LAW OFFICES OF BURTON L. RAIMI, P.A.
8499 South Tamiami Trail • Suite 266 • Sarasota, Florida 34238 • (941) 927-1603 • (941) 927-1703 (fax)

Mergers and Acquisitions1

Mechanics Of A Merger - Preliminary Steps

Due Diligence

1. Due diligence is the hands on - in depth - review by one party of the books and records of the other side
   a. Purpose is to confirm for itself that the representations made are accurate - also used to determine a purchase price
   b. Fluid process - not an exact science - it proceeds through stages
2. First stage: If auction process used, begins when investment banker sends out bid package
   a. Initial bid package is used to elicit interest on the part of potential bidders
   b. After review of initial bid package, potential bidders will want more information before submitting an offer
   c. This part of the due diligence the potential bidder will generally conduct itself
3. Second stage:
   a. In seminar notebook, there is a due diligence check list - sets out documents typically reviewed
   b. Often this list is only the beginning point which then leads to additional questions
   c. At this stage of the due diligence, acquiror is both confirming representations made to it and refining its potential offer
4. Third stage:
   a. After letter of intent is signed, containing specific offer, usually additional due diligence will be done - again to confirm the facts in more detail - plus to prepare for the actual consolidation itself
   b. Typically, the key personnel of the bank will also be interviewed
5. While the acquiror will have the greatest need for due diligence, target may have need to conduct its own due diligence
   a. Cash offer - confirm ability of acquiror to pay - Butchers out of Tennessee - requested financial statements - was sent glossy brochure

    b. Stock - quality of stock obtaining, financial condition of bank, past dividend policies - financial statements review may be adequate
    c. Merger among equals - both sides will have need to conduct due diligence
    d. Process - need for sensitivity and care - particularly in final stages of due diligence
6. Some protection in the form of confidentiality agreement
    a. However, if process not controlled, it can be very disruptive to business
    b. Difficult to maintain the confidentiality of the transaction
    c. Keep working group small, control access to records
    d. Consider, if workable, having due diligence conducted off premises, or after hours or on weekends