



MONTHLY NEWSLETTER

Vol. 3 • Issue 5 • March 2010



The President's Letter

Many thanks to all those who attended and participated in what turned out to be one of the best Capital Connections we have ever had in Atlanta. Facing the headwinds of our current economy and the struggles of many other organizations and events during these tumultuous times, Kurt Putkonen (PNC Business Credit and the Chairman of this year's Atlanta ACG Capital Connection Committee) and the Capital Connection Committee did a tremendous job driving sponsorships and participation, exceeding last year's event by at least 10% by almost every measure. Congratulations and many thanks to Kurt and the rest of the Atlanta ACG Capital Connection Committee: Ed Fisher (SouthPointe Ventures), Nancy Halwig (UPS Capital), Stuart Johnson (Barnes & Thornburg), Carol Langendorf (Regions Business Credit), Alex Mammen (TM Capital), Andy Mason (VRA Partners), Robert Owen (Tucker Midas) and Todd Wade (Bryan Cave).

We also have exciting news - our organization, Atlanta ACG, is partnering with *Georgia Trend* magazine to sponsor its awards for the fastest growing companies in Georgia. We are co-sponsoring the June 17, 2010 event with Cherry Bekhaert & Holland; the accounting firm responsible for helping compile the financial information related to the awards, interview management, review financial information and judge the awards. Moreover, we are forming a committee to plan the event to present awards to the winning companies. We are looking forward to participating in this process and in giving our members the opportunity to work with these tremendous businesses and honor their growth.

On March 2nd, we had a terrific Academy Breakfast sponsored by US Trust with Robert Ball (CEO of Office Arrow) moderating the following panel of experts on how to use social media to drive value in business: Reggie Bradford (Vitruve), Ryan Lund (Raymond James), Cynthia Rogers (formerly with RazorFish) and Lewis Simons (Cox Communications). Our Young ACG group had another successful event at the W Hotel in Midtown on February 18th sponsored by Merrill Datasite. The event included a mock casino and all proceeds were donated to the Atlanta Community Food Bank. Speaking of community service, we are reviewing the submissions from a long and deserving group of nominees for our community services award. In addition, we are in the midst of the ACG Cup competition at a variety of area colleges and universities. We will announce the results of both efforts in our next newsletter.

Last, your Atlanta ACG Board passed resolutions earlier this month on Board member term limits to ensure that we continue to have the appropriate level of turnover of Board members in order to properly represent our members and to strengthen our organization. Last year, over 20% of our Board rotated off to allow new Board members to serve; and under the continued strong leadership of Wayne Bradley (McKenna Long & Aldridge) as the Chairman of the Nominations Committee, we anticipate the turnover this year to be similar. The Board is hoping to find active members to continue filling our Board with energy and passion for our successful organization.

At Atlanta ACG, we continue to progress as Ralph Waldo Emerson suggests, *"Do not go where the path may lead, go instead where there is no path and then leave a trail."*

Very truly yours,

Dominic C. Mazzone
Managing Director, Mazzone & Associates
President, ACG Atlanta
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Calendar of Events

Thursday, April 22, 2010: 6:00 p.m. - 9:00 p.m. • 103 West

April Reception

Speaker: Richard Smith, Equifax Inc.

