

THE DRAWBACK IN VENDOR CONTRACTS

Although there is certainly a resurrection in *de novo* banks making a comeback across the country, it does not seem to have an effect on the ever-increasing number of mergers and acquisitions. There were 129 M&A transactions in the first two quarters of 2018.¹ Over 25% of those transactions occurred in the Southeast Region.²

With the Trump administration's emphasis on reducing regulatory hurdles, it is expected that M&A activity will continue to heat up across the country. While there are obvious costs that are associated with acquiring a financial institution, there is one often overlooked cost that seems to catch most acquirers by surprise – vendor termination fees. This oversight is an increasingly common and costly mistake, as we are seeing termination fees in excess of \$1 million dollars.

Typically, vendor contracts contain boilerplate language and legalese that are often not negotiated when the contract is entered into. These boilerplate provisions, however, are worth a second look by your legal counsel. Our firm has been seeing the fees associated mostly with FinTech and credit card contracts, from numerous large named vendors that have been well-trusted throughout the industry. The fees come in the form of deconversion fees, decoupling fees and express early termination fees, regularly shadowed by the vendor providing

a monthly service discount in exchange for extending the contract term.

Often times the financial institutions do not pay attention to such fees because they are not looking to be acquired. They only become important upon receiving an invoice from the vendor after giving notice of termination of their services. By the time we are contacted by certain financial institutions involved in an M&A transaction, it is often too late to negotiate the terms of the vendor contract entered into years prior. These contracts have the potential to have a major impact on the transaction price and shareholder value.

We urge you to read through your vendor contracts and not to accept that language that may seem boilerplate or typical. Our firm has experience in dissecting the unconscionable provisions and negotiating on the behalf of financial institutions across the country. Do not leave yourself exposed to potentially avoidable fees.



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