TOBIN SOLITARIO
INVESTMENT BANKING Grp.

Street Wise

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HOW IS THE MARKET?

We all hear that both the M&A market and the financing market have encountered challenges. Yet when it comes to the M&A and financing activity that you and we care about, there is plenty of activity and plenty of opportunities. As you know, Tobin Solitario Investment Banking Group is focused on the smaller end of the marketplace, primarily serving companies with revenues of $100mm or less.

We at TSIBG continue to observe that strategic buyers are indeed seeking acquisitions of $100mm or less. We do encounter more differences between the valuation expectations of buyers and valuation expectations of sellers, primarily as a result of sellers who may be less than willing to make reality checks on growth and margin expectations and buyers hoping to find a bargain in this environment. Strategic buyers are companies which are operators of a business - as contrasted to financial buyers which tend to buy and own a portfolio of businesses. Strategic buyers continue to look for acquisitions with the assistance of their corporate development staffs or they have retained investment banks such as TSIBG to assist them with locating potential target companies, sorting through valuation issues and structuring the acquisition.

Strategic sellers are also in the marketplace, courting buyers for their companies. Sellers that are healthy, growing and showing lots of promise are finding ample numbers of prospective buyers.

Companies are also able to raise money, particularly in the asset-backed lending arena where the supply of capital has become plentiful and where financing pricing has even declined considerably. Furthermore, some venture ideas are getting attention, particularly in companies poised for revenue growth and striving to fill unmet needs with innovative products and solutions. Money is being raised from venture capital firms as well as from private equity groups. Private equity groups look to invest in opportunities where they can invest at a more mature stage of a company's development cycle, often where their investment is accompanied by leverage to increase returns. Significantly tighter credit markets over the past year have made this latter strategy more difficult to implement, although less so for smaller acquisitions than larger acquisitions. Even so, both VCs and PEGS are looking for new platform investment opportunities and tuck-in acquisitions, but they aren't going to fund shortfalls in cash flow. They will invest in companies that are continuing to grow in this environment and will also invest in companies that might even have distressed balance sheets but sound business models.

Because of these tighter credit markets, we are also seeing interest from private equity groups who are looking for acquisitions where they themselves will provide all of the acquisition capital and not require any third-party financing. Furthermore, we've seen the size requirements of PEGs decline in this marketplace, allowing them to cast a wider net. The PEGs still call for companies with healthy margins and good growth. As long as those requirements are met, these buyers are eager to look.

Sure, if you look at league tables and other charts in the major media, the overall M&A business and the financing business are down considerably over the past year. But please remember, those information sources and pundits are particularly impacted and swayed by very large transactions such as Disney's purchase of Marvel Entertainment and eBay's sale of a majority stake in Skype, of which there have been far fewer in this environment. So the numbers look like they are down - and they are - overall. But if you segment out the <$100mm marketplace, activity is a little more vibrant and robust – at least from our point of view.

Tobin Solitario IBG serves the smaller marketplace – companies of $100 million in revenues or less. We are finding that many companies, particularly in the industries of technology, business services, software, manufacturing and distribution, are moving right along and able to continue to execute on their strategic plans.

A client QUOTE:

"When we were selling Quaero, we needed an investment bank that could complete some analytical work at short notice and with rapid turnaround. We called on Tobin Solitario Investment Banking Group. They exceeded our timing expectations, and also added additional value by identifying other key areas that needed to be addressed. We were very pleased with the results."

NARAS EECHAMBADI,
Founder and former CEO
Quaero, now a CSG solution

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NEWS & TRENDS: The Role of Corporate Attorneys

Tobin Solitario Investment Banking Group is an experienced and respected investment banking company which serves the smaller middle market. Tobin Solitario always works hand-in-hand with a corporate attorney in completing a transaction for a client. We rely on the attorney to represent our client in all legal matters surrounding the transaction that our client is contemplating.

GUEST COLUMNIST: *Tom Price contributes this article regarding the role of attorneys in purchase, sale or investment transactions. Tom is an attorney with the Charlotte office of Womble Carlyle Sandridge & Rice PLLC. His practice, along with that of his colleagues, focuses on venture capital and private equity transactions, mergers & acquisitions, technology licensing arrangements and various general corporate law matters.*

THE ROLE OF ATTORNEYS

Along with bankers and accountants, attorneys play a key role in assisting their clients with structuring purchase, sale or investment transactions and guiding them to a successful closing. This article explores the attorney's role in these transactions and offers a few points to consider when choosing legal advisors.

Generally speaking, attorneys are able to add more value to a sale, purchase or capital raise process if they are involved before it begins. For example, there are many strategies that should be considered months or years in advance, including wealth planning techniques to transfer ownership to family trusts, structural changes that improve tax consequences and improvements to employee benefit plans that benefit the owners. In addition, an attorney can also help an owner identify and address legal issues that could later "bog down" a buyer's due diligence investigation or result in a purchase price reduction. To the extent that a client is raising capital, they should seek guidance from their attorney regarding securities law compliance. An attorney's role is not typically time-intensive at the beginning of a process and involving one early can lead to a more smooth transaction.

In addition to drafting and negotiating the definitive deal documents, attorneys assist with a number of other important tasks. Counsel should review the form of confidentiality agreement that a seller requires potential buyers to sign before the due diligence process. Contrary to popular belief, these agreements are not "standard" and each side should pay careful attention to what they include and do not include. For example, a seller may wish to include a "non-hire" provision that would prevent a potential buyer from hiring its employees for a period of time after their due diligence. Attorneys should also review any letter of intent or term sheet before it is signed. Subtle changes to this document can significantly alter the business deal. Care should also be taken to make sure that the letter of intent is non-binding, except for those sections that are intended to be binding, such as exclusivity or confidentiality obligations. The letter of intent should fully and accurately reflect the business deal. After it is signed (even if it is non-binding), negotiating contrary language in the definitive agreement is difficult.

In an auction process, attorneys often draft a sale document that the bankers then distribute to potential buyers. The bidding parties are asked to return comments to this draft along with their letter of intent. Attorneys assist the bankers and the management team in evaluating the proposals. Every offer has two parts - the purchase price and the legal terms. Both components are critical and deserve careful consideration. It is the job of the attorney to work with the bankers and other professional advisors to help the client understand the terms and negotiate the best result possible for the client.

In choosing legal counsel, businesses should seek attorneys that have transactional experience with the specific type of deal that is proposed. Attorneys who regularly represent both buyers and sellers are often more efficient and effective because they have a better sense of the market. This experience also allows them to anticipate and address "deal-breaker" issues. As with choosing any trusted advisor, it is always wise to ask for references.

M&A Terminology

LETTER OF INTENT:

A letter of intent (or LOI) is a document outlining an agreement in principle between two or more parties in an intended merger or acquisition. The LOI precedes the purchase agreement and attempts to lay out the agreed upon transaction pending the closing.

An LOI is typically not binding on the parties in its entirety. Most LOIs, however, contain provisions that are binding, such as a non-disclosure agreement, a covenant to negotiate in good faith and a "stand-still" or "no-shop" provision promising exclusive rights to negotiate.

Letters of intent are typically used in acquisitions to provide written documentation of the principal terms of the deal before going into the final, detailed due diligence and drafting of the purchase agreement for the acquisition. A letter of intent (sometimes referred to as a term sheet) is signed by both parties to a proposed transaction and documents general agreement to the key terms of the transaction, such as the price, type of consideration and other important terms of sale. Letters of intent contemplate the negotiation and signing of a final "definitive agreement" containing all of the terms of the transaction.

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