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# **MERGERS AND ACQUISITIONS**

## **Shareholder Approval**

1. Shareholder approval - particularly on the selling side - is crucial because the shareholders are the owners of the bank
2. First step - Board of Directors first approve the agreement, by majority vote, subject to shareholder and government approval
3. Press release, carefully worded, is then issued announcing deal
4. Target Bank and Acquiror Bank
  - a. Florida Statutes - state chartered banks
    - i. Majority of shareholders of both target and acquiror must approve
      1. If holding company involved - only one shareholder of bank as the parent company is the shareholder
    - ii. Dissenters rights - upon written notice, shareholder has right to dissent against plan of merger - this triggers a valuation process which must be followed. The value of the shareholder's stock, determined through this process, is then paid to the shareholder
  - b. Federal Law - applies to both state and national banks being acquired by a national bank
    - i. Approval by 2/3's of shareholders of both acquiror (regardless of size) and target
    - ii. Dissenters rights similar to those under state law
  - c. Articles of Incorporation
    - i. Review to determine if there is a super majority requirement - such as 2/3 - for approval of a take over
    - ii. But must look to articles of incorporation and state laws to confirm
5. Holding Company
  - a. Acquiror

- i. Corporate law of state of incorporation
    - ii. Articles of incorporation
    - iii. If large entity acquiring small entity - shareholder approval may not be required
  - b. Target - assume shareholder approval will be required
- 6. Unless annual meeting is timed to occur at an appropriate time, a special shareholders meeting must be called
- 7. Proxy statement is the vehicle used to disclose to the shareholders the details of the transaction
  - a. If deals call for an exchange of stock, this document serves a dual purpose
    - i. Proxy statement for the target shareholders meeting - gives target shareholders all the material information required to make an informed decision
    - ii. Prospectus for acquiror: describes to target shareholders, in detail the stock they will be receiving in trade for the target stock - so can make an informed decision on the "purchase" of the stock
- 8. If bank or holding company is currently publicly held - that is the stock is registered under the securities laws and publicly traded, then the disclosure rules of the federal securities laws must be followed
  - a. Holding company - SEC has jurisdiction
  - b. Banks - Federal banking agencies will have jurisdiction
- 9. Contents of disclosure documents
  - a. Dictated by the rules of the appropriate federal agency - generally follow SEC's approach and format
  - b. Disclosure is detailed and voluminous
- 10. If not publicly held, may become publicly held as a result because certain triggers are hit - primarily 500 shareholders
  - a. Same disclosures will be required - plus will be registering stock in process - that is, it will be deemed publicly held after the transaction
- 11. If banks not publicly held
  - a. Anti-fraud provisions of federal securities laws still apply
  - b. Not required to follow precisely the federal disclosure rules - must still make appropriate and adequate approval to avoid allegation of violation of anti-fraud provisions - Rule 10b-5
  - c. Under very limited circumstances, it may be unnecessary for selling bank to obtain shareholder proxy votes - but great care must be taken in such cases.
- 12. Fairness opinion of investment banker - important to have in disclosure

- a. Include in proxy statement to target shareholders - provides independent verification that shareholders are obtaining a fair price for their stock
13. Timing - refer to sample time table in seminar note book - S-4 Registration Statement
- a. In sample time table beginning date was May 26, 1995 - first draft of SEC Form S-4 is distributed to working group
    - i. For target - it is its proxy statement
    - ii. For acquiror - it is its prospectus
  - b. Between May 26 - June 16 - first draft commented upon by working group, second draft circulated and commented upon
  - c. Form S-4 filed with SEC - June 21
  - d. Normally 30 day review period - in the example, there was a no-review - which happens for companies that have been publicly held a long time and have a good financial condition - typically add 30 to 45 days for government review
  - e. July 10 proxy sent to target shareholders
  - f. August 10 special meeting of shareholders