


# Mergers **and** Acquisitions

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**Targeting businesses** that are contemplating a merger or acquisition is a smart business decision when you consider the assets that are held in retirement plans. The sales process, however, can appear complicated if you don't have a clear understanding of what happens – and what **needs** to happen – along the way. There are numerous questions to ask, important aspects of the sale to be considered, and complex rules that affect the disposition of the buyer or seller's retirement plan. We have prepared the following information to assist you in **communicating** the **benefits** of working with Transamerica early in the process, and to instill prospects with **confidence** in your ability to provide retirement plan solutions throughout the merger and acquisition process.







## Learn what you need to know – by asking

You have a prospect that is preparing for a merger or acquisition. Before you make recommendations regarding the retirement plan, you need to ask your prospect some important questions – questions that are critical to the outcome of the plans involved in the transaction:

- Has the sale/purchase agreement been signed?
- Is the transaction a stock sale or asset sale?
- What type of plan does the buyer have? The seller?
- Are any of the plans a 401(k)?
- What has been communicated to the affected employees?
- What are the buyer's goals with respect to the plan of the acquired entity?

## Taking stock

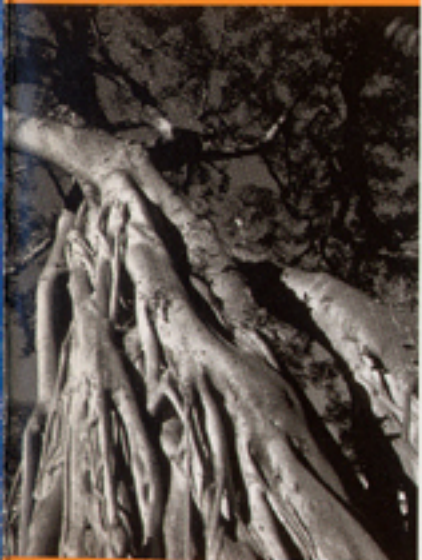
There are specific procedures that apply in a pure stock sale transaction or one that involves a money purchase plan. Here are some points to consider when the buyer is preparing to assume the seller's plan:

- Understand and evaluate the buyer's goals.
- Review both the seller's and the buyer's plan documents for compatibility.
- The seller's employees could enter into the buyer's current plan – while the seller's plan's assets likewise could merge into the buyer's plan.
- Note that alternative and separate plans could be maintained subject to the Acquisition Transitional rule.
- If the seller's plan is a money purchase plan, the buyer could immediately freeze accruals to stop liability with a board resolution, a plan amendment, and a notice to employees. Freezing allows the buyer time to examine his company's options without incurring further liability.

## Assets for Sale

In a merger/acquisition transaction based on the purchase of assets, the seller continues to own its current plan. These are the main characteristics of an asset sale:

- Contributions are discontinued for acquired employees under the seller's plan.
- Seller's and buyer's plan documents are reviewed if a merger is being contemplated to determine compatibility.
- Acquired employees enter the buyer's plan.
- Rollovers from the termination of the seller's plan can be accepted into the buyer's plan.
- If the seller's plan is a money purchase plan, the seller could immediately freeze accruals to stop liability with a board resolution, a plan amendment, and a notice to employees.







## Know the rules

There are three basic rules that can affect the disposition of the buyer's/seller's plans:

### **THE SAME DESK RULE**

Prohibits a distribution upon the liquidation, merger or sale of plan assets of an employer if their employees continue in the same jobs with the new employer.

### **ONE YEAR HOLD OUT RULE FOR DISTRIBUTIONS**

Distributions from a seller's plan when the plan ends prevents acquired employees from joining the buyer's plan for 12 months following distribution of assets - if the sale agreement is signed after the purchase/sale agreement is signed.

### **SUCCESSOR PLAN RULES**

- Distributions are not permitted if the employer sponsors a successor plan.
- A plan is a successor plan if it exists from the date of plan termination to 12 months after distribution of all assets.
- Distributions are permitted from the seller's plan if acquired employees are excluded from the buyer's plan for 12 months following distribution upon plan termination.
- The seller's plan should be terminated before the acquisition date to avoid successor plan rules.

## **A few tips for a smooth transaction**

- Get involved as early as possible in the transaction and deal only with the decision-maker.
- Ask if the sale/purchase agreement discusses the status of the seller's plan.
- The buyer may request the seller to terminate his plan before acquisition to avoid "baggage." In this case, suggest individual rollovers.
- Note the procedure if a money purchase plan is involved: immediately freeze accruals with a board resolution, a plan amendment, and a notice to employees.
- Call your Transamerica representative before you meet with your prospect.

Merger and Acquisition transactions are an excellent way to get "assets in the door," but they can appear complex. Rest assured, Transamerica will work with you every step of the way – so you look good, and your prospects needs are met.

You can bring in additional assets from either the buyer or seller by knowing the correct procedures and asking prospective clients the critical questions. For more assistance, call your Transamerica Sales Consultant or the Transamerica Producer Hot Line at **(888) 401-5826**.