

Top 10 Negotiated Financial Terms in M&A Transactions

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7:30 – 8:15 AM

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DEFINITIVE AGREEMENT FINANCIAL TERMS

General Principles

- Legal, business and financial negotiations are often linked on many deal terms
- Financial terms and formulas need to work at signing, closing and post-closing
- Neither party wants purchase price surprises
- Ambiguity is never a good thing for either side
- Buyers want to protect the franchise value for as long as feasible
- Sellers want certainty of closing and very few contingencies
- Buyers want all expenses and costs identified and quantified
- All material due diligence should be completed prior to signing definitive agreement



TOP 10 NEGOTIATED FINANCIAL TERMS IN M&A TRANSACTIONS

1. Purchase Price Formula – Cash Deals
2. Exchange Ratio Formula – Stock Deals
3. Walk-Away Rights
4. Data Processing and Related Agreements – Termination Fees
5. Change-in-Control Agreements
6. Treatment of Transaction Costs
7. Escrows, Holdbacks and Asset Exclusions
8. Payout or Continuation of Certain Benefit Plans
9. Handling of Financing or Other Contingencies
10. Break-Up Fees and Other Termination Fees



2019 M&A TRANSACTIONS

Summary Deal Statistics by Consideration Type

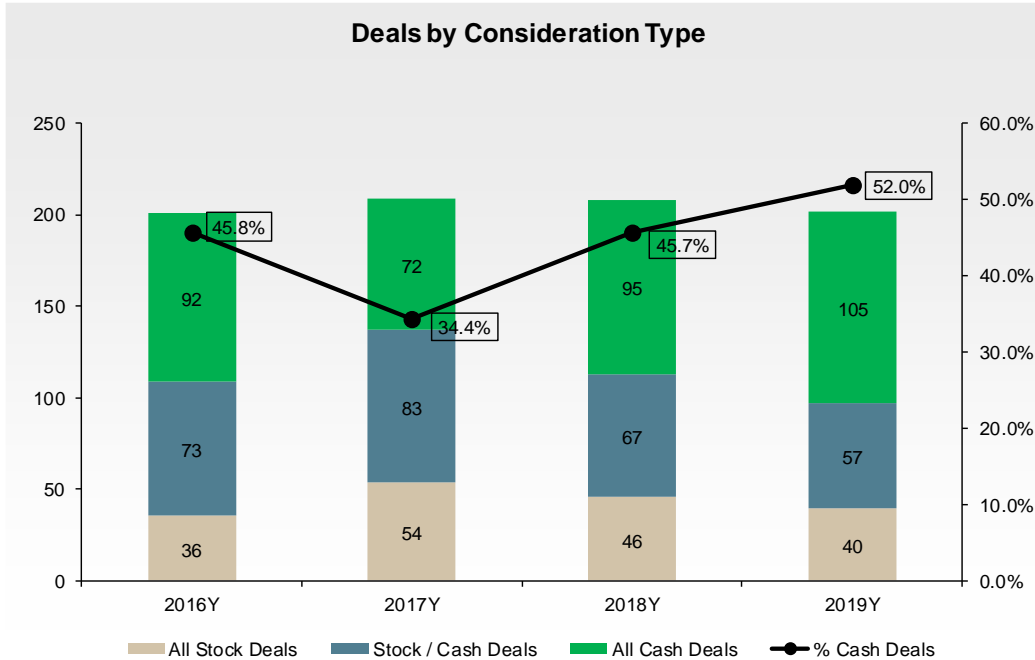
	Consideration Type			Total (1)
	Cash Only	Common Stock Only	Common Stock & Cash	
Number of Deals Announced	105	40	57	202
% of Deals Announced	52.0%	19.8%	28.2%	100.0%
Median Seller Assets	\$156,186	\$614,143	\$305,356	\$251,978
Median Transaction Value	\$38.8	\$119.8	\$51.9	\$61.3
Median Price / Tangible Book Value	147%	173%	151%	157%
Median Price / LTM Earnings	16.8	16.3	15.9	16.3

(1) A total of 266 deals were announced in 2019, 64 of which either did not disclose any deal consideration or the deal consideration was something other than cash and/or stock. Totals shown are for the remaining 202 deals which reported cash and/or common stock as part of the deal consideration.



M&A TRANSACTIONS BY CONSIDERATION TYPE

Deals Announced From 2016 - 2019



% represents # of Cash Deals as % of total transactions with disclosed consideration

	# of Deals Without Consideration Disclosed	Total # of Deals
2016Y	38	239
2017Y	44	253
2018Y	48	256
2019Y	64	266

Source: S&P Global Market Intelligence, a division of S&P Global.



