Business VENTURES

FAIRFAX COUNTY
ECONOMIC DEVELOPMENT AUTHORITY

QUARTERLY NEWSLETTER FOR SMALL, MINORITY- AND WOMAN-OWNED BUSINESSES

Getting Merger & Acquisition Deals Done in a Down Economy

By Florian Hauswiesner, Managing Partner of Hauswiesner King LLP

In this economic downturn, the process of selling or buying businesses has become a more lengthy and complex process than ever before. The recession affects every merger and acquisition (M&A), from multibillion-dollar buyouts involving private equity investors to "mom and pop" deals.

The challenges surrounding most M&A deals can often be overcome with careful planning and appropriate financial and legal plans.

The Financing Challenge

The first challenge is financing the planned acquisition. Only a couple of years ago, banks competed to finance highly leveraged buyout transactions. At the same time, many buyers of small businesses used home-equity loans to finance a part of the purchase price. Both options have changed profoundly. Bank financing is not an option as most banks have cut back dramatically on their risk exposure and many deals no longer get off the ground. Falling real estate values have made the option of using home equity no longer viable.

Determining the Value of the Business

For many deals, determining the purchase price may be a challenge. Many prospective buyers demand a discount because of falling or stagnant revenues and shaky revenue projections. Due to a significant drop in company valuations, many owners of closely held businesses find they must accept a purchase price that is significantly lower than what they could received only two years ago.

For an M&A lawyer, there are several legal tools to make a deal happen despite the current economic downturn:

Prepare the transaction ahead of time: Sellers need to plan ahead of time to prepare their business for a possible sale. In times like these, with plenty of businesses for sale, but few willing or eligible buyers, a thorough due-diligence process should always be anticipated. Begin by organizing corporate books, having all agreements with third parties (such as customers and vendors) organized and executed, and documenting all relationships with employees and contractors. If appropriate, sellers should also try to settle any customer disputes or any pending lawsuits before approaching prospective buyers.

Buyers need to assess all financial capabilities at their disposal to acquire the target. Unless the proposed transaction will be seller-financed, each prospective buyer should focus on securing bank financing and be prepared for a long process resulting in a complex financing structure. Every bank will carefully scrutinize the financial situations of the target, the buyer and the validity of the buyer's equity proposed to go into the deal. If liquidity is an issue, the buyer should talk to those already investing in the target company as potential partners. Having equity partners invest in the buyer and then acquire the target company in a second step may also be an option.

Letter of Intent: Once negotiations between the parties have begun, it makes sense to use a letter of intent with a binding confidentiality section outlining the key terms of the transaction. Buyers should try to push for a "no-shop provision"—meaning that the target cannot negotiate with another prospective buyer while negotiations are pending.

Earn-out Provisions: If the parties are not able to agree on a "fair" purchase price, using earn-out provisions makes sense. This means that after closing, a portion of the purchase price is contingent upon the acquired business reaching certain milestones. Typically, these benchmarks are financial, such as net income and net revenues. Sometimes, parties use non-financial milestones such as the number of customers, the launch of a new product, or the execution of a certain agreement with a major new customer. Emerging companies use non-financial benchmarks because determining the value of the business is more difficult than for mature companies. Another advantage of an earn-out provision is that it will reduce the base purchase price. This makes obtaining bank financing easier as the debt-equity ratio is more appealing to prospective lenders.

Holdbacks: An additional protection for the buyer is the use of holdbacks for a part of the purchase price to cover post-closing indemnification claims and other contingencies. This means that a part of the purchase price is placed with an independent escrow agent, for a specified period of time after closing. The holdback amount can be as high as 20 percent of the purchase price, but holdback amounts of up to 10 percent of the deal value are the norm.

