Crowe Horwath

August 2013

The Global Corporate Advisor

The Corporate Finance newsletter of Crowe Horwath International

Hello and welcome to the August issue of Global Corporate Advisor, brought to you by the United States GCA team. In this month's issue, we provide three feature articles – two from US-based advisors and one from New Zealand.

Rick Childs from the Indianapolis office provides us with a mid-year M&A update on US banks, featuring survey results on M&A conditions jointly conducted by Crowe Horwath and *Bank Director* magazine.

Dan McConaughy from Los Angeles and Chad Kellar from Indianapolis give an in-depth look at why using 'rules of thumb' to provide valuations as part of the due diligence process can lead to differences between initial expectations and final result.

In New Zealand, Greg James has compiled an overview of practical ways to reduce due diligence costs.

Next month, our Latin America Regional Leader Roberto Perez will bring you updates from his region. If there are any topics relating to Latin America you would like us to cover, please get in touch to discuss your ideas.

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Inside This Issue:

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The GCA team is here to respond to your needs relating to M&A transaction support, valuations and M&A advisory services. If there is a topic you would like us to cover in future issues of the GCA newsletter, don't hesitate to contact Peter Varley, Chairman of GCA at *peter.varley@crowecw.co.uk*. Alternatively, please contact your local member of the GCA team to discuss your ideas.

Taking a Practical Approach to Due Diligence

By Greg James, New Zealand

Over recent years, business confidence in New Zealand has been consistently rising. The economic climate is ripe for growth through acquisitions, and a number of private equity groups have raised new funds for potential investments. As a result, M&A activity has, and will continue to, increase. Given this, it is timely to focus on best practice due diligence and how buyers can get the best return for their time and financial commitment.

A potential investor performs due diligence to understand and evaluate a business prior to acquisition. This process includes reviewing and validating business operations and financial position to substantiate valuations, assess operational performance and identify misrepresentations. It is a critical step in allowing the purchaser to understand the value drivers within a target business.

It is important the due diligence is planned, structured and tightly focused. Otherwise the process can drift, wasting time, money and resources and potentially leading to a missed opportunity or poor acquisition.

If an investor requires finance to acquire the target, a bank will normally require due diligence reports to be prepared by external parties to assist with its financing decision. In particular, banks will normally require financial and tax due diligence reports.

Types of due diligence

There are a number of areas buyers should review during due diligence, including:

- commercial and organizational structure
- financial and profit normalization
- tax
- legal
- information technology
- human resources.

Generally, the key areas of focus should be around the detection of:

- early recognition of revenues
- recording revenues that are not genuine
- increasing income through a one-time gains
- shifting income or expenses into incorrect periods
- failing to record or disclose all liabilities.

This process is particularly important for small to medium-sized enterprise targets as they may not have audited accounts.

The use of external advisors

Trusted external advisors, including accountants and lawyers, are a critical part of due diligence. To get the most from your advisors, it is important to take the following steps.

- Be in regular contact with your advisors so you are aware, as much as possible, of any material or key issues. This will allow you to change the scope of work in progress if necessary.
- Work collaboratively with your advisors and those of the target.
- Ensure there is a forum for advisors to communicate with each other, as the findings of one advisor may affect the work of another.
- Seek the opinion of advisors on the general competence of the target's management during due diligence. Advisors with experience across of a number of deals can quickly evaluate the ability of company management. A smooth due diligence process is usually a good indicator of quality management.
- Manage cross-cultural issues when using advisors in foreign countries. Always have a local advisor on your team who is familiar with doing deals in the target country.

Remember external advisors are expensive. To keep due diligence costs down, you need to effectively manage your advisors and clearly outline your expectations at the start.

How to reduce due diligence costs

1. Agree to a broad purchase price upfront

To ensure you are not wasting your time, it is often a good idea to agree to a broad purchase price upfront before commencing due diligence.

This may include reviewing any valuation model the target has, and examining how the purchase price may change based on material findings during the due diligence process.

It is also common to agree on a sale price when a purchaser is looking to acquire a competitor and the deal is essentially unconditional – subject to any material issues being discovered during due diligence. This is a common sense approach, as the vendor will clearly not want competitors to review their commercial and financial information and use this information for their own benefit, rather than to acquire the company.

2. Enter into an exclusivity agreement with the vendor

It is common for a purchaser to try and enter into an exclusivity period where they are the only party able to perform due diligence, and are given first rights to negotiate a deal.

This aims to avoid a situation where there are multiple potential buyers and you may be outbid during a tender or auction process – rendering your due diligence a waste of time and effort.

To secure an exclusivity period, a purchaser would normally need to provide some form of commitment, such as a refundable deposit.