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MARKET DYNAMICS

TBV Dilution, EPS Accretion and Internal Rate of Return (“IRR”)

	Buyer		Seller		Seller	Deal	Deal	Price/	TBV	Earnback	IRR	Cost	EPS	EPS
	ST	Seller Name	ST	Total Assets (\$000)	Announcement Date									
Stock Deals	Glacier Bancorp Inc.	MT	FNB Bancorp	UT	\$326,343	01/16/19	\$85.0	216%	0.1%	0 years	17.2%	18%	0.6%	0.5%
	United Bankshares Inc.	WV	Carolina Financial Corp.	SC	\$3,979,888	11/18/19	\$1,117.9	207%	3.4%	2.5 years	15%-19%	25%	7.5%	8.3%
	S&T Bancorp Inc.	PA	DNB Financial Corp.	PA	\$1,166,694	06/05/19	\$206.0	206%	3.0%	3.2 years	> 20%	33%	2.8%	5.2%
	Heritage Commerce Corp	CA	Presidio Bank	CA	\$906,059	05/16/19	\$197.6	203%	8.0%	4.3 years	> 25%	50%	5.0%	6.1%
	Fidelity D & D Bancorp Inc.	PA	MNB Corporation	PA	\$412,770	12/10/19	\$78.7	200%	Note 1	0 years	21%	30%	11%	17%
	Median					\$906,059		\$197.6	206%	3.2%	2.5 years			5.0%
Cash Deals	Community Bank System Inc.	NY	Kinderhook Bank Corp.	NY	\$631,996	01/22/19	\$93.2	184%	NA	NA	NA	30%	3.2%	NA
	Level One Bancorp Inc.	MI	Ann Arbor Bancorp Inc.	MI	\$320,091	08/13/19	\$67.8	170%	19%	4.7 years	> 20%	35%	> 25%	> 30%
	RBB Bancorp	CA	PGB Holdings Inc.	IL	\$223,294	09/06/19	\$32.5	169%	3.9%	3.3 years	NA	30%	9%	NA
	Columbia Financial Inc. (MHC)	NJ	Stewardship Financial Corp.	NJ	\$961,130	06/07/19	\$137.2	167%	6.1%	4.6 years	19.4%	48%	16.2%	20.7%
	First Guaranty Bancshares Inc.	LA	Union Bancshares Inc.	LA	\$261,371	08/05/19	\$43.4	154%	7%-9%	3 years	NA	25%-35%	NA	NA
Median					\$320,091		\$67.8	169%	7.1%	4.0 years			12.6%	25.4%

Note 1: Marginally accretive to tangible book value.



TOP 10 NEGOTIATED FINANCIAL TERMS

#1 - Purchase Price Formula – Cash Deals

- Fixed cash price considerations:
 - Buyer wants downside protection by requiring a minimum equity provision while Seller wants upside if interim earnings are greater than expected (or closing is delayed)
 - Minimum equity could be a closing condition or a price adjustment
 - Factors impacting minimum equity:
 - Interim earnings – through closing or month-end prior
 - Level of ALLL or changes in credit quality prior to closing
 - AOCI – change in amount of unrealized gain/losses or AFS investments
 - Transaction costs – pay or accrue in closing equity; or specific amount up to a limit
 - Dividends – common to have special dividend equal to excess amount over minimum equity
- Variable cash price considerations:
 - All of the factors above are in play as they could directly impact the purchase price
 - Typically based on a percentage of book value or a dollar premium above book value
 - Continuous monitoring up to and through closing
- See following example



SAMPLE CASH PURCHASE PRICE CALCULATION

Target is an S-Corp.

Formula Based on:

- 1.65 x Bank's Base Capital (8.0%)
- Dollar-for-dollar credit for excess capital
- Plus net assets of parent company
- Plus one-half of estimated tax benefit from 338(h)(10) election
- Plus an earnings credit if deal closes after a certain date
- \$1.0 million escrow of purchase price to cover indemnification

Bank Capital Calculation	Actual Dollars
Bank Capital	\$22,809,852

Bank Capital Calculation	
Bank Assets	\$210,275,441
Times 8%	<u>8.0%</u>
Base Capital	\$16,822,035

Excess Capital Calculation	
Total Bank Capital	\$22,809,852
(Less) Base Capital	<u>\$16,822,035</u>
Excess Capital	\$5,987,817

Bank Value Calculation	
Base Capital	\$16,822,035
Times 1.65	<u>1.65</u>
Subtotal	\$27,756,358
Plus Excess Capital	<u>\$5,987,817</u>
Bank Value	\$33,744,175

Purchase Price Calculation	Actual Dollars
Bank Value	\$33,744,175

Plus Other Holding Company Assets	
Cash and Due	\$239,199
Equity Investment in Nonbank Subsidiary	\$93,000
Other Assets	<u>\$50,000</u>
Subtotal	\$382,199

Less Holding Company Liabilities	
Balance Due to Nonbank Subsidiary	(\$3,112,800)
Other Liabilities	<u>(\$261,444)</u>
Subtotal	<u>(\$3,374,244)</u>

Purchase Price before 338(h)(10) Adjustment	\$30,752,130
Plus 338(h)(10) Adjustment [Section 2.1(a)(ii)]	<u>\$750,000</u>
PURCHASE PRICE	\$31,502,130

Plus Section 2.1(a)(iii) Credit for 80% of Average Daily Net Income, if applicable (1)	TBD
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FINAL PURCHASE PRICE	\$31,502,130
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(1) To be determined.