Employing Key Personnel to Ensure a Seamless Transition

In many M&A deals involving closely held businesses, one or numerous sellers are executives or other employees of the target company. From the perspective of a corporate buyer, integrating the target company into its business operations will be challenging. However, continuing a seamless operation with customers and vendors is imperative to the company's success. In difficult economic times, it is important to make the transition with the new owners as smooth as possible. As early in the process as possible, both parties should discuss which key employees will remain on the payroll, in what capacity, the term and compensation aspects. Another option is to hire, for a specified period of time, one or two sellers who served in an executive capacity prior to closing to act as external consultants.

Because of the current economic climate, buyers and sellers should be prepared for deals to take longer than expected and have more complex legal and financial structures than before. Deals will still be done but transaction costs will be higher. On the other hand, in a stagnant economy, strategic investors will find that relatively low company valuations and decreased competition offer numerous growth opportunities through M&A transactions. ■

Florian Hauswiesner is a corporate lawyer in Tysons Corner representing both sellers and buyers of businesses. He can help you prepare a business for sale, negotiate terms sheets and deal documents, and manage closing. You can contact him directly at *florian@hfkllp.com* or 703-992-8810. Additional information on mergers and acquisitions and other corporate matters are available at Hauswiesner Fritz King LLP's Web site at *www.hfkllp.com*.

BUSINESS VENTURES Third Quarter 2009

Minority Businesses in the Spotlight

Eleven Fairfax County Companies Make 2009 *Hispanic Business* List

Eleven Fairfax County-based companies, including nine in technical fields, are among the 500 largest Hispanic-owned businesses in the nation based on revenue, according to *Hispanic Business* magazine. The list was published in the magazine's June issue.

The Fairfax County companies are among 18 from Virginia on the 2009 Hispanic Business 500 list, which is based on 2008 data. Fairfax County has more firms on the list than 39 states, including Maryland (eight), as well as the District of Columbia (five).

"Fairfax County is proud to be the home of so many successful Hispanic-owned companies," said Gerald L. Gordon, Ph.D., president and CEO of the Fairfax County Economic Development Authority. "The fact that Fairfax County has nearly as many Hispanic Business 500 firms as Maryland and the District of Columbia combined illustrates the strength and diversity of the county's economy and business community."

The 11 Fairfax County companies on the 2009 *Hispanic Business* 500 list are:

38 MVM, Inc. *(www.mvminc.com)*

85 Tessada & Associates *(www.tessada.com)*

88 GeoLogics Corp. *(www.geologics.com)*

131 COmputing TechnologieS, Inc. *(www.cots.com)*

140 Priority One Services, Inc. *(www.priorityoneservices.com)*

141 MicroTech LLC *(www.microtechllc.com)*

156 SCI Consulting Services, Inc. *(www.sciworld.com)*

221 Kemron Environmental Services *(www.kemron.com)*

270 Citizant *(www.citizant.com)*

385 Engineering Management & Integration *(www.em-i.com)*

499 MAC Aerospace Corp. *(www.macaerospace.com)*

Together, these companies generated $510 million in sales revenue and employed 5,130 workers in 2008. ■

Six Fairfax County Firms Named to 2009 *Black Enterprise* 100 List

Black Enterprise magazine's 2009 ranking of the 100 largest African American-owned industrial/service businesses in the nation includes six Fairfax County-based companies, five of them federal contractors in information technology sectors. The magazine bases the BE 100 on company revenue. The list is in the magazine's June issue and online at *www.blackenterprise.com.*

The six Fairfax County companies constitute more than half of the 10 Virginia companies on the BE 100 service/industrial list this year, and one-third of the 18 businesses on the list from the Washington, D.C., region. Only six states have more than six companies on the list: Georgia, Illinois, Michigan, Ohio, Texas and Virginia.

"We are extremely proud to be the home of more top African-American owned and operated companies than 44 states," said Gerald L. Gordon, Ph.D., president and CEO of the Fairfax County Economic Development Authority. "Fairfax County is such a unique community. Everyone has opportunity and everyone can contribute to our overall economic success."

