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MERGERS AND ACQUISITIONS

Governmental Approvals Of Bank Mergers The Personal Touch

- A. A merger application must be filed with the surviving bank's regulator -- state, federal, or both where appropriate.
 1. If a new bank is to be formed as part of the process, applications for a new charter will have to be filed with the new bank's proposed regulator and with the FDIC for deposit insurance.
 2. If the acquisition involves a holding company, a holding company application to the Federal Reserve Board will have to be filed.
- B. As soon as you decide to merge or sell your bank, and before you make a public announcement or sign a contract, one or two representatives should pay a social call on all relevant regulators to inform them of the decision, including who the merger partner is and who the new management team and directors will be.
 1. It is not a bad idea for each side to go separately to the regulators so that the regulators will be more free to discuss problems they see in the combination.
 2. This has the benefit of obtaining the regulators preliminary comments on the proposed transaction before you are committed to it.
 - a. During this meeting you will learn if your bank or your merger partner has problems that will cause a delay or denial of the applications.
 - b. You will learn if your proposed management team is acceptable to the regulators.
 - c. You will also learn of any new requirements or policy positions that may have come into play in the application and approval process.
 - d. Finally, you will learn during this meeting of regulatory concerns that may not be published -- quirks of the regional office you are dealing with, items of special interest to them that should be addressed in the application process.

3. Most important, however, when your applications are finally filed, the regulators will have a face to put with the otherwise boring and lengthy documents they must review which should facilitate the review. You will also have had personal contact with a person in the agency on whom you can call if you have a question and, equally important, the regulators will have the name of a person to call if they have a question.
 4. A meeting of this type also builds a lasting relationship with the regulators. It shows the regulators that they are trusted and respected. In short, even if there is nothing unusual about the transaction, a meeting generates good feelings for years to come.
- C. A regulatory meeting is essential if one of the banks involved is a problem bank. If it is, the regulators must feel comfortable that the merger will assist the problem bank to work out its problems. They will also want to know that "problem" management will be replaced.
1. If your bank is the problem, the visit with the regulators early in the game will help keep the regulators from escalating enforcement actions against your bank until the deal can be completed.
 2. If your merger partner's bank is the problem, then you will want to assure the regulators in this meeting that your bank is capable of dealing with the problems after the merger and intends to "get rid" of the problem management with whom they have had to deal over the years.
- D. Special regulatory considerations.
1. Community Reinvestment Act. Merger and other applications will be denied unless both bank's CRA performance is satisfactory. If the performance of one of the banks is not satisfactory, a lot of talking, explaining and promising will be necessary for the applications to be approved.
 2. Safety and soundness or violations of law. If there are concerns in this area, peace must be made with the regulators before the applications will be approved.