TOP 10 NEGOTIATED FINANCIAL TERMS

#2 - Exchange Ratio Formula – Stock Deals

- The majority of stock deals have fixed exchange ratios with no adjustment for changes in Buyer stock price (see following chart)
 - Seller fixes ownership percentage and certain level of cash dividends
 - Seller bears the risk of changes in Buyer’s market price between contract and closing
 - Buyer benefits from fixing pricing metrics (locks in EPS and TVPS accretion/dilution)
- Variable exchange ratios were more common when premiums were lower
- Combination stock and cash deals are still prominent (28% of deals in 2019)
 - Cash can be part of the consideration paid by Buyer; or special dividend paid by Seller
 - Special dividend works well when target has excess capital (Buyer can avoid borrowing)
 - Shareholder Election processes are less common high premium deals
 - Most deals are structured with a fixed exchange ratio and fixed amount of cash for each share
 - In the past, deals allowed for election by shareholders to take stock, cash or a combination (within limits of overall deal mix, i.e. 60% stock and 40% cash)



EXCHANGE RATIO PROVISIONS

Top 10 Largest and Smallest All-Stock Deals by Deal Value (2019)

	Buyer Name	Buyer State	Seller Name	Seller State	Seller Total Assets (\$000)	Deal Announcement Date	Deal Value (\$Mils)	Deal Exchange Ratio	Fixed Exchange Ratio? (Y/N)	Adj. to Exchange Ratio? (Y/N)	% Change from Initial Stock Price
10 Largest Deals	BB&T Corp.	NC	SunTrust Banks Inc.	GA	\$215,543,000	2/7/2019	\$28,282.6	1.295	Y	N	
	First Horizon National Corp.	TN	IBERIABANK Corp.	LA	\$31,734,598	11/4/2019	\$3,917.4	4.584	Y	N	
	TCF Financial Corp.	MN	Chemical Financial Corp.	MI	\$21,498,341	1/28/2019	\$3,551.9	0.5081	Y	N	
	Texas Capital Bancshares Inc.	TX	Independent Bk Group Inc.	TX	\$14,959,127	12/9/2019	\$3,122.9	1.0311	Y	N	
	United Bankshares Inc.	WV	Carolina Financial Corp.	SC	\$3,979,888	11/18/2019	\$1,117.9	1.13	Y	N	
	People's United Financial Inc.	CT	United Financial Bancorp	CT	\$7,339,940	7/15/2019	\$758.0	0.875	Y	N	
	Valley National Bancorp	NJ	Oritani Financial Corp.	NJ	\$4,074,702	6/26/2019	\$744.6	1.60	Y	N	
	WesBanco Inc.	WV	Old Line Bancshares Inc	MD	\$3,075,613	7/23/2019	\$500.1	0.7844	Y	N	
	First Defiance Financial	OH	United Community Finl Corp.	OH	\$2,869,116	9/9/2019	\$474.9	0.3715	Y	N	
	Sandy Spring Bancorp Inc.	MD	Revere Bank	MD	\$2,626,721	9/24/2019	\$460.7	1.0500	Y	N	
10 Smallest Deals	ChoiceOne Financial Services	MI	County Bank Corp	MI	\$616,564	3/25/2019	\$89.0	2.0632	Y	N	
	First Bancshares Inc.	MS	Southwest Georgia Financial	GA	\$547,544	12/18/2019	\$87.9	1.00	Y	N	
	Banner Corp.	WA	AltaPacific Bancorp	CA	\$434,700	7/24/2019	\$87.6	0.2712	Y	N	
	Glacier Bancorp Inc.	MT	FNB Bancorp	UT	\$326,343	1/16/2019	\$85.0	0.6474	Y	Y	+/- 15%
	Fidelity D & D Bancorp Inc.	PA	MNB Corporation	PA	\$412,770	12/10/2019	\$78.7	1.039	Y	N	
	Nicolet Bankshares Inc.	WI	Choice Bancorp Inc.	WI	\$440,541	6/27/2019	\$72.1	0.5	Y	Y	+/- 10%
	Santa Cruz County Bank	CA	Lighthouse Bank	CA	\$314,400	5/28/2019	\$68.9	0.5204	Y	N	
	ACNB Corp.	PA	Frederick County Bancorp	MD	\$442,421	7/2/2019	\$62.3	0.9900	Y	N	
	Seacoast Banking Corp. of FL	FL	First Bank of the Palm Beaches	FL	\$189,126	11/19/2019	\$32.9	0.2000	Y	N	
	First Bank	NJ	Grand Bank NA	NJ	\$196,935	3/19/2019	\$22.1	3262.956	Y	N	

