HANDLING THE UNASKED-FOR OFFER

Part 2 of M&A series: You were minding your own business when someone tried to buy you...

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This is the second of a series of blogs on community bank merger and acquisition issues. (Read Part 1 here.) This blog will deal with an issue that often puts fear in the hearts of community bankers--the unsolicited offer.

Note I did not say "hostile offer."

There are few hostile offers in community banking.

In fact, our firm handled the last one for a community bank, which was a misguided attempt by a neighboring bank to force our client to sell. The purported buyer went to the regulators, went to the community, and went to the shareholders of our client, all for naught.

This purported buyer did not understand what the word "no" meant when the target's board uttered it.

Hostile offers in community banking are very rare. What is not rare is the unsolicited inquiry often resulting in an unsolicited offer.

Actually, what's an "offer"?

The starting point is, what constitutes something by way of an offer that the board is required to respond to?

For example, is a casual cocktail conversation at the state or national bankers convention an unsolicited offer?

If your neighbor bank buys your Chairman of the Board a drink at the convention and says, "If you are ever ready to sell, call me," is that an unsolicited offer?

How about, "We are interested in your market. We have admired your bank and it ‘fills a hole' in our footprint for us." Is that an unsolicited offer?

Enjoy your drink. Generally, cocktail conversation does not constitute an unsolicited offer, although my own recommendation is that even cocktail conversation be reported back to the board at the next meeting so nobody is surprised.

What if the potential acquirer invites the Chairman and the CEO to lunch to discuss how the two banks might come together? Is that an unsolicited offer that the board needs to respond to? Probably not.

At those types of "meet and greet" meetings, typically the buyer, especially if they are trying to convince the seller target to take their stock, will spend most of the lunch or dinner describing what a great organization the buyer has and why the seller would fit so well with it. Even that type of discussion does not require a written response.

What if the CEO or Chairman receives a letter from a firm out of "New York" that basically says "we have lots of money and would like to buy your bank--call us within the next five days."

Is that an unsolicited offer?

No, that is junk mail.

Throw it in the trash.

Clearer-cut cases of official offers

Here is where it gets interesting, however. What if the bank you have been dealing with on kind of a soft-touch cocktail conversation, lunch, etc., sends a letter to the board indicating that that organization is prepared to pay between $X and $Y for your organization, subject to due diligence?

Does that nonbinding expression of interest need to be responded to?

Answer: Probably, unless it is so far below the norm, e.g. 50% of book value for a healthy bank, that it is not even in the ballpark.

What kind of response does the board need to make?

First of all, the board needs to assess the value of the offer versus the value of the holding company's own stock. This is basically to test whether the seller's shareholders would be better off holding the seller's stock than whatever is being offered by the buyer. That does not mean you have to sell.

Must you jump on command?

What if the expression of interest from the potential buyer has a five-day trigger, i.e. "If you do not respond in five days, we are withdrawing the expression."

Does that mean you have to call a special board meeting?

Does that mean you have to jump, as requested by the potential purchaser?

No. It does mean that you probably just need to pick up the phone, or have one of your representatives pick up the phone, call the potential buyer, and let them know you will get to their proposal at the next regularly scheduled board meeting.

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My next blog will deal further with information regarding the analysis of an unsolicited offer. Keep in mind, the board's overarching job is to enhance the value for the shareholders. In the context of an unsolicited offer, that simply means this: Would the shareholders be better off accepting what has been offered or would they be better off holding the stock of the current holding company?

You can also catch the article, "Don't slouch towards sale: Put your bank's best face forward for buyers" in the ABA BJ Novembr 2012 Digital Magazine.

About Jeff Gerrish

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's consulting and law firms have assisted over 1,500 community banks in all 50 states across the nation since their formation in 1988. Gerrish formerly served as regional counsel for the Memphis regional office of the FDIC and with the FDIC in Washington, D.C. with nationwide responsibility for litigation against directors of failed banks. Currently, Gerrish's practice involves mergers and acquisitions, strategic planning, capital raising, and general consulting with community financial institutions

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