The six Fairfax County companies on the 2009 BE 100 service/industrial list are:

17 Thompson Hospitality *(www.thompsonhospitality.com)*

31 UNITECH *(www.unitech1.com)**

47 OMNIPLEX World Services Corp. *(www.omniplex.com)*

54 COMTek *(www.comtechnologies.com)*

70 CMI Management, Inc. *(www.cmimgmt.com)*

98 InScope Solutions *(www.inscopesolutions.com)*

Together, the six companies earned more than $694.8 million in sales revenue and employed 7,030 workers in 2008. ■

**Acquired by Lockheed Martin in January 2009.*

Commissioner Soza Honored

Photo by Karen Smaw, FCEDA

On July 17, Fairfax County Economic Development Authority Commissioner Will Soza received Dialogue on Diversity's Lifetime Achievement Award. Maria Cristina C. Caballero, president/CEO of Dialogue on Diversity, presented the award to Soza after his keynote speech at the 2009 Entrepreneurship/Information Technology Conference in Washington, D.C. ■

Founded in 1991, Dialogue on Diversity is a international network of women entrepreneurs that promotes constructive dialogue among Latino and other ethnic and cultural communities, with a special emphasis on their economic viability through entrepreneurship. For more information, visit *www.dialogueondiversity.org*.

FCEDA's "Entrepreneurship 201" Workshop Takes Companies to "Next Level"

For Fairfax companies that have been in business for at least five years, and which have had increasing revenue for three years, the "Entrepreneurship 201: Beyond the Basics" workshop on June 17, 2009, featured experts talking about growth and expansion strategies and tactics in marketing, finance, business development and commercial real estate.

Comparing the workshop to the FCEDA's popular "Entrepreneurship 101" sessions, Gerald L. Gordon, Ph.D., president and CEO of the FCEDA, noted that this session offered "the kind of strategies and advice that business people can use to take companies to the next level."

Presenters included David Krauskopf, business counselor, SCORE, on "Marketing Strategies for Growing Your Business;" Diane Dempsey, director of small business relations, BAE Systems, on "Business Development Strategies for Public and Private Sector Procurement;" Deric Mims, chairman of the Community Business Partnership, and senior vice president, SunTrust Bank, on "Financing Resources for Company Growth" and Catherine Riley, vice president of marketing, Fairfax County Economic Development Authority, on "The Value of Economic Development in Fairfax County."

Next up: December Session of "Entrepreneurship 201: Beyond the Basics"

The workshop is scheduled for December 2, from 8 am to noon at the FCEDA headquarters in Tysons Corner. There is no cost to attend, but you must pre-register. Seating is limited to the targeted audience. For more information and to register, visit *www.fairfaxcountyeda.org/events/entrepreneurship-201.* ■

Photo by Alan Fogg, FCEDA

At the Entrepreneurship 201 workshop, June 17, 2009. Left to right: David Krauskopf, SCORE counselor; Diane G. Dempsey, director, small business relations, BAE Systems; Jo Mears, U.S. Small Business Administration; Catherine W. Riley, FCEDA Vice President, Marketing; Deric Mims, senior vice president, SunTrust Bank; Barbara Carpenter, community outreach manager, FCEDA, and Steve Tate, principal, Capital Properties, LLC.

"Entrepreneurship 101" Reaches Milestone

Photo by Alan Fogg, FCEDA

Cristobal Rivera, a Springfield resident who hopes to start a business specializing in movies and music from central and South America, became the 2,000th person to attend an "Entrepreneurship 101" workshop since the FCEDA began hosting them in 2003. During a ceremony at FCEDA headquarters, Mr. Rivera was presented with a certificate marking the occasion.

Pictured, left to right are: Jo Mears, U.S. Small Business Administration; Cristobal Rivera; Catherine Riley, vice president, marketing, Fairfax County Economic Development Authority; Tina Wade, Virginia Department of Business Assistance. ■

NEWS YOU CAN USE NOW

SBA American Recovery Capital (ARC) Loan

The U.S. Small Business Administration (SBA) will begin accepting loans for a new temporary program called America's Recovery Capital. "ARC" loans of up to $35,000 are designed to provide a "bridge" for viable small businesses with immediate financial hardship—to keep their doors open until they get back on track.