% with Fixed Exchange Ratios

100%



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EXAMPLE STOCK / CASH PRICING MATRIX

Fixed Exchange Ratio or Fixed Cash Price

Buyer Stock Price Range	Transaction Pricing Based on Varying Range of Buyer Stock Price During 2019												Assumed Price (3)
	Low											High	
	\$24.50 (1/16/19)	\$25.00	\$25.50	\$26.00	\$27.00	\$28.00	\$29.00	\$30.00	\$31.00	\$32.00	\$32.50	\$32.99 (11/26/19)	\$29.13
<u>BASED ON DEFINITIVE AGREEMENT</u>	Fixed Exchange Ratio (1)												
Fixed Cash Price Per Share	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00
Exchange Ratio	0.1716	0.1716	0.1716	0.1716	0.1716	0.1716	0.1716	0.1716	0.1716	0.1716	0.1716	0.1716	0.1716
Implied Deal Value Per Share (2)	\$4.60	\$4.65	\$4.69	\$4.73	\$4.82	\$4.90	\$4.99	\$5.07	\$5.16	\$5.25	\$5.29	\$5.33	\$5.00
Implied Deal Value Aggregate (\$millions) (2)	\$19.0	\$19.2	\$19.4	\$19.5	\$19.9	\$20.3	\$20.6	\$21.0	\$21.3	\$21.7	\$21.9	\$22.0	\$20.7
% of 9/30/19 Tangible Equity	128%	129%	130%	132%	134%	136%	139%	141%	144%	146%	147%	148%	139%
Multiple of LTM 9/30/19 Net Income	21.3	21.5	21.7	21.9	22.3	22.7	23.1	23.5	23.9	24.3	24.5	24.7	23.2

- (1) No adjustment in the Exchange Ratio unless (i) Buyer stock price is below \$23.30; and (ii) Buyer stock price has declined by more than 20% as compared to the SNL Micro Cap Bank Index.
- (2) Assumes a resulting 50% stock / 50% cash mix (election process up to 75% stock).
- (3) Per definitive agreement and based on Buyer 20-day average closing stock price as of September 19, 2019.



TOP 10 NEGOTIATED FINANCIAL TERMS

#3 – Walk-Away Rights

- For Sellers, a “double-trigger” termination right is considered “market” (typically 15% or 20%)

Example 1: IF, Buyer stock price is down more than 20% between contract date and closing date, and is also down more than 20% relative to the NASDAQ Bank Index; THEN, Seller termination right is triggered; however, Buyer has the option but not the obligation to increase the exchange ratio to avoid termination.

Example 2: IF, Buyer stock price is down less than 20%; THEN, Seller has no termination right.

Example 3: IF, Buyer stock price is down more than 20%, but is ***not*** down more than 20% relative to the NASDAQ Bank Index; THEN, Seller has no termination right.

- Buyers typically request termination right in the event Seller does not maintain “Minimum Equity” amount
 - As a “closing condition” this creates closing uncertainty for Seller and is often discouraged
 - Sellers will negotiate to accept a price reduction for any shortfall below the requested “Minimum Equity”
- Material Adverse Effect (“MAE”)
 - Commonly provided to Buyer in a cash deal; and to both Buyer and Seller in a stock deal
 - MAE can include specific quantifiable thresholds (e.g. Seller’s net income is less than zero)
 - The MAE provision is typically not quantified, but provides termination right in the event of a “material adverse event.” An MAE is typically considered to be an extremely high threshold and the definition typically excludes macroeconomic or geopolitical events that affect the economy or industry as a whole