3. Do your homework before appointing advisors

Before you appoint external advisors, we recommend you do your own due diligence to determine the areas your advisors should focus on. We often suggest organising an initial meeting with the target's senior management to ask simple questions such as:

- Are there are material issues that any purchaser should be aware of?
- Are any agreements under negotiation or up for renegotiation in the near future that would affect the profitability of the business?
- Do you think any major customers may leave the business in the near future or as a result of the sale?
- Are there any material legal or tax issues any purchaser should be aware of, including recent or pending proceedings?

On the basis that any commitments made by the vendor will be subject to warranties in the sale and purchase agreement, the vendor is effectively obligated to answer your questions truthfully.

In addition, you can state that any misrepresentations will be discovered during the formal due diligence process, which could affect the future working relationship.

4. A phased approach

To take a cost-effective approach, acquisition due diligence can be divided into two phases.

Phase 1, known as the initial due diligence, is a top-level, kick-the-tires evaluation that tells acquirers whether the target satisfies basic investment criteria. This step typically examines:

- entity structure
- historical financial performance
- business model
- going concern validation
- impairments.

If this investment criteria is met, companies move to Phase 2, known as secondary due diligence, which is a more intense evaluation that drills deeper into operations. This process allows buyers to abandon a potential investment before starting the expensive Phase 2.

5. Ensure the vendor is committed to a structured process

An organized vendor makes the due diligence process more efficient. For this reason, the format of the process should be agreed upfront, including:

- identifying the key contacts at the vendor
- ensuring the vendor has sufficient resources
- confirming access to senior management
- agreeing on timelines to provide requested information.

The seller

So far, we have focused on due diligence from the buyer's perspective. However, the process is equally important from the seller's perspective for the following reasons:

- an inefficient due diligence process occupies significant management time, and takes senior staff away from day-to-day operations
- the quality of information provided by vendors will affect company valuations
- buyers will evaluate the competency of management (and the value of the company) in response to the due diligence process.

Asset versus share transactions

If the purchaser acquires a company – by buying its shares – they acquire all the known and unknown legal and other issues. Known issues are normally included in the buyer's valuation modelling, and will result in a lower purchase price.

A buyer will attempt to reduce any potential exposures by ensuring the sale and purchase agreement has appropriate warranties and/or indemnity clauses. These allow the buyer to make a claim against the vendor to reduce the purchase price if certain events occur. These could include a company's largest client leaving soon after acquisition, an audit revealing a substantial tax exposure, or a significant legal issue occurring soon after sale.

However, if a buyer uncovers an unsatisfactory number of issues or uncertainties during due diligence, the buyer may choose not to buy the shares. Instead, it may acquire the assets or business outside the company structure, leaving any potential historical exposures with the vendor.

Conclusion

M&A are significant events for any company, and mistakes can be costly. They can also be highly emotional, with both sides likely to experience lows and highs. However, the more planned and organized you are, the less painful and expensive the process will be.

This article appeared for publication in NZBusiness magazine in September 2013.

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Bank M&A Midyear Update: Consolidation Pace Remains Lower than Expected in the US

By Rick Childs, Indianapolis

Many people expected the pace of US bank M&As in 2013 to pick up as a result of pressures from regulatory burdens, lack of growth in existing markets, and boards and management teams that had grown weary of banking.

However, deal activity for the first six months of 2013 indicates a consolidation pace consistent with 2012. The pace is ahead of 2011 and 2010 levels but still below levels seen before the credit crisis. Deal volume in 2012 was bolstered by a vibrant third-quarter deal flow. Unless the same deal volume is experienced in the third quarter of 2013, the yearly deal count could slip below 2012 levels.

Credit quality concerns still affecting deal volume

In a survey on merger and acquisition conditions jointly conducted by Bank Director magazine and Crowe Horwath in October 2012, one of the primary reported impediments to consolidation was the credit quality of potential sellers. While current-year levels of nonperforming assets by sellers are better than they were at the peak of the credit crisis, levels are still high compared with historical norms.

History indicates that when credit problems are prevalent in the banking industry, both the number of deals and pricing are negatively affected.

Pricing for deals announced in the first half of 2013 is consistent with the overall pricing for 2012 and up slightly from the second half of 2012. Credit quality would appear to be dampening overall pricing.