"These ARC loans are another tool in the SBA toolkit which will provide critical support to small businesses struggling to make it through these tough economic times," said Administrator Karen G. Mills.

ARC loans are deferred-payment loans of up to $35,000, available to established, viable, for-profit small businesses that need short-term help to make their principal and interest payments on existing and qualifying business debt. ARC loans are 100-percent guaranteed by the SBA and have no SBA fees associated with them.

ARC loans will be disbursed over a period of up to six months and will provide funds to be used for payments of principal and interest for existing, qualifying small business debt including mortgages, term and revolving lines of credit, capital leases, credit card obligations and notes payable to vendors, suppliers and utilities. SBA will pay the interest on ARC loans to lenders at the variable rate of the Prime interest rate plus 2 percent.

Repayment will not begin until 12 months after the final disbursement. After the deferral period, borrowers will pay back the loan principal over five years.

ARC loans will be made by commercial lenders, not SBA directly. For more information on ARC loans, visit *www.sba.gov.* ■

For more information about all of the SBA's programs for small businesses, call the SBA Answer Desk at 1-800 U ASK SBA or TDD 704-344-6640, or visit the SBA's Web site at *www.sba.gov.*

Is it Networking—or Annoyance?

By Melvin Murphy

At a business function, I met an insurance/financial consultant with a major FORTUNE 500 company. He was very personable and the conversation was pleasant throughout the evening.

At the end of the night, we exchanged business cards and parted ways. The next week I received a telephone call from the consultant pitching his firm to manage my financial portfolio. I explained that, in that area, I had no need for his services, and I thought the discussion was over. Several weeks later, he called once again offering his services. Again, I expressed my satisfaction with the company I was already using.

Eventually, he passed my name to one of his colleagues, who requested to borrow my mailing list for marketing purposes. I refused to lend my mailing list, but I offered assistance in other ways.

During one of the subsequent conversations I had with the second consultant, he said, "You should allow [the first consultant] to manage your financial portfolio."

When did the simple act of networking turn into annoyance?

If you are on either end of a networking situation, remember:

- Networking is different from badgering. Learn to listen, and don't be conniving in an effort to win business. Don't be like the consultant who asked his colleague to approach me about my portfolio.
- Be firm if you don't want to continue hearing a pitch. People often employ aggression to force an issue. If a contact doesn't explicitly communicate a lack of interest, the aggression will continue.
- Savvy self-promoters know that making contacts isn't just about how many, but about forging long-term relationships.

It is imperative that when you meet new people, and even in existing partnerships, you don't attempt to use others. The result may be the loss of your good reputation. Most people are pleasantly surprised when you approach them with a genuine interest in learning more about them and their business. When you are genuinely interested in learning more about them, trying to help them solve their problems and keeping in touch with them to see how their progress is, you are setting the groundwork for becoming a trusted resource. Remember: networking done well doesn't feel awkward or aggressive. ■

Speaker, author and seminar leader Melvin Murphy's latest book is "I'm Somebody, Who Are You?" Send comments to *mmurphy833@aol.com*, or visit *www.melvinmurphy.com.*

Looking for a Business Event or Class in Fairfax County?

The FCEDA's Small Business Datebook lists upcoming classes, workshops, conferences and other events of special interest to small and minority-owned businesses and entrepreneurs. Visit the online calendar at *www.fairfaxcountyeda.org/small-business-datebook.*

FAIRFAX COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
Business VENTURES
QUARTERLY NEWSLETTER FOR SMALL, MINORITY- AND WOMAN-OWNED BUSINESSES

Fairfax County Economic Development Authority
8300 Boone Boulevard, Suite 450
Vienna, VA 22182-2633