WALK-AWAY PROVISIONS

Top 10 Largest and Smallest All-Stock Deals by Deal Value

	Buyer Name	Buyer		Seller State	Seller Total Assets (\$000)	Deal Announcement Date	Deal Value (\$Mils)	Deal Exchange Ratio	Fixed Exchange Ratio? (Y/N)	Adj. to Exchange Ratio? (Y/N)	Walk-Away Rights		
		State	Seller Name								Double-Trigger? (Y/N)	Double-Trigger? (%)	
10 Largest Deals	BB&T Corp.	NC	SunTrust Banks Inc.	GA	\$215,543,000	2/7/2019	\$28,282.6	1.295	Y	N	N	N	
	First Horizon National Corp.	TN	IBERIABANK Corp.	LA	\$31,734,598	11/4/2019	\$3,917.4	4.584	Y	N	N	N	
	TCF Financial Corp.	MN	Chemical Financial Corp.	MI	\$21,498,341	1/28/2019	\$3,551.9	0.5081	Y	N	N	N	
	Texas Capital Bancshares Inc.	TX	Independent BK Group Inc.	TX	\$14,959,127	12/9/2019	\$3,122.9	1.0311	Y	N	N	N	
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	People's United Financial Inc.	CT	United Financial Bancorp	CT	\$7,339,940	7/15/2019	\$758.0	0.875	Y	N	N	N	
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	WesBanco Inc.	WV	Old Line Bancshares Inc	MD	\$3,075,613	7/23/2019	\$500.1	0.7844	Y	N	Y	20%	
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	Sandy Spring Bancorp Inc.	MD	Revere Bank	MD	\$2,626,721	9/24/2019	\$460.7	1.0500	Y	N	Y	15%	
10 Smallest Deals	ChoiceOne Financial Services	MI	County Bank Corp	MI	\$616,564	3/25/2019	\$89.0	2.0632	Y	N	N	N	
	First Bancshares Inc.	MS	Southwest Georgia Financial	GA	\$547,544	12/18/2019	\$87.9	1.00	Y	N	Y	20%	
	Banner Corp.	WA	AltaPacific Bancorp	CA	\$434,700	7/24/2019	\$87.6	0.2712	Y	N	Y	25%	
	Glacier Bancorp Inc.	MT	FNB Bancorp	UT	\$326,343	1/16/2019	\$85.0	0.6474	Y	Y	Y	10%	
	Fidelity D & D Bancorp Inc.	PA	MNB Corporation	PA	\$412,770	12/10/2019	\$78.7	1.039	Y	N	Y	20%	
	Nicolet Bankshares Inc.	WI	Choice Bancorp Inc.	WI	\$440,541	6/27/2019	\$72.1	0.5	Y	Y	N	N	
	Santa Cruz County Bank	CA	Lighthouse Bank	CA	\$314,400	5/28/2019	\$68.9	0.5204	Y	N	NA	N	
	ACNB Corp.	PA	Frederick County Bancorp	MD	\$442,421	7/2/2019	\$62.3	0.9900	Y	N	Y	15%	
	Seacoast Banking Corp. of FL	FL	First Bank of the Palm Beaches	FL	\$189,126	11/19/2019	\$32.9	0.2000	Y	N	N	N	
	First Bank	NJ	Grand Bank NA	NJ	\$196,935	3/19/2019	\$22.1	3262.956	Y	N	N	N	
											% with Double Trigger Provision		45%



TOP 10 NEGOTIATED FINANCIAL TERMS

#4 - Data Processing and Related Agreements – Termination Fees

- As part of each DP or other contract renewal, negotiate the termination fee language with your vendor
- Sellers should be strategic about the term and maturity dates of these agreements – ***termination fees are essentially an allocation of the franchise value to a third-party vendor***
- Sellers need to fully understand termination fee amounts and ask for the fee calculation (including deconversion costs) from their vendor early in the process
- Buyers will include consideration of the fee into the pricing or in the price formula
- DP vendors expect to be paid termination fees in full; and do not make gratuitous concessions
- Buyers should not expect a concession on the termination fee if Seller’s vendor is the same; unless, Buyer is willing to extend current contract OR already negotiated as part of their DP contract
- DP termination fees are more impactful in smaller deals as they typically represent a higher percentage of the purchase price



TOP 10 NEGOTIATED FINANCIAL TERMS

#5 – Change-in-Control Agreements

- Purpose of CICs?... a “reward” for creating value; a protection for employment in the case of a CIC; a recruiting or retention tool; and/or a means of protecting the franchise value
- Perhaps the most challenging issue for lawyers and investment bankers
- Generally, there are two types of CIC agreements:
 - Single trigger – executive paid upon a CIC, regardless of whether retained
 - Double trigger – first trigger is CIC; second trigger is termination (or constructive termination)
- Example of Constructive Termination:
 - Seller CEO has a double-trigger CIC
 - Seller CEO to be offered Regional President position with Buyer
 - Constructive Termination occurs because he/she is no longer CEO of the Bank
 - Incentivizes executive to quit to get CIC payment
 - Resolution: negotiate payout of CIC; coupled with new employment agreement with Buyer that includes non-compete and non-solicitation covenants
- Non-compete/Non-solicitation Covenants
 - In our experience, CICs should contain these protective covenants, but in some cases do not
 - Could result in key executive negotiating employment terms while also negotiating deal terms...not a good situation



