few of these businesses have engaged in any meaningful succession planning initiatives, paving the way for an emerging leadership crisis. This paper has endorsed an underutilized acquisition strategy, *acquisition entrepreneurship*, as a partial solution to this growing societal problem. For example, this Article has highlighted the type of entrepreneur who begins a search to purchase a small business, their assembly of capital through search funds, and other unique aspects of these transactions. Overall, this Article concludes that acquisition entrepreneurship is a viable way to connect retirement-age business owners with an entrepreneur ready and willing to take over

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66. *Id.*

67. *Id.* at 49 ("Typically, angel investors have a triple bottom line. First, they've made it, so now they want to pay back society by helping the next generation of entrepreneurs. . . . Finally, they want to make money."); *see also About Us*, Northern Michigan Angels, https://www.northernmichiganangels.com/about-us/ ("The [angel investor] group's primary interest is in working with scalable entrepreneurial companies whose potential success will have an impact on the quality of life in Michigan, especially in northwestern lower Michigan.").

68. *See* Andrew Seale, *Are We Entering the Age of the Search Fund?*, Touchpoint by Firmex, https://www.firmex.com/resources/blog/entering-age-search-fund/ (sharing crowdsourced data from searchfunder.com expressing that only hundreds of successful searches have taken place to date).

their business. Additionally, this Article has endorsed the expansion of educational opportunities on acquisition entrepreneurship for entrepreneurs and investor groups. In expanding these educational opportunities, our local entrepreneurial ecosystems can make these complex transactions more accessible for entrepreneurs and investors while also providing encouragement to aging small business owners to cash in on their life's work by selling their small business.