Sponsored by: Kilpatrick Stockton

Tuesday, April 27, 2010

ACG Academy Breakfast

Tuesday, May 11, 2010: The Country Club of the South
Golf Tournament

Thursday, May 20, 2010: 6:00 p.m. - 9:00 p.m. • Villa Christina

Monthly Dinner Meeting

Speaker: Colin D. Meadows, Invesco

Sponsored by: Alston + Bird, LLP

Thursday, June 17, 2010: The Ritz-Carlton, Buckhead

Fast 40 Awards Dinner

New Members

Owen Basham, *Nancy Creek Capital*

Richard Baxter, *FTI Consulting, Inc.*

Stephen Brown, *Presidential Financial Corp.*

Treg S. Brown, *Genuine Parts Company*

William C. Bucher, *Axiom Healthcare Pharmacy, Inc.*

Rich Cockrell, *The Cockrell Group*

Michael J. Delaney, *Kilpatrick Stockton LLP*

Jim Deupree, *ChapterTwo*

Junko I. Horvath, *MV Financial Group*

Joel J. Hughey, *Premiere Global Services, Inc.*

Charles W. Mills, *Houlihan Lokey*

Eric Jia Morgan, *Regency Capital, LLC*

Wendi D. Murphy, *BNY Mellon Wealth Management*

Watson Nichols, *The Private Bank*

Todd K. Reich, *The Lenox Group, LLC*

Luis R. Reyes, *Decosimo*

Timothy Shelley, *Cherry, Bekaert & Holland, L.L.P.*

Wesley N. Slagle, *Bernstein Global Wealth Management*

Bruce Sugarman, *ConJoin Group LLC*

Adam Tillery, *FTI Consulting, LLC*

John R. Tinnell, Jr., *CIT Commercial Services*

Raul Velarde, *Bibby International Trade Finance*

Caroline Wisniewski, *Bridge Capital Associates, Inc.*

Board of Directors

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Mazzone & Associates

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Vice President of Membership

Todd Wade
Bryan Cave Powell Goldstein, LLP

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SouthPointe Ventures, LLC

Winston Gillum
Harbert Management Corporation

Ransom James
Arcapita Inc.

John Kahn
Financial Asset Management Systems, Inc.

Richard Kopelman
Habif, Arogeti & Wynne LLP

Teri McMahon
Alston & Bird LLP

Ira Moreland
ICV Capital Partners

Allen Taylor
Bank of America Merrill Lynch

Truc To
KPMG LLP



At Long Last, Deal Making Activity is Heating Up

Three Atlanta-based equity firms have closed transactions in the last couple of months, and they are seeing an increase in prospective deals for 2010.

Take the Atlanta Equity Fund. In late January, the private equity fund acquired Southport, Ct.-based Consumer Financial Services, a family-owned business that helps resolve delinquent accounts for commercial lenders and equipment manufacturers.

"A handful of factors are coming together to drive a better deal flow," said David Crosland, managing partner of Atlanta Equity Investors.

As in the case of CFS, the Company was founded by a father who had passed the day-to-day activities on to his son. The father wanted to cash out and the son wanted to professionalize the company and bring in a partner. So, Atlanta Equity purchased a majority of the Company and brought in an experienced CEO to work with the son.

"There's a generation of baby boomers that built wonderful businesses who are 65 or 70 and can't wait out the current downturn, and they want to continue to grow," Crosland said. "They need to do something."

Another category of deals is the company that needs capital to grow.

"In a different environment, they might have secured that capital with debt. But now in softer markets, they need equity capital to continue to drive growth," Crosland said.

Plus there are two other factors "driving more transaction volume," he added.

First, people want to complete deals before there is an increase in the capital gains tax rates, which is expected next year.

"Credit markets in the last 90 days have started to thaw," Crosland said. "I wouldn't be surprised if by the third quarter banks decide they need to get

back in business and decide to become more aggressive. But, I don't think we'll see the kind of craziness that we saw in 2008 and before."

As Crosland said, "There's more transaction volume than last year and the quality is improving." But he is concerned that there might be a double-dip recession as inventories get replenished and as stimulus funds are depleted.

Another Atlanta private equity firm — Roark Capital Group — also is seeing more activity.

Earlier this month, the firm — partnering with Philadelphia-based Entrepreneur Partners — closed on the acquisition of Peachtree Business Products and AmeriFile, two related direct marketing firms specializing in the business-to-business space.

The combined business will be based in Marietta and will provide rapid turnaround, customized marketing and office management products to more than 250,000 small business customers nationally utilizing direct mail, the Internet and other marketing channels.

The deal was Roark's first of 2010 and could be a good sign that the economic tide is turning.

"We are very busy," said Ezra Field, managing director of Roark Capital Group. "Peachtree was our fifth acquisition in the past 6 months, and we have some promising new opportunities we're working on now. In terms of the economy, we continue to be cautious. Things appear to have stabilized in general, but specific sectors are still experiencing real pressure."

Larry Mock, managing partner of Navigation Capital Partners, said the firm just closed on a deal a couple of weeks ago. It acquired Specialized Technical Services, Inc., a company that installs smart meters for utilities.

"We try to identify a high growth industry, find a company and find a CEO," Mock said.

At STS, the goal is to grow the company to about \$50 million in sales, partly through another acquisition. And in three years, Mock expects the company to be making about \$200 million sales.

In looking back over the last 18 months, Mock said it's all a matter of perspective.

"We did eight new investments last year," he said. "That's because last year's prices were low, and it was a good time to be a buyer."

The firm's slogan from January, 2009 onwards was: "We need to turn owners into partners."