TOP 10 NEGOTIATED FINANCIAL TERMS

#6 – Treatment of Transaction Costs

- Buyer will want all transaction costs identified and quantified
- Schedule typically includes:
 - Investment banking fees (fixed or a formula)
 - Legal fees (usually variable)
 - Accounting and tax fees (usually variable)
 - DP and other contract termination fees and deconversion costs
 - CIC payments
 - Severance payments/retention or stay bonuses
- How to handle in definitive agreement:
 - “not to exceed” language
 - Direct hit to equity prior to closing coupled with minimum equity requirement



TREATMENT OF TRANSACTION COSTS

Sample Schedule and Treatment of Transaction Costs

"SELLER Capital" means SELLER's shareholders' equity determined in accordance with GAAP on a consolidated basis, net of goodwill and other intangible assets, calculated in the same manner in which SELLER's consolidated tangible equity capital at June 30, 2017, was calculated in accordance with GAAP; but, expressly including adjustments for accumulated other comprehensive income or loss as reported on SELLER's balance sheet. In calculating SELLER Capital, employee severance payments and retention bonuses payable by BUYER post-Closing, conversion and similar post-Closing integration costs, purchase accounting adjustments, and the Final Transaction Related Expenses of up to \$5.3 million will not be taken into account. To the extent Final Transaction Related Expenses exceed \$5.3 million, the difference, on an after-tax basis (applying an effective tax rate of 35 percent), will be treated as a reduction of SELLER Capital.

SELLER Closing Capital defined and a representation provided in other sections of the Agreement.

	Estimated Transaction-Related Expenses	Final Transaction-Related Expenses
Transaction-Related Expenses (\$000s)		
Employee Related		
Change-in-Control Cost	_____	_____
D&O Tail Coverage Insurance	_____	_____
Integration/Operations		
Data Processing - Termination and Deconversion Fee	_____	_____
Other IT/Systems Termination Cost	_____	_____
Title Policy Premiums	_____	_____
Professional Expenses		
Investment banking - Advisory	_____	_____
Investment banking - Fairness Opinion	_____	_____
Legal	_____	_____
Accounting	_____	_____
Other		
TOTAL	_____	_____

Note: As provided in the Agreement, any negative differential between \$5,300,000 (the "Maximum Transaction Expense Amount") and the Final Transaction Related Expenses will be subtracted from SELLER Capital on an after tax basis (applying an effective tax rate of 35 percent) for purposes of determining both SELLER Closing Capital and the Closing Capital Differential.



TOP 10 NEGOTIATED FINANCIAL TERMS

#7 – Escrows, Holdbacks and Asset Exclusions

- Most bank M&A deals settle at closing (or shortly thereafter) without escrows, holdbacks or asset exclusions
- Escrows and holdbacks are commonly requested from closely-held Sellers, where Buyer simply demands Seller shareholders to “stand behind” reps and warranties for a period of time after closing
- Can be regionally influenced
 - Upper Midwest tends to have many family-owned banks where Escrows are commonly used to insure indemnification protection to Buyer for a period of time (1 to 3 years)
 - Often subject to a minimum “basket” (i.e. \$25,000) before Buyer can collect against Escrow
- Other situations involving these structures might include:
 - Troubled bank – carve out “bad assets” - more common during the “Great Recession” as opinions on asset values varied greatly
 - Specific assets – parties can’t agree on value of specific identified assets (e.g. OREO, office building, etc.)



TOP 10 NEGOTIATED FINANCIAL TERMS

#8 - Payout or Continuation of Certain Benefit Plans

- Buyers should diligently identify and quantify the impact of a CIC to all benefit plans
- Deferred compensation plans can be complex and difficult to quantify closing equity impact
 - Key issue: does a CIC result in vesting (and potential payment) of “accrued” or “vested” balance
Result: no financial impact to Seller’s closing equity
 - OR
 - Does the full benefit stay in-place with vesting accelerated
Result: could create significant liability and reduction to Seller’s closing equity
- Buyers typically want to “extinguish” all specifically-designed executive benefit plans



