



2007 Directors Conference

WRAP-UP GENERAL SESSION

The Trials and Tribulations of M&A

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Saturday, November 10, 2007

10:45 am-Noon

WIB/AABD
2007 Directors Conference

**Trials and Tribulations of Mergers:
10 Lessons Learned**

*Indian Wells, California
November 10, 2007*

**The Good,
the Bad,
and the Ugly**

=1=

**Know who you
are and where
you're going.**



=2=

Do Your Homework.

- Financial data
- Products and services
- Market area
- Expertise
- Philosophy and culture

=3=

**Choose your
advisors wisely.**



=4=
**Don't get
intoxicated or intimidated
by the numbers.**



=6=

**Take due diligence
seriously.**



=7=

**Understand
the deal.**



=8=

**Communicate,
communicate,
communicate.**



=9=

**Promote
teamwork.**



=10=
Be the Leaders.

Don't...

- Just let things happen
- Micromanage
- Create bottlenecks
- Deliver bad news a little at a time
- Over-commit
- Compromise standards
- Lose perspective

Do...

- Articulate the vision
- Direct and advise
- Remove obstacles
- Act quickly and decisively
- Keep your promises
- Accommodate
- Have fun!

Manny Ramirez



KEEFE, BRUYETTE & WOODS



Manny Ramirez

NOTES

WIB/AABD Annual Directors Conference

November 2007

Hyatt Grand Champions, Indian Wells, CA

Transaction Structure and Process Trends



23



Structure Trends

Cash is King.

The vast majority of deals that are getting done today in the US have some cash component to them.

Through the first three quarters of 2007:

82 Deals (44%) were 100% Cash
91 Deals (48%) were Cash/Stock Mixture
15 Deals (8%) were 100% Stock

On average, the mixture deals cited above were 59% stock / 41% cash.

Deal Consideration Trend

It is obvious that the trend toward cash consideration is well-established. We believe this is the beginning of a longer term trend toward cash deal financing.

Issues For Buyers:

1. Cash financing costs;
2. Potentially higher due diligence standards.

Issues for Sellers:

1. Justification of deal premium;
2. Higher visibility/certainty of closing deal value.



24

Cash Financing Trends

Availability of Financing.

How the cash portion of a deal is financed will continue to be an issue.

- | | |
|-------------------------|---|
| Trust Preferred. | Optimal method for financing cash deals.
New-issue TPS market has effectively seized.
Short-term phenomenon – new-issue TPS market will return. |
| Preferred. | Has not been used by banks to a large extent to finance deals.
Can be issued in pools or by individual issuers.
More expensive than TPS / Less expensive than common stock. |
| Common Stock. | Highest cost of capital.
Generally not an efficient way to raise cash for a deal. |

Generally deals that have a financing contingency will be viewed by a seller as less desirable than those that do not.

Cost of Financing - TPS.

While we believe that new-issue TPS will return to normal availability, pricing spreads will widen with this return to “normalcy.” We believe this “normal” pricing will be between 225 and 325 bps over the corresponding index, depending on the operational characteristics of the issuer.

Higher financing costs will generally put downward pressure on deal valuations.



Negotiation Trends

Cash Issues.

While always present in cash deals, buyers want to be certain exactly what they are buying when a seller is taking all or most of their chips off the table.

Buyers – Generally more diligent in both pricing and examining cash deals.

Sellers – Held to higher future earnings justification standards.

Due Diligence

The trend in due diligence is for more – not less. This coincides with two more global trends: (i) Heightened sense of potential macro-economic and bank-specific vulnerabilities and (ii) more cash deals being announced.

Buyers review higher portion of loan portfolio – on both percent and dollar basis.

Sellers that do receive stock consideration have higher diligence standards of buyers.

Higher diligence standards cause the overall process to take more time.

Issues (especially individual loan quality) that in the past may not have resulted in a purchase price adjustment or been elevated to “deal issue” status, now are.



Costs and Deal Structure Trends

Deal Costs.

The general trend is that deal costs, especially for professional services, is increasing.

Process – Longer negotiation process just takes more time.

Diligence – Higher standards require more review and hence more time.

Post-Closing Contingencies

Unlike recent history (the past ten years or so), the trend is that there will be greater use of post-closing contingencies moving forward. These contingencies are most useful and prevalent in the banking sector in the following areas:

Bank-owned branches that will be divested or sold/leased-back following a deal.

Differences in valuation of REO properties.

Non-performing assets.

While the employment of post-closing contingencies has been virtually non-existent in bank deals recently, we believe this mechanism will become more common moving forward.



27

Trials and Tribulations of M&A

“Accounting Issues or Deal Points?”