Number of Deals by Quarter

Year	Q1	Q2	Q3	Q4	Totals
2008	45	38	36	24	143
2009	24	34	19	41	118
2010	27	52	49	50	178
2011	35	43	32	37	147
2012	55	51	73	56	235
2013	50	51	-	-	101

Average Nonperforming Assets/Total Assets of Sellers (%)

Year	Q1	Q2	Q3	Q4	Totals
2008	1.69	1.15	0.81	2.14	1.40
2009	2.45	2.64	3.23	4.46	3.32
2010	4.07	4.21	4.52	4.13	4.25
2011	4.42	6.49	3.71	4.24	4.84
2012	2.95	4.25	3.78	3.29	3.57
2013	3.28	3.85	-	-	3.57

* Totals are weighted averages.

Average Price/Tangible Book Value (%)

Year	Q1	Q2	Q3	Q4	Totals
2009	101.48	123.27	125.62	107.24	113.73
2010	147.78	123.49	105.56	111.67	118.39
2011	112.11	105.93	108.88	107.15	108.48
2012	128.88	113.83	109.24	107.55	114.30
2013	115.97	112.53	-	-	114.25

* Totals are weighted averages.

FDIC deal volume drops

Although the US Federal Deposit Insurance Corporation (FDIC) continues to work with institutions, deal flow for assisted transactions has diminished from its peak in 2010. Asset discounts, the bid amount for an institution divided by the assets sold, have settled in at around 16%, likely the result of the FDIC offering deals without the benefit of a loss-sharing agreement. The average deposit size of the institutions sold has also decreased.

FDIC-Assisted Deals			
Year	# of Deals	Average Deposits Assumed ($000s)	Average Asset Discount %
2010	147	403,975	10.83
2011	90	319,549	15.70
2012	47	205,398	15.63
2013 YTD	16	107,881	15.94

Branch Deal Volume		
Year	# of Deals	Average Deposit Premium %
2010	78	3.22
2011	81	3.33
2012	88	2.53
2013 YTD	27	3.40

Branch deal volume slightly lower than prior years

Branch deal volume is on track to be slightly lower in 2013. Deposit premiums dipped in 2012 but have rebounded back to 2010 and 2011 levels in the first six months of 2013. For many community banks, a small one- or two-branch network might be the only feasible acquisition opportunities.

While deposit premiums are up in 2013, they are still at a reasonable level and in some regions are still well below the average. As larger and regional bank holding companies continue to evaluate their branch networks, it's likely that acquisition opportunities will continue to be available.

Possible M&A indicators for the next 12 months

While deal volume has been steady these past several years, it is still well below the predictions from various industry pundits. The past two Bank Director Crowe Horwath merger and acquisition surveys highlighted concerns about credit quality, the economy, and regulatory issues as major causes of the slowdown.

While credit quality has been improving in the industry, the levels of nonperforming assets are still high compared to historical averages. Based on the correlation between deal volume and credit quality, the overall level of nonperforming assets will need to improve significantly before deal volume will increase. Economic indicators have been improving, but there are still unknowns both in the US economy and worldwide, suggesting that uncertainty is still at levels that make it difficult to do deals.

The regulatory environment is more stable now that regulatory agencies have taken industry concerns into consideration and revised their Basel III rules, but the overall level of concern over regulatory issues is still high. With an onslaught of new rules such as the Dodd-Frank Wall Street Reform, Consumer Protection Act and new rules from the Consumer Financial Protection Bureau, implementation issues are a challenge for banks.

As a result, it appears as though US bank merger and acquisition levels will remain constant and more moderate than the levels predicted over the past several years.

This article first appeared for publication in Bank Director on 2 August 2013.

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Valuation as Part of Due Diligence: Why 'Rules of Thumb' Can Lead to Unpleasant Surprises

By Chad Kellar, Indianapolis, and Dan McConaughy, Los Angeles

Bank acquisitions following the 2008–09 credit crisis have drawn increased scrutiny. Regulators and investors alike are closely monitoring how well management's initial projections compare with the final valuations at closing.

Unfortunately, all too often the acquirer's management is surprised by the difference between its pro forma balance sheet projections and the final independent, third-party valuations. These unexpected changes in valuation could have a significant impact on the acquiring institution's regulatory capital requirements and future earnings potential.

To avoid such last-minute surprises, more institutions with extensive acquisition experience are involving their third-party valuation teams earlier in the process – during the due diligence phase – in order to provide preliminary valuations. Involving valuation teams earlier in the process has grown popular as the pace of Federal Deposit Insurance Corporation-assisted acquisitions slows and banks accelerate the pace of open-bank transactions, which allow more time for planning and due diligence.

As this occurs, it is important that an acquiring bank's management team has a clear understanding of the valuation issues that are likely to arise and that all those involved – appraiser, auditor and bank executives – communicate clearly before and during the due diligence process.