Navigation also has another deal about to close — the purchase of a Southeastern bank that is awaiting approval by the Federal Reserve Bank.

In addition to that, Mock said: "We've got several companies that we are very close to doing a deal." Most of those possible deals are being considered as a way to add to the STS platform.

"The positive thing that is happening is that the companies are performing better because the economy is picking up," Mock said. "The manufacturing sector seems to be leading us out of the recession."

Continued on page 4...



Maria Saporta is one of Atlanta's outstanding journalists and observers of local business. She was with the *Atlanta Journal-Constitution* for 27 years as a reporter and business columnist. Maria currently is writing a weekly column on Atlanta's business community for the *Atlanta Business Chronicle*.

Maria Saporta's Column - Continued...

From Wayne Bradley's perspective, mergers and acquisitions are "definitely back." Bradley is an attorney with McKenna Long & Aldridge, and while there is more activity than in the past year or two, it still is not as "robust" as professionals were hoping it would be. And, he expects that situation to continue for the balance of the year.

"We saw a steady stream of deals over the course of the year, and in fourth quarter, we saw a big pick-up in deals, including a large proportion of 'healthy' deals," Bradley said. "This has continued through the first quarter of 2010. And, as the economy continues to recover, we expect to see deal activity continue to increase."

But he added that sellers' expectations are still too high and that credit remains tight."

Bradley agreed with Crosland that deals will focus on companies that have to sell — family businesses without a succession plan, business divorces, and sellers concerned about possible tax law changes and companies that are in distress.

"There also are thousands of businesses facing refinancings that cannot be accomplished in today's credit markets, Bradley said. "Where cash flow is good, some lenders are 'kicking the can' and extending credit for another year, at revised market terms

While he believes growth will be "gradual," he also said some industries — primarily health care and technology — will see lots of deals.

Questions for the future remain.

As Field said: "It would be hard right now to make any prediction on how long it will be before sustainable growth appears or what the pace of growth will be once it shows up. Key indicators we are looking for include a decline in unemployment, an increase in consumer confidence, and greater debt capital availability to small businesses."

But in the meantime, several of Atlanta's private equity firms are enjoying brighter days for the rest of 2010.

Are You One of Georgia's Fastest Growing Companies?

Georgia Trend's 40 Fastest Growing Middle-Market Companies in Georgia

Sponsored by Association for Corporate Growth Atlanta
and Cherry, Bekaert & Holland

Association for Corporate Growth Atlanta (ACG Atlanta) and Cherry, Bekaert & Holland, L.L.P. (CB&H) and are pleased to inform you that they are accepting nominations for consideration as one of The 40 Fastest Growing Middle-Market Companies in Georgia, a special feature in the July issue of *Georgia Trend Magazine*.

The feature will highlight the Top 20 middle-market Georgia-based companies in the following two separate categories:

- ▶ The Small Middle Market category (companies with revenues of \$20M to \$60M); and
- ▶ The Large Middle Market category (companies with revenues of \$60M to \$500M).

Please complete and return the enclosed form to Katie Colombo (via email at kcolombo@cbh.com or via fax at 404.767.3217) by Friday, April 2, 2010. The entry form is also available online at www.cbh.com/Georgia40.

We will evaluate the results and contact the finalists to schedule brief appointments to validate the information and interview executives as appropriate for the magazine. We will then celebrate the success of the 40 notable companies at an exclusive awards banquet to be held in June.

ACG Atlanta



Submit your entry form online at
www.cbh.com/Georgia40

Transaction Planning as M&A Activity Comes Back to Life in 2010: Tax Issues Regarding Installment Sales of a Business

By Vince Eget and Jennings Pitts



After many months of inactivity, we are finally seeing M&A deal flow come back to life again. As this activity continues to increase, the professional advisory community needs to refocus again on sharpening their M&A planning skills.



Invariably, sales transactions in recent years often included installment notes and/or contingent consideration. This article will provide tax-planning information designed to enhance net after-tax cash flow when one of these aspects is part of a transaction.

When buying or selling a company, two of the most important factors to consider are cash flow and timing of cash flow. Many transactions involve cash payments over time, typically via an installment note. Further, it is not uncommon for a transaction to have an earn-out component or contingent purchase price. These types of arrangements are treated as installment sales under Internal Revenue Code Section 453 and create tax issues for both the buyer and the seller. When considering how to structure a transaction, one should review all aspects relevant to installment sales to ensure that the buyer and, particularly, the seller achieve the optimal net after tax cash flow from the transaction.