November 10, 2007

Presented by: *Robert T. Perry-Smith*
Chief Executive Officer
Perry-Smith LLP



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“Accounting Issues or Deal Points?”

The Answer . . .

Unanticipated accounting issues quickly turn into deal points, as do the resulting tax consequences.

“There is no worse mistake in public leadership than to hold out false hopes soon to be swept away.”

-Winston S. Churchill

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“Accounting Issues or Deal Points?”

The Source . . .

- Asset and Liability Valuation and Allowances
- Stock Option and Restricted Stock Agreements
- Settlement of Director and Executive Benefit and Severance Agreements
- Retention Agreements and Related Expenses
- Contract Terminations and Deductibility of Merger Costs

“Confront the Brutal Facts”

-Jim Collins

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"Accounting Issues or Deal Points?"

Asset and Liability Valuation and Allowances . . .

- Investments
- Loans
- ALLL
- Accrued and deferred liabilities
- Deferred income taxes
- Goodwill
 - *"If you have to go through too much investigation, something is wrong."*

-Warren Buffett

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"Accounting Issues or Deal Points?"

Stock Option and Restricted Stock Agreements . . .

- Acceleration
- Buy-out provisions
 - Impact on shareholders
 - Potential increase in goodwill
- Impact on equity
 - *"My favorite time frame for holding a stock is forever."*

-Warren Buffett

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“Accounting Issues or Deal Points?”

Settlement of Director and Executive Benefit and Severance Agreements . . .

- “Recent enhancements” and The Golden Parachute (280G)
- Death benefit liabilities and EITF 06-4
- Section 409A problems aren’t deferred for tax purposes

“The Fairness Doctrine must prevail.”

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“Accounting Issues or Deal Points?”

Best Practices . . .

- Failing to plan, is planning to fail!
- Rally the team and communicate!
- Get the cards on the table early . . . avoid surprises!
- GAAP is not the enemy!
- Once committed . . . stay the course and execute!

*“You can accomplish anything in life, provided
that you do not mind who gets the credit.”*

- Harry S. Truman

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Review of a Third-Party Offer

Annual Directors Conference

November 2007



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Disclaimer

- Nothing contained herein shall constitute legal advice. The information in this hand-out is for general introductory purposes only. The purchase or sale of an institution usually presents complicated legal issues which are highly dependent on specific fact patterns. You should always contact your counsel before taking any action relating to the purchase or sale of an institution.

Preliminary Matters

1. All information relating to the Bidder's proposal is highly confidential and should not be discussed with any third party.
2. There should be no trading in the stock of the Company or any other company considered by the Board as a possible participant in a transaction with the Company without the concurrence of counsel – no “tipping”.
3. Obviously, individual directors should not participate in any discussions with outsiders regarding the Bidder or any major corporate transaction involving the Company. Premature discussions may prejudice the Company's position. If you obtain any information concerning a third party's thinking or plans, no matter how tentative, that information should be communicated to the Board.

Preliminary Matters (cont'd)

4. If you choose to keep notes of Board meetings or conversations, make sure that they are accurate, complete, and free from material intended to be humorous or which could be misunderstood out of context. These notes must be kept confidential. The Company minutes are the official record of the Board proceedings. It is possible that litigation could arise out of the actions the Board is considering. In any case, all deliberations of the Board may well be the subject of public scrutiny. Any notes could be “discovered” in such litigation.
5. No discussions about the Bidder's proposal should be held with reporters, securities professionals, or, indeed, anyone. Any calls should be referred to the CEO.

Indication of Interest, Proposal, Offer

- What are the differences between these?
- Do the duties of directors change in response to these different contacts?

Directors' Duty in Assessing a Combination Proposal

- The Business Judgment Rule will apply to the decision by a board of directors as to whether or not to negotiate with a potential acquirer (including a proposal at a premium to market) and to conduct any subsequent negotiations.
- The Business Judgment Rule is a presumption that in making a business decision the directors of a company acted on an informed basis, in good faith and with the honest belief that the action was taken with the best interests of the company and its shareholders.

Directors' Duty in Assessing a Combination Proposal (cont'd)

- When the Business Judgment Rule applies, in effect, a court will not second-guess the Board of Directors' decision.
- One key in relying on the Business Judgment Rule is to build a record demonstrating due care, good faith and loyalty on the part of the directors.

Directors' Duty in Assessing a Combination Proposal (cont'd)

- A diligent, well-informed board that is thorough in its deliberations will be credited with good business judgment.
- An ill-informed board that acts quickly and with limited consideration of the issues may have difficulty defending its conduct if challenged.

