

Florida Credit Union Sets Precedent with Bank Deal

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By John Reosti

Achieva Credit Union's purchase of Calusa Bank in Punta Gorda, Fla., could prove a game changer for consolidation between rival financial industries.

The Dunedin, Fla., credit union became the first such institution to buy a bank in Florida. The sale of the \$165 million-asset Calusa also marked the first time that a credit union's purchase of a bank has been structured as a merger, rather than as a purchase-and-assumption agreement.

An absence of precedent re-

sulted in a lengthy review by regulators.

"It was an uphill slog for several months," Michael Bell, a lawyer at Howard & Howard in Detroit, said in an interview.

"We were blazing a trail and the regulators were blazing a trail," Gary Regoli, Achieva's chief executive, added. "We anticipated that we'd have to take our time. There were questions that had never been asked."

The key issue involved the deal's structure, since Achieva

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THURSDAY, DECEMBER 3, 2015 AMERICAN BANKER

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had proposed buying all of Calusa's issued and outstanding stock. The differences between that method and a purchase and assumption of assets and liabilities extend beyond academic analysis. Prior bank acquisitions by credit unions were all structured as purchase and assumptions.

There could be negative tax consequences for purchase-and-assumption deals when a selling bank is profitable. In addition, most bank combinations are structured mergers. Set against those issues, credit unions would likely prefer whole-bank deals, industry observers said.

Industry observers have long expected more credit unions would buy banks, and Calusa's sale could be used as a template. Bell said he is working with several other Florida-chartered credit unions that are interested in buying banks. Regoli, moreover, indicated Calusa – the 20th bank in Florida to be sold this year – was not the only bank that had met with Achieva.

Bell said he believes whole-bank acquisitions by credit unions might be feasible in some states under current statutes, adding that some "small changes" could extend the opportunity to other states and open the

field to federally chartered credit unions.

Not everyone is so optimistic about the prospects for future deals.

Peter Duffy, a managing director at Sandler O'Neill, said credit unions would have to gain access to supplemental capital before bank acquisitions become a significant trend.

Under current regulations, booking retained earnings is the means of adding capital available to most credit unions, a fact that clearly limits their ability

"We were blazing a trail and the regulators were blazing a trail," a CEO says.

to pay for acquisitions – whole bank or otherwise.

"A buyer has to consider the potential introduction of goodwill, which has the effect of reducing capital ratios," Duffy said. "Potential credit union buyers are going to be very mindful of their ratios without access to supplemental capital."

The National Credit Union Administration, which oversees the industry's deposit insurance fund and supervises federal credit unions, is contemplating issuing rules that would permit supplemental capital to count in calculating an institution's risk-based capital ratio.

Before supplemental capital could be used in calculating the more important overall capital ratio, however, Congress would have to revise the Federal Credit Union Act, which defines retained earnings as the only source of regulatory capital for credit unions.

Legislation to that effect was introduced in the House of Representatives earlier this year, but it has yet to clear the Financial Services Committee.

"We're really getting to a point where Congress has to decide whether they want these types of combinations to occur," Duffy said.

What about credit union sales to banks? Instances of those taking place are even

scarcer than credit unions buying banks, which is a problem, some industry observers said.

"It's got to go in both directions," Bell said. "It should be easier for banks to buy credit unions. ... The market will demand it. It can't impact just one side."

The market "wants large, well-run, healthy institutions to be able to add scale via acquisitions, not just organically," Duffy said.

Banks seeking to buy credit unions face significant hurdles, said Barak Sanford, a managing director at Promontory Financial in Washington. For instance,



More to Come? Attorney Michael Bell said he is working with several other Florida-chartered credit unions that are interested in buying banks.

winning approval from credit union members is typically more difficult than securing the blessing of bank shareholders. Regulators are also likely to give closer scrutiny to deals that result in the termination of membership rights, he added.

"Restrictions come into play," Sanford said. "I don't see bank acquisitions of credit unions becoming easier."

Negotiations between the \$1.1 billion-asset Achieva and Calusa began after an investment banker introduced Regoli to Lew Albert, Calusa's chairman and chief executive, and Todd Katz, the bank's president. Geogra-

phy was a key driver; Achieva wanted to enter Charlotte County, where three of Calusa's four branches were located.

Achieva agreed in May to pay \$23.2 million in cash for the privately held Calusa.

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