Overview of the issue

To assure objectivity, auditors for all publicly traded financial institutions and most privately held banks require an acquiring bank to use a third-party valuation team. Traditionally, the actual acquisition price is negotiated between the parties based upon the acquirer's due diligence. The outside valuation team is then engaged to determine the fair values of the acquired assets and liabilities as of the date when they are recognized on the acquiring institution's financial statements.

This traditional sequence of events often leads to unpleasant surprises, however. The third-party valuation team's valuations do not always align with management's expectations and judgments. The underlying causes for this misalignment relate to fundamental differences in approach. For example, the bank's perspective on the value of a loan is not necessarily fair value (or what a third-party buyer would be willing to pay), which is what the valuation team must consider.

Moreover, as part of their due diligence considerations, many acquirers apply generic 'rules of thumb' to valuing items on the acquired balance sheet and make broad assumptions about how earnings will be affected by these valuation adjustments. Management's opinions also might be affected by the overall strategic value of the acquisition, such as specific transaction-related synergies.

While such considerations certainly are valid when negotiating the terms of the deal, they often do not factor into the valuation team's work, which is governed by three primary accounting standards:

1. Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 805 – formerly Financial Accounting Standard (FAS) No. 141(R), 'Business Combinations' – provides general guidance for acquisition accounting.
2. FASB ASC 820 – formerly FAS 157, 'Fair Value Measurements' – addresses issues related directly to valuation practices.
3. FASB ASC 310-30 – formerly American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) 03-3, Accounting for Certain Loans or Debt Securities Acquired in a Transfer – provides guidance on how to account for credit-impaired loans. It is important to perform the loan valuations in a manner that effectively accommodates these accounting requirements going forward.

According to these standards, the valuation team values the acquired assets and liabilities at fair value as of the date of the acquisition. Because this valuation can have such a significant effect on the acquiring institution's regulatory capital and financial results, management should bring in a third-party valuation team as early as possible during the due diligence process.

While there usually is not sufficient time to conduct an early valuation during a failed bank acquisition, in a normal bank transaction, the acquirer often has more control over the timing. By involving the valuation team early, management will have a clearer understanding of the valuation of the bank's loan portfolio and the intangible value of its core deposit base.

Loan portfolio valuation

Since a bank's loan portfolio generally is its largest asset, valuing this portfolio consumes the majority of the valuation team's effort. Achieving consensus on its fair value can be challenging, as there's not an observable market price for most bank loan portfolios. The valuation of the loan portfolio primarily is performed using a discounted cash flow methodology and various assumptions (such as probability of default, loss given default, prepayment speeds, and required market rates of return on the projected loan cash flows) that require consensus from all parties involved.

In many cases, management relies heavily on the credit review due diligence team to assign the marks on the loan portfolio. Credit review teams generally use an identified loss approach that is more applicable to an allowance for loan loss methodology. Alternatively, a range of life-to-date loss projections can be presented as a best-case/worst-case scenario to evaluate the overall merits of the transaction. This simple credit mark approach often neglects the timing of loan cash flows as well as the market-required rates of return on those cash flows, which must be considered in order to arrive at a true fair value that complies with FASB's accounting standards. As a result, when the valuation team presents its final fair value numbers, the loan valuations might be lower than initially anticipated.

Why does management tend to overvalue relative to the valuation team? Following are two basic examples that illustrate why the numbers vary.

Consider a loan on the books for $1 million, with a loan-loss allowance of $500,000. Assume that as part of the acquiring bank's due diligence the credit team reviews the loan and finds the reserve to be reasonable based on the collateral value underlying the loan.

When the valuation team approaches that loan, however, it must consider that in the event of default, the $500,000 net likely would not be recovered for an additional 18–24 months while the collateral is sold. A buyer in the market (a market participant) would further discount the ultimate cash flow amount to generate a reasonable holding period return while the buyer held the asset. As a result, the valuation team might value the same loan at $420,000.

Alternatively, consider a $1 million, 10-year, 4 percent loan with collateral far in excess of any possible liquidation value, and where management does not apply any credit mark to the loan. However, based on changes in the interest rate environment since the loan was originated, the valuation team could determine that the market participant's required rate of return should be 6.5%, resulting in a valuation of $840,000.

These basic examples illustrate how the valuation team's findings can produce a lower number than management anticipated and perhaps had already reported to regulators or investors. In these instances, the differences would add $80,000 and $160,000 to goodwill.

Multiply this across the entire loan portfolio and the effects could be enormous. Adding sizable sums to goodwill can have serious implications for the acquiring bank's regulatory capital requirements.