A. Duty of Care

- A key prerequisite to application of the Business Judgment Rule is that, in connection with their business decisions, the directors satisfy their duty of care by informing themselves of all material information reasonably available to them and by acting with requisite care in discharging their duties.
- In discharging their duty of care, directors may rely on reports of management and advice of counsel, accountants, investment bankers and others whom they reasonably believe are acting in areas of their professional expertise and have been selected with reasonable care.

B. Duty of Loyalty

- Another prerequisite to application of the Business Judgment Rule is that the Board has complied with its duty of loyalty, which requires that directors not act solely or primarily for a personal or non-corporate purpose, such as to preserve their positions, compensation, or prerequisites as directors or officers.
- Directors must not place their own interests or preferences before the welfare of the Company and its shareholders.
- Stock ownership by directors in the Company is not a disqualifying factor.

C. Duty of Good Faith

- The third prerequisite to the application of the Business Judgment Rule is that directors must act in good faith and reasonably believe that their actions are in the best interests of the Company and its shareholders.
- Where directors consciously ignore their duties and act with indifference with respect to material issues facing the Company, their conduct does not satisfy this good faith requirement.

Are There Other Director Duties in a Sale of the Company?

1. California and most other states' law provide no real answer.
2. However, there is legal precedent in Delaware that, if the Board determines that a sale of the Company for cash is in the best interests of shareholders or if the Company abandons its long-term strategy in response to a bid and seeks an alternative that would break up the Company, the Board has a duty to obtain the highest price reasonably attainable for the Company.
3. A change in control of the Company from a mass of public shareholders to a single shareholder will trigger this duty.

Are There Other Director Duties in a Sale of the Company? (cont'd)

4. A disinterested board maintains the right and continues to have the duty to exercise its business judgment in seeking to maximize shareholder value, however there is no “blue print” for carrying out this duty.
5. The board has reasonable latitude in determining the method of sale which will produce the greatest shareholder value.
6. Any method, however, that does not provide for a realistic market check (pre- or post-signing) will be difficult to defend.

Methods and Techniques for a Market Check

- **Pre-Agreement***
Prior to signing agreement, Company, usually through its investment bankers, either (i) attempts to identify interested acquirors and determines the best price they would be willing to pay or (ii) initiates a formal auction.
- **Post-Agreement**
Merger agreement is signed, followed by public announcement and the merger agreement does not provide significant obstacles for other bidders to make competing offers (i.e., there are provisions for fiduciary outs, ability to accept superior proposal and reasonable bust-up fees; also no show-stopper voting lock-ups).

*Techniques approved by Delaware Supreme Court

General Factors to be Considered in Evaluating a Response to the Bidder's Proposal

- Each director should consider all factors that he or she deems relevant to assessing the merits of the proposed acquisition and its advantages and disadvantages as compared with alternative courses of action. These factors may include:
 1. The views of the management of the Company as to the prospects of the Company as an independent company, the adequacy of the consideration offered, and whether the present is an advisable time to consider the sale of the Company.
 2. The opinion of the Company's financial advisor as to the adequacy, from a financial point of view, of the consideration offered.

General Factors to be Considered in Evaluating a Response to the Bidder's Proposal (cont'd)

3. Current industry, economic and market conditions and trends impacting the Company.
4. If the Board were to decide to consider a sale of the Company, other acquisition or combination possibilities for the Company and the extent to which those possibilities may increase shareholder value.

**General Factors to be Considered in Evaluating a
Response to the Bidder's Proposal (cont'd)**

5. The effects of the proposed transaction on employees, customers, suppliers, communities and any other relevant constituencies, to the extent that these considerations relate to shareholder value.
6. The importance of market position, significant scale and scope and financial resources to continue to compete effectively in today's environment. Ability of the Company to function as an independent corporation.
7. Regulatory and execution risks inherent in the Company's current plans.

**General Factors to be Considered in Evaluating a
Response to the Bidder's Proposal (cont'd)**

8. Compliance of the proposed transaction with applicable legal standards, including regulatory requirements:
 - Nature and extent of approvals;
 - Timing of regulatory process; and
 - The possibility that regulators may impose burdensome conditions to the grant of approvals.

General Factors to be Considered in Evaluating a Response to the Bidder's Proposal (cont'd)

9. Due diligence report on the financial performance and capacity of the Bidder, previous acquisitions and techniques used, and negotiating strategies of the Bidder.
10. Other terms and conditions of the proposed transaction.
11. Likelihood of consummation and any risks of non-consummation.

Conclusions

- If the Board exercises its business judgment in good faith and with due care in the best interests of the Company and its shareholders, the courts should not second-guess the Board's judgment.
- The best way to preserve the Business Judgment Rule defense is to build a record of due care, loyalty and good faith dealing.
- If the Board makes a determination to "sell" the Company for cash, the Board should seek the highest price reasonably attainable.