FAST FORWARD

A FORWARD SALE

WHEN WE LEARNED that our bank client had agreed to purchase a consumer banking platform, we knew that they would be required to raise substantial funds. It was an opportune time to undertake the transaction. The price was right. The consumer banking platform was being sold by its parent because its national regulator had urged the parent to bolster its capital position, including through divestitures, after having been required to make a cash injection during the financial crisis. The transaction was one of the largest M&A transactions of 2011, and one of the most significant since the start of the financial crisis.

The acquisition involved cash and stock consideration. The cash component of the purchase price was financed in part through a debt offering, on which we also advised. The acquiror chose to raise the remainder of the cash consideration through a forward sale of its common stock. While registered forwards became popular in the mid-2000s, only a handful of sizeable forward transactions have been undertaken since then. A $2 billion underwritten forward sale was newsworthy. It also was exactly the right approach. Given continued market volatility, and the requirement to obtain various regulatory and other consents which would be time-consuming, the forward sale offered the requisite certainty and the desired flexibility. The underwriters or their affiliates agreed to borrow and sell to the public through the underwriters shares of common stock. The acquiror was able to complete the forward sale, providing assurance that it would have the funds available to complete the deal. Also, it was able to obtain a favourable, definitive price, but was not required to issue settle the forward contract until it was ready to complete the acquisition. The forward sale could be settled entirely by physical delivery of stock or through cash or net stock settlement.