Core deposit Intangibles

Although valuing the loan portfolio consumes the most time and attention of the valuation team, other issues must be addressed as well. Among these are core deposit customer relationships, including savings accounts, money market accounts, and non-interest–bearing and interest-bearing checking accounts.

These deposit accounts are an attractive, low-cost source of funds compared with alternative sources, such as time deposits and Federal Home Loan Bank (FHLB) advances. The value of core deposits as a low-cost source of capital is offset to some extent by the cost of maintaining branches and other administrative costs. Nevertheless, these core deposit accounts present a significant intangible value that is being acquired.[1]

The most appropriate method for determining this intangible value is the discounted cash flow method, which recognizes that economic value is based on anticipated future cost savings. The estimated future cash flows are converted to present value using a discount rate. The valuation team also factors in the nature of the business, the overall level of risk, the expected attrition rate of core depositors, and other factors such as the alternative cost of funds in the marketplace.

The result of these numerous assumptions and calculations is a core deposit intangible asset recorded on the balance sheet on day one. While this intangible asset has no immediate effect on a bank's capital requirements, it generally is amortized over a 10-year period, which can have a significant effect on future earnings projections.

1 For more information, read *Valuing Core Deposit Customer Intangibles*, Daniel L. McConaughy and Rick L. Childs, July 2011, http://www.crowehorwath.com/folio-pdf/ASR11966_FBCCArticle.pdf.

Here again, the accepted rules of thumb can lead to unexpected differences between due diligence assumptions and the ultimate valuation. For example, in today's record low interest rate environment, the relative value of this low-cost source of funds, compared with the cost of alternative funding, is significantly diminished.

Yet it is not uncommon to find banks still estimating core deposit intangibles to be equal to 3% to 4% of the core deposit base. In the case of an acquisition with a $100 million core deposit base, that would mean booking a $3 million to $4 million intangible asset, which is then amortized as an expense on an accelerated basis over seven to 10 years at the rate of $300,000 to $500,000 in the first few years.

With the projected low interest rates for the coming years, however, a more appropriate intangible value in this environment might be closer to 1% of the deposit base. This means the acquiring bank would be amortizing an expense of only $100,000 to $200,000 in the early years. This $200,000 to $300,000 difference in annual expense could change the bank's assumptions about how accretive the transaction will be going forward.

Liability valuation

In general, the fair values of less complex liabilities – such as time deposits, FHLB advances and other borrowings – are estimated using an income approach and well-established formulas. In most cases, the valuation of these liabilities is relatively straightforward and noncontroversial, and most banks' internal models already comply with fair value requirements.

One exception relates to trust preferred securities, which for many years were a popular way for bank holding companies to raise required regulatory capital. With rates pegged to common indices, trust preferred securities are a low-cost source of capital, but because of the risk associated with these debt instruments, the market currently demands a significantly higher rate of return. As a result, such liabilities often are valued at a significant discount to par, which has a beneficial effect on the opening balance sheet.

On the other hand, to comply with US generally accepted accounting principles (GAAP) requirements, the bank ultimately must accrete that value to the original par amount by recording a higher interest expense. The effect, then, is initially positive in terms of its impact on regulatory capital requirements, but it ultimately will have a negative impact on future earnings.

Big picture versus fair value

When management evaluates a potential acquisition, it rightfully takes a big picture view, considering factors such as expected cost savings and synergies, the opportunity to add or combine branches, and the ability to gain access to a new market and new revenue sources. For financial reporting purposes, however, assets and liabilities must be considered in terms of their fair values to market participants, not as part of a specific transaction to a specific buyer. The fair value standard may have a significant effect on capitalization requirements and projected earnings – two metrics of particular interest to regulators and investors.

In addition to helping to align these two viewpoints, bringing in the third-party valuation team early in the due diligence process also provides other advantages. Performing a preliminary valuation gives management time to work through vendor selection prior to closing. It also provides time for management and the valuation team to review expected methodologies and deliverables well in advance – another valuable step in eliminating surprises. It also can produce some cost savings, because some of the preliminary steps associated with valuation can be completed in advance. These cost savings can offset some costs of bringing in the valuation team early.

An early, preliminary valuation also helps the acquirer's accounting team get an early start on formulating the appropriate accounting policies for integrating the acquired assets and liabilities. Accounting for those items presents many complexities for accounting personnel and the senior management team responsible for asset quality and financial reporting.

Above all, however, because of the potential complexities of the process, and because valuation can have such a significant effect on the acquiring institution's financial results, early involvement of the valuation team is an effective way to help minimize unexpected surprises and provide the management team with a clear understanding of the time and resources that will be required for a smooth transaction.

This article appeared for publication in Bank Director on 27 February 2013.

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