

FOLEY EXECUTIVE BRIEFING SERIES



**Strategies for Broker-Dealers: Moving Forward During Economic Difficulty**

March 16, 2009

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**Program Introductions**

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**View From Inside the FINRA  
Enforcement Process**

**Recent Changes, New Priorities, and Practical Advice  
in Dealing with FINRA**

Richard G. Wallace, Partner



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**Top Trends in Broker-Dealer M&A**

Edwin D. Mason, Partner



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## Tell Me Something I Don't Know...

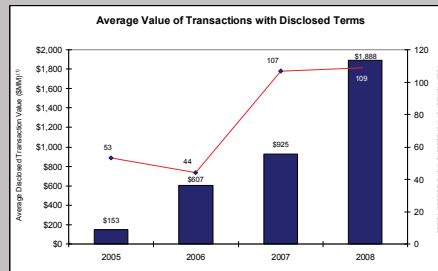
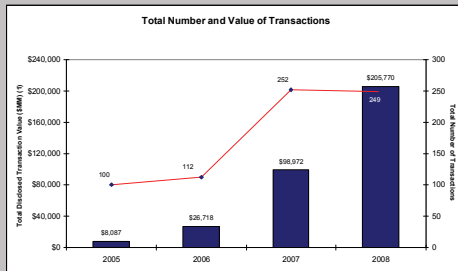
- Credit crisis has choked off transaction funding, but is forcing weak companies to sell assets.
- Private equity is out of deals.
- The bad economy has elevated caution as the driving motivation for buyers.



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## Retrospective: The Broker-Dealer Universe in 2008



Selected Global Transactions: 2008 (\$MM)

Ann Date	Target	Target Type	Target Country	Acquirer	Acquirer Country	Percentage Acquired	Deal Value	Entity Value (1)
9/14/08	Merrill Lynch & Co Inc	Global Investment Bank	United States	Bank of America Corp	United States	100%	\$48,766	\$48,766
10/3/08	Wachovia Corporation	Divorced	United States	Wells Fargo & Company	United States	100%	\$5,127	\$5,127
8/31/08	Dresdner Bank AG	Divorced	Germany	Commerzbank AG	Germany	100%	\$4,348	\$4,348
10/6/08	Fortis Bank S.A/NV	Divorced	Belgium	BNP Paribas SA	France	75%	\$2,765	\$7,020
1/13/08	Citigroup Inc.	Divorced	United States	Cit-Ind Investor Group	Singapore	N/A	\$2,590	N/A
9/15/08	HSBC plc	Divorced	United Kingdom	Lloyds TSB Group plc	United Kingdom	100%	\$2,502	\$6,562
10/14/08	Credit Suisse	Divorced	Switzerland	Qatar Holding	Qatar	20%	\$,148	\$5,392
9/30/08	Delta	Divorced	Belgium	Cris of Belgium, France and Luxembourg	Belgium	N/A	\$,013	N/A
9/23/08	Morgan Stanley	Global Investment Bank	United States	Mitsubishi UFJ Financial Grp	Japan	22%	\$,839	\$5,841
3/16/08	Bear Stearns Companies, Inc.	Global Investment Bank	United States	JPMorgan Chase & Co	United States	100%	\$,456	\$,456

(1) Dollar value of consideration must be at least \$5M if disclosed

Source: Freeman & Co. LLC



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## Broker-Dealer – Number and Value of Transactions

- Despite the visibility of government engineered bailouts and distressed transactions during 2008, financial services transactions were down slightly from 2007 numbers.
- In 2007, there were 252 broker-dealer transactions, with an average transaction value of \$925 million.



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## Broker-Dealer – Number and Value of Transactions

- In 2008, the number of broker-dealer transactions dropped to 249, but, because of certain “mega-deals”, the average transaction value grew to \$1.8 billion.

Selected Global Transactions: 2008 (\$MM)

Ann. Date	Target	Target Type	Target Country	Acquirer	Acquirer Country	Percentage Acquired	Deal Value	Entity Value #
9/4/08	Merrill Lynch & Co Inc	Global Investment Bank	United States	Bank of America Corp	United States	100%	\$48,766	\$48,766
10/3/08	Wachovia Corporation	Diversified	United States	Wells Fargo & Company	United States	100%	15,127	15,127
8/1/08	Dresdner Bank AG	Diversified	Germany	Commerzbank AG	Germany	100%	14,348	14,348
10/9/08	Fortis Bank S.A./N.V.	Diversified	Belgium	BNP Paribas SA	France	75%	12,765	17,020
1/15/08	Citigroup Inc.	Diversified	United States	QIC Ltd Investment Group	Singapore	N/A	12,500	N/A
9/18/08	HBOS plc	Diversified	United Kingdom	Lloyds TSB Group plc	United Kingdom	100%	10,502	10,502
10/16/08	Credit Suisse	Diversified	Switzerland	Qatar Holding	Qatar	20%	9,148	45,392
9/5/08	Deuts	Diversified	Belgium	Grp of Belgium, France and Luxembourg	Belgium	N/A	9,013	N/A
9/22/08	Morgan Stanley	Global Investment Bank	United States	Mitsubishi UFJ Financial Grp	Japan	22%	7,839	35,841
3/16/08	Dear Stearns Companies, Inc.	Global Investment Bank	United States	JPMorgan Chase & Co	United States	100%	1,456	1,456

