

## In Search of a Win-Win Outcome

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### Preparation

- Research other party
    - Public filings and analyst reports
  - Consider experience of negotiation counterpart
    - Inexperienced negotiators can be less predictable
  - Understand the other party and its issues/ perspectives
    - The nature of the party can affect relevance of tone
      - Already in strategic relationship
    - Founder vs. PE-backed
      - Entrepreneurial enterprise vs. publicly traded company
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## Preparation (cont.)

- Understand what is important to your client
    - What are the goals of the negotiation?
    - How badly does your client *want* “the deal”?
    - What are the boundaries of “the deal” acceptable to your client?
  - Understand/Anticipate the motivations of your adversary and their client
    - What are their goals/business objectives/boundaries?
    - What is their motivation?
  - Preparation is underrated—do your homework and rehearse within your team, if possible.
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## Timing Considerations

- Consider external events that can affect timing
    - Conferences
    - Announcements
    - Vacations
    - Board meetings
    - Approvals necessary on both sides (e.g., Corporate or OUS decision makers)
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## Tone

- Nature of other party
    - Existing strategic partner
    - Personal effect of negotiation on negotiator
    - Experience of negotiator
    - Type of investors may affect attitude of management
      - Private equity vs publicly traded vs family-owned business
  - Boxing vs. Volleying
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## Volleying

- Does it matter who goes first?
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38<sup>th</sup> Annual Corporate Counsel Institute session  
"Mock Negotiation: In Search of a Win-Win Outcome"