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MERGERS & ACQUISITIONS

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▸ IS CASH STILL KING IN ACQUISITIONS?

In December 2005, securities offering reform became a reality in the United States. Commentators and capital markets professionals were quick to observe that the offering reforms would have a wide ranging impact on the financing and capital raising process in the United States. In particular, the largest corpocan offer a target the next best thing to an all cash deal – a stock deal, with an automatically effective shelf registration statement filed by the WKSI at closing. Using this approach, the WKSI acquirer uses its stock as the consideration. The target stockholders who are to receive stock consideration in the acquisition can 'convert' their stock consideration into cash at closing. The target stockholders may dispose of their merger stock immediately by availing themselves of the automatic shelf rate issuers now have the opportunity to avail themselves of a streamlined securities registration process designed to provide rapid and less cumbersome access to the capital markets. They fit into a new category of corporate issuers called well known seasoned issuers, or 'WKSI'.

When a WKSI files a registration statement with the Securities and Exchange Commission, the registration statement is declared effective immediately. WKSI issuers need not be concerned about possible delays resulting from an SEC review. The significance of securities offering reform on the financing and capital registration statement, without bearing any risk of illiquidity.

This approach is particularly attractive to target stockholders that are financial sponsors or hedge funds looking to an M&A transaction as an exit. More and more companies remain private for longer and put off initial public offerings as liquidity opportunities. But financials sponsors, hedge funds and venture capitalists may suffer investor fatigue and seek a liquidity opportunity. To the extent that the target raising process has been demonstrated beyond question in 2006. Yet interestingly enough, its impact in the area of mergers and acquisitions is potentially significant, but has gone largely unnoticed.

WKSIs that are contemplating cash or stock acquisitions are finding that they have enhanced flexibility in choosing the form of consideration. Frequently, acquisition targets are interested in immediate liquidity and prefer to receive cash at closing. In the past, this may have forced an acquirer's hand and compelled the acquirer to agree to an all-cash deal. Now, WKSI acquirers have an alternative. They recipients of the WKSI stock dispose of the securities in an orderly manner, such as through an agented or underwritten public offering, the WKSI acquirer also may benefit from having its stock end up in the hands of investors with a long-term interest in the company. ■

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