Without proper planning, sellers particularly can experience some unintended results. If a sales agreement does not include a maximum sales price, basis (either stock or assets) must be recovered over a fixed period represented by the future term of the installment note. Additionally, if there is a contingent payment over multiple years with no maximum sales price or fixed period, basis must be recovered in equal amounts over a 15 year period. Both scenarios potentially create a capital loss for the seller, which can arise by delaying the use of (stock or asset) basis that ends up being in excess of actual proceeds received. If using a fixed period or 15 year basis recovery period results in a substantial distortion of basis recovery, there is some relief available. A taxpayer may apply for an IRS ruling to use a reasonable basis of recovery. However, this is both costly and time consuming.

A seller must also pay attention to any depreciation recapture that might result in an installment sale transaction. Under Code Section 1245, ordinary income “taint” generally results when there is a gain related to an asset that has been previously depreciated or amortized. Gain subject to depreciation recapture is taxed at ordinary rates, which are

substantially higher than capital gain rates. Even worse, any ordinary income recapture must be recognized in the year of the installment sale irrespective of the fact that the installment payments are received in the future. Thus, steps should be taken to mitigate the adverse consequences of recapture in the deal negotiation. Typically, this is done through purchase price allocation or changes to the deal structure.

In any asset sale transaction, purchase price allocation is extremely important. Under Section 1060, purchase price is allocated to purchased assets to be depreciated and/or amortized over applicable lives based on relative Fair Market Value (FMV) following a residual approach. Any amount in excess of purchased identifiable assets is categorized as goodwill, which is a Section 197 asset amortized over 15 years. Typically, a transaction that includes cash and notes must allocate the proceeds pro-rata based on the relative FMV of the assets. However, parties to a transaction may also consider a non pro-rata allocation of the cash/note proceeds under Revenue Ruling 68-13. This may be an opportunity to allocate gain/loss in a more effective manner to increase the gain deferral period.

Another common issue regarding installment sales is that deferred interest must be computed and paid by the seller for transactions under Code Section 453(A) when installment obligations exceed \$5 million as of the end of each tax year. However, this is a “per taxpayer” limitation. Thus, the seller, who may encounter a potential 453(A) interest charge, could consider restructuring their transaction to fall below the \$5 million limit and avoid the charge. This can be done either by modifying the terms or possibly by a gift to their spouse in the case of a stock deal.

When structuring business transactions, one needs to be aware of the pitfalls and opportunities that arise with installment sales. Changes in the timing and ability to utilize basis should be reviewed by the seller and buyer to maximize net after tax cash flow. Also, care should be taken to ensure that income is not re-characterized from capital gain to ordinary income, and avoiding the additional interest charge under Internal Revenue Code Section 453(A).

Eget is a shareholder and Pitts is a manager at Bennett Thrasher PC, the 4th largest Atlanta-based accounting and audit firm. They provide a broad array of tax consulting for entities ranging from formation and structural issues to succession and liquidity events as well as critical business and tax planning throughout their life cycle. Please visit the firm online at www.btcpa.net.



What's on Your Horizon?



The Next Deal

75% of attendees directly attribute
new deals to their participation



New Business Relationships

95% of past attendees report making
valuable business contacts



Critical Market Intelligence

The world is changing and
you need to stay ahead of the wave

InterGrowth Brings Attendees and Opportunity Together —
Find Your Next Opportunity

MAY 4-6, 2010

FONTAINEBLEAU HOTEL, MIAMI BEACH, FLORIDA

Register online at www.acg.org

Programs Update

2010 Atlanta ACG Capital Connection

February 10, 2010



Programs Update

March Breakfast Meeting

March 2, 2010



ACG Atlanta

Golf Classic Tournament

Tuesday, May 11, 2010

Shotgun Start: 1:00 pm

\$175 per player / \$700 Foursome



THE COUNTRY CLUB OF THE SOUTH
4100 Old Alabama Road
Alpharetta, GA 30022

Our annual Golf Tournament is a favorite event of our members and their guests. In this economic environment, personal time in a relaxed setting with clients and potential clients is more important than ever. This is an awesome opportunity to entertain clients and provide them with a memorable and enjoyable experience.

Golfers of all ages and handicaps are welcome.

Registration for this event is available at:
<http://chapters.acg.org/atlanta>

For more information regarding this event,
please contact:

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