

Closing Your M&A Deal on a Weekend

October 28, 2015

In case you are wondering – no, this is not about making the closing more festive, or planning for a champagne celebration after the closing.

As companies think about the timing of the closing, several key drivers are leading both the buyer and the seller to strongly prefer a month-end closing (which could happen to fall on a weekend), especially:

- Accounting and systems issues with having a cut-off date that is not at month-end for purposes of preparing the closing balance sheet or financial statements to be included in future public filings
- The switch over of operational items and IT systems (with a weekend closing providing the parties' operational and IT teams with additional time to complete the switch over and perform testing before the business re-opens)

Careful planning and structuring will be needed in order to accomplish a weekend closing (typically at 12:01 a.m. on a Saturday or Sunday). We are seeing this occur with increasing frequency, and different structures and arrangements can be deployed to facilitate a weekend closing. None of these can occur as a last minute afterthought, but rather will take advance planning and co-operation by the parties, their advisers, financing sources and other transaction participants.

A primary item to focus on will be how to accomplish funding and payment of the purchase price on the weekend, when Fed wires are not possible and banks are ordinarily closed. A few examples of different types of arrangement that we see being used, depending on the circumstances, are:

- *Intra-bank transfer:* Both seller and buyer having (or opening) a bank account at the same bank (which may be the lead bank, where a bank financing is funding the purchase price), and a transfer of the purchase price being effected intra-bank between the two bank accounts at the time of the transaction closing over the weekend. This arrangement assumes the bank is willing to co-operate in a weekend transfer of funds between accounts in that bank.
- *Change of title to bank account:* A new bank account is opened for purposes of the transaction. That account is initially in the name of and controlled by buyer. Buyer funds the account with the purchase price and other closing payments on Friday. In anticipation of the weekend closing, the parties prepare and execute an instrument changing title to and control of the bank account to seller as of the time of closing. That instrument is released on the weekend when the closing occurs, at which time the seller acquires legal ownership and control of the deposited funds. (Where buyer's debt financing for the acquisition is to be secured, additional complexity is involved including that the arrangement will need to include perfecting a security interest in the bank account, which would be released at the moment of closing.)

Where the closing involves a merger under state law that becomes effective through the filing of a certificate of merger with the relevant state office, additional planning will be needed, for states like Delaware, to file the certificate of merger with an effective time as of 12:01 a.m. on the weekend while addressing the contingency that the closing may not occur.

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