SERP & DEFERRED COMPENSATION PLANS

Sample Schedule and Treatment of SERPs and Deferred Plans

SERPS								Est Exp at CIC For Proper Retirement Accrual (3)	Additional Accrual
Employment Status	Vesting Status (1)	Total Benefit Liability	Change of Control Payout Schedule (2)	Actual Accrued Balance 9/30/2016	Estimated Accrued Balance 12/31/2016	Estimated Accrued Balance 6/30/2017			
1	active	100%	\$250,000	10 yr - monthly	\$180,716	\$184,496	\$185,000	-	\$65,000
2	active	100%	\$150,000	10 yr - monthly	\$84,121	\$85,722	\$87,323	\$23,677	\$39,000
3	active	100%	\$200,000	10 yr - monthly	\$112,211	\$114,343	\$116,475	\$31,525	\$52,000
4	retired & in p/o	100%	\$250,000	10 yr - monthly	\$183,120	\$180,153	\$177,186	-	\$72,814
5	active	100%	\$205,600	10 yr - monthly	\$39,263	\$42,105	\$44,947	\$107,197	\$53,456
6	active	100%	\$500,000	10 yr - monthly	\$280,525	\$285,856	\$291,187	\$78,813	\$130,000
7	active	100%	\$151,580	10 yr - monthly	\$11,424	\$12,251	\$13,078	\$99,091	\$39,411
8	active	100%	\$450,000	10 yr - monthly	\$301,778	\$306,879	\$311,980	\$21,020	\$117,000
9	active	100%	\$250,000	10 yr - monthly	\$167,655	\$170,489	\$173,323	\$11,677	\$65,000
10	active	100%	\$250,000	10 yr - monthly	\$189,406	\$195,024	\$195,024	-	\$54,976
11	active	100%	\$250,000	10 yr - monthly	\$28,868	\$30,957	\$33,046	\$151,954	\$65,000
12	active	100%	\$250,000	10 yr - monthly	\$120,784	\$123,048	\$125,312	\$59,688	\$65,000
13	termed	100%	\$344,465	10 yr - monthly	\$151,064	\$153,016	\$154,968	\$99,936	\$89,561
\$3,501,645					\$1,884,339	\$1,908,849		\$684,578	\$908,218

DIRECTOR DEFERRED RETIREMENT PLAN								Estimated Expense at COC (5)
Employment Status	Vesting Status	Estimated Total Benefit Liability	Change of Control Payout Schedule (4)	Actual Accrued Balance 9/30/2016	Estimated Accrued Balance 12/31/2016	Estimated Accrued Balance 6/30/2017		
1	retired & in p/o	100%	\$14,967	10 yr - annual	\$29,873	\$30,418	\$14,967	-
2	termed	100%	\$367,040	10 yr - annual	\$357,792	\$362,416	\$367,040	-
3	active	100%	\$243,073	10 yr - annual	\$236,949	\$240,011	\$243,073	-
4	active	100%	\$10,964	10 yr - annual	\$10,688	\$10,826	\$10,964	-
5	active	100%	\$191,624	10 yr - annual	\$186,796	\$189,210	\$191,624	-
6	active	100%	\$149,608	10 yr - annual	\$145,838	\$147,723	\$149,608	-
7	active	100%	\$49,175	10 yr - annual	\$47,937	\$48,556	\$49,175	-

Footnotes

- (1) Change of control accelerates vesting to 100%
- (2) Change of control accelerates immediate payout over specified period
- (3) Roughly 74% NPV is accrued thru normal retirement date with remainder accrued during payout period
- (4) Change of control does not change payout period
- (5) The 5.25% annual interest crediting terminated at separation



TOP 10 NEGOTIATED FINANCIAL TERMS

#9 - Handling of Financing or Other Contingencies

- Sellers don't like closing contingencies, including:
 - Financing cash deals – Buyer needs to borrow OR raise capital to fund the deal; often only consider if no other bidders are interested
 - Regulatory – does the Buyer have a clean regulatory record, or a history of past issues? BSA, Compliance or CRA issues are problematic for a Buyer
 - Shareholder approval by Buyer – usually not a big issue but sometimes required as part of stock transactions

- Debt or Equity Financing Contingency
 - Seller should request a financing commitment letter be in place prior to signing definitive agreement
 - Assurances of successful equity raise can be more challenging
 - Seller should negotiate for a special termination fee if financing is not received



TOP 10 NEGOTIATED FINANCIAL TERMS

#10 - Break-Up Fees and Other Termination Fees

- Break-up fee for an unsolicited offer
 - Seller may not solicit offers after definitive agreement is signed
 - If an unsolicited offer is received, Buyer is notified (can't be done in secret)
 - Board may consider unsolicited offer as part of their fiduciary responsibility (“fiduciary out”)
 - If deal is terminated, Buyer is entitled to a break-up fee
 - Break-up fees typically range from 3-5% of purchase price – balanced to dissuade other parties from making an unsolicited offer but not so high as to mitigate the board’s fiduciary duties
 - Seller would only consider new offer if it exceeds current deal by significantly more than the break-up fee
 - Language typically requires the offer to be deemed a “superior proposal” by the Seller’s board of directors, after consultation with their investment banker and legal counsel
- Other Termination Fee language could include:
 - Specific fees if financing is not received
 - Specific fees for breach of the agreement; although most deals leave that open-ended to be able to sue for damages



