DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

Aborted Bid Cost Insurance

Issue

The M&A community is filled with reports of failed mergers or acquisitions. These transactions fail for a variety of reasons, many of which are outside the control of the parties involved.

Some of the reasons a deal falls through may include:

Other party accepts a higher bid;

Failure to receive regulatory approval;

Loss of financing;

Withdrawal by the other party

Compounding the disappointment of a failed deal is the significant financial loss associated with the fees that must be paid to the various external advisers who were retained to execute the transaction. These parties may include attorneys, investment bankers, public relations firms, auditors, printers and lobbyists.

Solution

Aborted Bid Cost Insurance is offered presently through Lloyds markets, this coverage reimburses the company for external costs resulting from an aborted transaction which has failed for identifiable reasons outside the company's control. Although the insurance cannot prevent the failure of the transaction, it can insure that the experience is not also a financial loss. The coverage can be purchased as soon as an agreement in principle is reached.

Frequently Asked Questions

Is a draft policy available? Yes.

How do you determine the policy limits? The policy limit is typically 1% of the transaction size. For example, a $100 million acquisition would typically require a $1 million policy. However, this can be adjusted as needed.

What does it cost? Premiums range from 4% to 9% of the limits purchased.

When should the insurance be purchased?

- Private companies must purchase within five (5) days of signing the Letter of Intent.
- Public companies must purchase within five (5) days of announcing the deal or signing the agreement.

What information is needed to get a quote? A completed application and the merger agreement and/or the letter of intent.

Is confidentiality maintained? The confidentiality of our client transactions is paramount. Each transaction is structured by a dedicated team of professionals who specialize in M&A transactions.

What is the policy period? The policy must incept no later than five (5) days after signing the letter of Intent and extends until completion or termination of the transaction or 12 months, whichever comes first.

Case Studies

Case Study I

Issue
Two public companies agree to a merger and sign a Letter of Intent. The purchaser intends to acquire the seller's stock at $8 per share.

A week after announcing the deal, the seller accepts a competitive bid at $9 per share.

The buyer is unwilling to raise their bid. This leaves the buyer with $2,500,000 in unrecoverable costs, which are owed to various professional advisers.

Solution

For an estimated premium of $140,000 an insurance policy would have reimbursed the insured for all external costs related to the failed merger**.**

Case Study II

Issue
A New England company agrees to acquire its largest competitor.

Four months after the transaction is announced, the FCC refuses to approve the transaction unless the acquirer agrees to sell substantial assets. The parties do not want to proceed on this basis and the transaction is terminated leaving almost $1,900,000 in professional fees incurred with no possibility of recoupment.

Solution
Both the buyer and the seller could have purchased coverage to reimburse them for any external costs related to the merger.