(1) Dollar value of consideration must be at least \$5M if disclosed

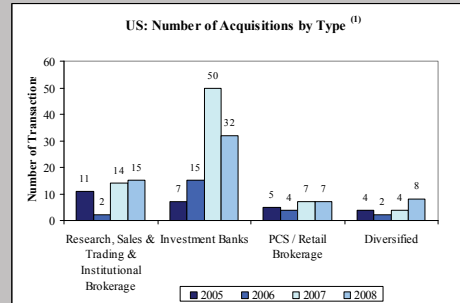
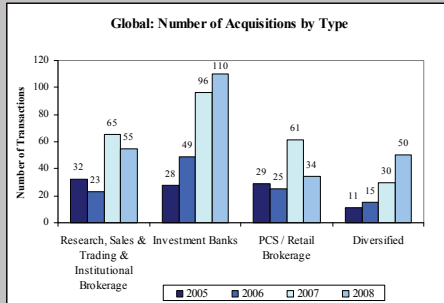
Source: Freeman & Co. LLC



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## Retrospective: The Broker-Dealer Universe in 2008 continued...



(1) Transactions where the target was a North American entity.

Firm Type Classifications:

Research, Sales & Trading & Institutional Brokerage = Institutional Brokerages, Specialists/Market Makers & Equity/Fixed Incomes Research Firms

Investment Banks = Global, Regional & Boutique Investment Banks

PCS/Retail Brokerage = PCS Teams & Retail Brokers

Diversified Broker-Dealer = whose revenues are not predominantly derived from any one of the above categories

Source: Freeman & Co. LLC



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## M & A Snapshot: January 2009

- January 2009 global M&A deal activity down 38.7% from prior January.
- January 2009 U.S. M&A deal activity down 50% from prior January.



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## M & A Snapshot: January 2009

- But lower middle market (deals < \$100M) is relative “bright” spot, with deal flow down less than 40% compared to 60% or more for deals over \$100M.



## A Buyer's Market has Emerged

- Strategic buyers dominate.
- Valuations have come down some but price points are still unstable.
- Cash is king.





## Distressed M&A Will Continue to Increase

- However, scarcity of debtor-in-possession financing will hamper Chapter 11 reorganizations and result in more piecemeal liquidations rather than sales of going concern businesses.
- This allows patient buyers to cherry-pick.



## Distressed M&A Will Continue to Increase

- “Orphaned” business units of larger financial institutions may be attractive targets for smaller niche buyers.





## Buyers Must Guard Against Risks Associated with Acquisitions

- Bad economic times expose buyers to risks of ill-conceived and/or poorly executed acquisitions—there's little room for error and potential major downside to buyers.
- Rigorous due diligence is a necessity.
- A slower M&A market may allow for extended due diligence periods for buyers to “drill-down” on acquired businesses.



## Buyers Must Guard Against Risks Associated with Acquisitions

- Buyers' diligence needs to assess impact of non-competes, if any.
- Buyers need to bring the right expertise to the table.
- Asset (vs. stock) deals can help shield buyers from liabilities but are not guaranties against assumption of unwanted liabilities.





## Buyers Must Guard Against Risks Associated with Acquisitions

- Post-closing execution will be critical to avoid or mitigate risks going forward.



## Buyers Must Guard Against Risks Associated with Acquisitions

- The reverse side of the coin: prospective sellers must plan ahead for due diligence and get their houses in order.





## Trends in Deal Terms

- Sellers may be more willing to negotiate on an exclusive basis and assuming sellers are able, for a somewhat longer period.
- Expect more buyer take-back financing or purchase price earn-outs, which can help bridge valuation/purchase price expectations.



## Trends in Deal Terms

- Anticipate smaller baskets; higher caps; increased escrows; tighter reps and warranties.
- But remember that seller indemnities are only as good as the party backing them.



## Trends in Deal Terms

- Consider specific quantitative MAC benchmarks to enable buyers to walk away from transactions without liability if financial or business conditions of targets deteriorate materially after signing M&A agreement.
- But, sellers will value certainty to close even more than ordinary times, so expect seller push-back.



## The 2009 Forecast

- Expect downward trend in overall M&A to continue throughout 2009 but with a possible upward counter-trend in M&A activity within the financial services industry.





## The 2009 Forecast

- Broker-dealers will continue to consolidate in 2009 as firms look for combined efficiency in an increasingly tough environment.



## The 2009 Forecast

- It's a great time to be in the market, if you are a disciplined strategic buyer with a strong balance sheet and a longer view.





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**Thank you for joining us for  
today's program.**