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## DON'T MISS OPPORTUNITIES IN THE "DEAD" M&A MARKET

Let others sit back and wait for M&A to "return."

Astute bankers with capital can buy opportunities on the cheap right now.

If you talk to the larger investment banks and the well-known "names" in the community banking scene, they will tell you that mergers and acquisitions are still fairly dead.

But my suggestion to our clients around the country is that they be prepared for the action on the merger and acquisition front. I anticipate a major pick-up in the community bank arena in connection with the acquisition of smaller banks, as well as the purchase of branches from the larger banks or troubled institutions.

Opportunities to explore

Several distinct opportunities have come up, or are developing:

"We want out." Many smaller banks are no longer "looking for the cheese," but are simply "trying to get out of the trap." This will typically create an opportunity for the acquisition of a healthy bank at a modest price. Pricing has dropped so that it hovers, for a normally capitalized bank, somewhere around book value. I generally tell our clients that if they want us to find them a buyer and we can get them book and a quarter, they ought to take the check immediately to the bank, deposit it, hope it clears, and run. As noted, many of the smaller banks simply want to be a branch of a larger bank due to the compliance cost, built-in overhead, and infrastructure necessary to deal with today's regulatory issues.

This will present a great opportunity for some of the larger community banks that are in the "have" category, rated 1 or 2 (yes, there are still some 1-rated banks). The "haves" can acquire these banks for cash, or even in some cases, some amount of stock (generally 50% of the purchase price must be in stock to be tax-free to the recipient).

Opportunities will abound in this arena during 2010.

"Take my branch-please." The opportunity to acquire branches from larger banks or smaller troubled banks will be plentiful. Larger banks will continue to reevaluate their franchise, their locations, the profitability of their locations, and the like, and will either sell "darkened" branches, i.e. sell the real estate, or sell the branch itself with the deposits, and possibly some good loans along with it.

Also, branch pricing has dropped like a rock, because FDIC has put a lot of "product" on the market. These days, if you pay 2% of core deposits for a branch acquisition, you are pretty much in line with the premium in the industry. Keep in mind, a branch acquisition is structured as a purchase of assets and assumption of liabilities. Unlike a merger transaction, where the buyer gets "everything," (including any contingent liabilities), in a branch acquisition, the buyer

only obtains the liabilities it specifically agrees to assume (normally deposits), and any assets it specially agrees to purchase. No contingent liabilities are picked up. It is very clean, easy, and quantifiable.

"Hitting the garage sale." There will also be an opportunity to buy former banks from some of the larger banks when they acquire multi-bank holding companies in failure situations. These multi-bank holding companies, by definition, have multiple charters. It may be that the acquiring bank did not want the locations in a certain state and will spin those off after making the acquisition from the FDIC.

"Success from failure." Troubled banks will abound still in 2010. I advise our clients around the country not to shy away from the acquisition of a troubled bank. It simply involves the assessment of the risk in the loan portfolio and pricing for that risk. Many of the deals now are getting very creative where, as a practical matter, the seller is getting nothing but a bunch of bad assets, or the right to the value determined on a bunch of bad assets, over a period of time.

As part of your strategic thinking (or planning) you need to be thinking about geographic expansion through a healthy bank acquisition, a failed bank acquisition, an impaired bank acquisition, or branching. All of them involve current opportunities.

#### About the Author

Jeff Gerrish is chairman of the board of Gerrish McCreary Smith Consultants, LLC, and a member of the Memphis-based law firm of Gerrish McCreary Smith, PC, Attorneys. He is a frequent contributor to ABA Banking Journal and ABA Bank Directors Briefing, and frequently speaks at ABA events and telephone briefings.

Gerrish formerly served as Regional Counsel for the Memphis Regional Office of the FDIC, with responsibility for all legal matters, including cease-and-desist and other enforcement actions. Before coming to Memphis, Gerrish was with the FDIC Liquidation Division in Washington, D.C. where he had nationwide responsibility for litigation against directors of failed banks.

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