BOUGHT AND SOLD

A BOUGHT DEAL

OUR CLIENT, A LARGE FINANCIAL INSTITUTION, completed a significant acquisition for which a portion of the consideration was shares of its stock. The seller, now a significant stockholder, sought liquidity. However, an announced sale by a significant stockholder undoubtedly would have had an impact on the issuer's stock price. Likewise, if the stockholder were to sell out its stake over time, the market would come to anticipate future sales and that overhang of stock coming into the market might serve to depress the issuer's stock price over a protracted period. What to do? Working with the issuer and its advisers and the selling stockholder and its advisers, we settled on a plan.

As a well-known seasoned issuer, the issuer was able to file an automatically effective registration statement for the resale of the selling stockholder's securities. All of the steps necessary to effectuate a transaction were undertaken, including diligence, negotiating an underwriting agreement, and arranging for a comfort letter and legal opinions to be delivered. The next step was arranging for an underwriter to execute the transaction as a bought deal. A bought deal is an effective approach for a significant stockholder to employ in selling its stake in a company. In a bought deal, the underwriters commit to purchase the securities at an agreed-upon price, assuring the selling stockholder that a transaction will be executed within its price parameters. The underwriters will not have had the opportunity to build a book and solicit interest in the securities prior to committing to purchase them. In this instance, additional measures had to be employed to ensure that no single investor would acquire stock in an amount that would render that investor a control person under the relevant banking laws.

The transaction was a variable-price re-offer transaction, in which the securities are re-offered to the market at varying prices after the purchase by the underwriters. After the pricing of the transaction, when the selling stockholder and the underwriters had reached an agreement, it remained critical that the price paid by the underwriters for the securities remained confidential, because the underwriters may still have had a "long" position in the securities. It is the largest bought deal that has been effected for a selling stockholder to date. This offering methodology proved uncommonly successful in addressing the disparate interests of all parties while minimizing to the greatest possible extent, the risk of damaging one or more of the parties.