The Lawyer's Guide to
ASSET-BASED FINANCE
Special Advertising Supplement to *The National Law Journal*

Sales, Mergers and Acquisitions of Commercial Finance Companies: Some Initial Considerations

The issues requiring analysis when considering whether to sell, purchase or merge a finance company are numerous and far exceed the space here dedicated to the subject. That said, there are some initial considerations that potential buyers and sellers should prudently analyze at a minimum. This brief article addresses only the surface of some of these initial considerations.

Are You a Seller?

Time horizon is a major consideration for many sellers. Horizons run the gamut, from aging owners with estate planning needs and limited-life equity funds that must sell within a specified timeframe, to public companies oriented toward maximizing shareholder value given then-prevalent, but ever-changing, market conditions. Timing exigencies accordingly can be an impetus to exploring a sale. Irrespective of such exigencies, however, prudent businesspeople consider strategic alternatives on a continuous basis and throughout changing market and business environments.

LEN BLUM MATT PECHINSKI

A primary consideration when pondering a sale is the company's position vis-à-vis its strategic plan. Has the company been meeting its objectives? Is it in an attractive growth phase? Is growth expected to flatten? Has the company achieved operating scale? Does it have adequate access to low-cost capital and other resources needed to fully realize its potential? Answers to these questions are important in determining whether or not to sell.

If the company is part of a larger enterprise, one should analyze whether the finance company still fits within the overall strategic direction of its parent. Is cross marketing working? Are senior executives and other shared resources adequately addressing the specific needs of their portfolio companies? Is the finance company offering growth opportunities that are consistent with the growth opportunities elsewhere in the overall enterprise?

Regardless of the foregoing considerations, the market environment for commercial finance companies and similar enterprises is necessarily a potent factor. Are the valuations applicable to recent comparable transactions attractive? Is there a relative scarcity in the M&A markets for businesses similar to the subject finance company? Positive answers to these questions counsel in favor of a sale.

There is a bottom line to this analysis. If a finance company is more valuable to others than it is to the current investor(s), a sale should be considered. Of course, it is part of good strategic planning to conduct periodic valuation analyses. Such valuations should be compared to normalized multiples observed in the marketplace for comparable companies to determine the potential value that could be created for investors through a sale.

Are You a Buyer?

The initial considerations for a potential buyer are similar to those of a potential seller. Indeed, a potential buyer's initial considerations are often the converse of the potential seller's issues.

The investment thesis is critical. Will the transaction simply add volume to the acquirer's business? Will the transaction facilitate expansion into new geographic regions? Will the transaction introduce additional products and/or services and, if so, are they complimentary to the acquirer's existing products and/or services? Will desirable management personnel be included? Positive answers to these questions weigh in favor of pursuing an acquisition.

Synergies also must be considered. Will the acquisition result in the acquired business lowering its cost of funds and/or increasing its leverage capacity? Are there certain back-office or other functions that could be consolidated with the acquirer's? Will the transaction present cross-selling opportunities? Here again, the more positive the answers, the more attractive an acquisition will appear.

Of course, pricing and other costs (including the dedication of senior management resources) are also an important consideration for a potential buyer. These considerations involve the review of marketplace valuations and an analysis of whether a franchise can be developed efficiently on an organic basis.

Management Issues

Important considerations for sellers and buyers alike include management issues. Will key executives be expected to continue in their roles post-transaction? Will there be any adjustment to those roles? Are certain executives absolutely necessary to ensure the success of the transaction?

The answers to these questions can inform the deal participants as to where management agreements and incentives are necessary or advisable, and as to the terms thereof.

Generally speaking, the success (or failure) of an acquisition will be determined in large part by the chemistry between the management teams on each side of the transaction. Do the personalities of the relevant management teams seem to mesh? Do they have similar or compatible business philosophies? Are the pro forma responsibilities of management clearly understood? How will credit decisions be made? The answers to these and similar questions can often serve to forecast the potential success or failure of an M&A transaction.

Executing the Deal

Before launching any M&A effort in earnest it is prudent to consult with knowledgeable third party financial and legal advisors. At the very least, such advisors can help determine proper valuations for discussion, based on sound financial modeling and strategic analysis and taking into consideration relevant tax, accounting and other considerations.

While many M&A deal participants may have certain skill sets in-house that can address these issues, it is important not to underestimate the demand M&A transactions can place upon senior executive personnel, especially if the relevant executives are not in a position to dedicate the majority of their professional time to the transaction. The art and science of conducting M&A transactions are best practiced by those that have dedicated their professional lives to the pursuit. From deal analysis to deal process, from deal structuring to management relations, and from negotiation to closing, a good advisor will add considerable value.

Also important to appreciate are the benefits of using third party advisors as an intermediary between deal participants. In addition to giving deal participants the proverbial "second bite of the apple" with respect to the negotiation of deal issues, the intermediary also can absorb the pain of the transactional process in a manner that permits the deal participants to have a fair chance at living happily ever after. Good intermediaries can take blows and finesse difficult negotiation points in a manner that is often not available to the principals directly. After all, unlike the principals, the intermediary does not need to live together after the transaction closes!

Far from exhaustive, this article addresses only some of the initial considerations for those contemplating an M&A transaction for a commercial finance company. While the facts and circumstances of every deal are different, the initial considerations discussed herein are a good place to start.

Len Blum and Matt Pechinski are Managing Directors of Westwood Capital LLC, 489 Fifth Avenue, New York, NY 10017 212-867-3200 www.westwoodcapital.com

WESTWOOD CAPITAL, LLC