

Structuring acquisitions can be tricky, may require nimble negotiation tactics

BY BRAD ALEXANDER

Like most marriages, money is the center of discussion in mergers and acquisitions. It is the nucleus of a happily ever after in the financial world.

Dave Harris, principal of Southard Financial, a business valuation and investment banking firm in Memphis, is a marriage counselor of sorts for businesses around the Mid-South. He says a lasting merger or acquisition can happen in a variety of ways, but it's important for all the parties involved to be clear in negotiations. Depending on the structure of the businesses portfolio and market conditions, deals can change on a dime.

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"A lot can happen during the time between the letter of intent and the definitive agreement," Harris says, "or even between the signing of the definitive agreement and closing."

Harris says his company has overseen dozens of mergers and acquisitions

over the last 15 years.

The negotiations vary by the type of company. If the firm is publicly traded, fickle stockholders may catch wind of a potentially sour deal.

Most M&A negotiations are structured with a mixture of stocks and cash, Harris says.

"However, in a stock deal the market price of the buyer's stock can change on a daily basis, making the actual consideration a moving target," Harris says.

The deals can also include debentures, preferred stock or stock options and warrants issued by the buyer. Executives, lawyers and arbitrators negotiate until a closing agreement is secure.

"Most bankers know each other, especially within their markets," Harris says. "They could have been talking about a merger for years. General parameters of deals can be put together very quickly, but the devil is in the details."

Occasionally, bidding wars break out, as was the case with Citigroup, Inc., and Wells Fargo & Co. angling for the remaining value of a wounded Wachovia Corp. earlier this month.

"There might be issues of fairness to



Deutsch



Harris



Oswald

one party or the other, and there will certainly be negotiations and complex issues to address regarding the merging of systems, people and corporate cultures — management philosophies."

Besides working the firms' lawyers and developing a legal agreement chock full of legalese, merging management philosophies is one of the trickiest parts of a merger or acquisition.

"The way that they care for their clients has to be close to our business philosophy," says Michael Deutsch, chief

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operating officer of Sovereign Wealth Management, an individual and family wealth consultant. "Regardless of price, the philosophy has to be there."

In mid-2006, Sovereign acquired a firm in St. Louis, York Financial Advisory, Inc., that managed about \$60 million. Deutsch says previous owner Nona Bonheimer was assessing options for retirement when the deal happened.

"She was searching for the right transition," Deutsch says. "(During negotiations) we had face-to-face meetings with every client to reassure them why we were there and no body else."

Sovereign closed the deal in October 2006.

Jennifer Oswald, chief financial officer of Sovereign who led negotiations of the company's most recent acquisition, says they are speaking with firms in St. Louis, Denver and Atlanta about another acquisition. Deutsch says the declining stock markets and aging baby boomers have many firms around the country looking for an exit plan.