ABOUT PROBANK AUSTIN



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PROBANK AUSTIN

Firm at a Glance - Practice Areas and Services

Investment Banking

- M&A Advisory Services
- Branch Acquisition and Divestitures
- Stock Valuations
- Capital Planning
- Fairness Opinions
- Strategic Alternative Assessments

Financial Management

- ALCO and IRR Reporting
- Interest Rate Risk Reviews
- Liquidity Stress Tests
- Budgeting Package
- Profitability Analysis - *Product, Branch, Customer*
- LoanPricingPRO®

Strategic Consulting

- Strategic Planning
- Operational Reviews
- Executive Compensation Reviews
- Core Processing and Vendor Selection
- Management/Staffing Studies
- Market and Branch Feasibility Studies

GRC Solutions and Management (Governance, Risk and Compliance)

- Regulatory Compliance
- BSA/AML/CRA and Fair Lending Reviews - System Validations, Look Back Experts
- Enterprise Risk Management
- Loan Review & ALLL Validation Services
- Credit Risk Management
- Commercial Appraisal Reviews
- Capital Planning and Stress Testing
- IT and IS Audits and Intrusion Testing
- Internal Audits
- Mortgage Quality Control Audits/Process Reviews
- Fintech Services – Marketplace Lending and Online Lender Expertise
- Due Diligence Reviews
- Litigation Support and Expert Witness Testimony
- Loan Portfolio/CRE Stress Testing

Education Services

- Education Training - Seminars, Webinars, Compliance Schools, Conferences, In-House Training
- Compliance Training for Lending and Deposit Topics
- Newsletters and Manuals (*InCompliance*)
- Director and Officer Training



PROBANK AUSTIN

Quick Facts

- **Founded:** 2017 through the merger of Professional Bank Services, Inc. (1978) and Austin Associates (1969)
- **Offices:** Louisville, Nashville, Toledo, New York City, Chicago, San Francisco
- **Ownership:** Private/employee owned; approximately 80 FTE employees
- **Clients:** Banks, credit unions, trade associations, regulatory agencies and law firms
- **Education:** In recent years, more than 10,000 people attended over 800 educational programs conducted by ProBank Austin in 36 states plus 40 in-house training programs in 21 states
- **M&A:** Ranked *5th* nationally with 140 whole-bank deals since 2005 ⁽¹⁾

(1) Source: S&P Global Market Intelligence as of December 31, 2019



PROBANK AUSTIN

M&A Experience - Top Financial Advisors in Whole Bank Deals

Overall Rank	Advisory Firm	Number of Deals 2005 through 2019	Announced Deal Value (\$M)
1	Keefe, Bruyette & Woods	609	\$125,664.6
2	Sandler O'Neill & Partners, L.P.	600	\$162,724.3
3	Hovde Group, LLC	220	\$12,219.0
4	Raymond James & Associates, Inc.	206	\$26,526.4
5	ProBank Austin (1)	140	\$4,017.6
6	Janney Montgomery Scott LLC	104	\$8,559.7
T-7	Capital Corporation, LLC	96	\$781.1
T-7	Sheshunoff & Co. Investment Banking LP	96	\$2,872.5
9	Performance Trust Capital Partners, LLC	78	\$5,282.3
10	Boenning & Scattergood, Inc.	76	\$5,657.9
11	D.A. Davidson & Co.	72	\$6,079.6
12	Stephens Inc.	69	\$12,211.0
13	Piper Jaffray & Co.	65	\$5,715.2
14	DD&F Consulting Group	61	\$2,954.1
15	FinPro, Inc.	57	\$1,634.7

Source: S&P Global Market Intelligence, a division of S&P Global. Data includes all U.S. deals from 2005 through 2019.

Note: More than 100 firms reported in S&P's M&A Advisory rankings. Some deal values not reported and rankings exclude terminated deals.

(1) ProBank Austin formed from the merger of Professional Bank Services Inc. and Austin Associates, LLC effective January 12, 2017.



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Rick joined Austin Associates in 1984. He currently co-manages ProBank Austin's investment banking and strategic consulting areas. He coordinates client projects involving M&A transactions, fairness opinions, stock valuations, strategic planning, capital planning and regulatory consulting, among other specialized services. Rick also served as an instructor at the Stonier Graduate School of Banking, and holds Series 63 and 79 (Investment Banking) licenses.

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Mike joined Austin Associates in 2016, bringing more than 35 years of banking expertise in mergers and acquisitions, corporate development, equity research, investment banking, strategic planning, investor relations, and corporate lending. His background includes serving as a Partner, member of the Executive Committee, and Director of Bank Equity Research for Roney & Co. (now Raymond James). Mike is a graduate of Dartmouth College and holds FINRA Series 7, 24 (Principal) and 63 licenses.



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