

## Stock Purchases versus Asset Purchases

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One of the first questions we ask a seller is, "Are you a C-corporation, S-corporation, LLC, partnership or sole proprietor?" Corporate structure is the primary element that steers a transaction toward a stock purchase or an asset purchase.

A stock purchase consists of the buyer purchasing stock directly from the selling shareholders of the target agency. The advantages to the sellers are straightforward. The selling shareholders receive capital gain treatment for the proceeds from the sale. Additionally, all liabilities and contractual relationships of the seller are retained in the corporation and transferred to the buyer. For a buyer, a stock sale allows for the ready transfer of the agency's contractual assets such as company appointments, producer non-solicit agreements and real estate leases. The significant disadvantages come from the loss of tax deductible intangible asset amortization and the assumption of the seller's known and unknown liabilities.

An asset purchase consists of the buyer purchasing all of the intangible assets and most of the tangible assets from the seller. Proceeds from the sale are deposited into the seller's corporate account for distribution to the shareholders. Usually the corporation is liquidated after the sale is completed and the sale proceeds have been distributed. The advantages of this structure to the buyer are straightforward. The buyer sidesteps known and unknown liabilities of the seller. Additionally, the buyer receives tax deductible 15 year straight line amortization on the portion of the purchase price allocated to intangible assets. Insurance agency intangible assets generally represent over 90% of the assets and the value of the tax deductible amortization could equal 15% of the purchase price on a Present Value basis.

The seller's perspective regarding an asset purchase depends on corporate structure. A C-corp. is required to recognize the sale of assets and pay tax at the corporate level. This is a severe disadvantage because the corporate level tax for capital gains is the same as it is for ordinary income. Consequently, the tax advantaged status of capital gain income is lost in a C-corp. Additionally, in most cases the distributions or dividends to the shareholders of the sale proceeds are not tax deductible to the corporation but are taxable to the stockholder. The seller is subject to double taxation in addition to the already high tax rate. While there are a few exceptions, as a general rule, an asset sale is not a viable option for a C-corp.

The double taxation issue is alleviated if the seller is an S-corp., LLC, partnership or sole proprietor. For these types of entities, the proceeds of an asset sale flow through the entity to the shareholders or owners. Tax is paid at their level, not the corporate level. This eliminates the double taxation incurred by C-corps and ensures lower capital gain tax rates. C-corps. may elect S-corp. status once a year and realize the full benefits of S-corp. status after a 10 year waiting period (NOTE: The American Recovery and Reinvestment Act of 2009 reduced the waiting period to 7 years for any company hitting that threshold prior to 2011).

This brings us back to our original question: What corporate structure is the selling entity? If the seller is a C-corp., the transaction is usually forced into a stock purchase and the price is often discounted by 10-20% to compensate the buyer for lost tax benefits. If the seller is an S-corp., LLC, partnership or sole proprietor, an asset sale is the preferred structure generating a higher price for the seller at no additional cost to the buyer after accounting for the tax benefits.

Agency Tax Considerations			
Transaction Structure	Seller C corp.	Seller S Corp.	Buyer Perspective
Asset Purchase	Double Tax	Capital Gain	15 year Tax Amortization on Price
Stock Purchase	Capital Gain	Capital Gain	No Tax Write-off
Merger	Tax Deferred	Tax Deferred	Carryover of Basis No Tax Write-off

# MarshBerry M&A Advisory Services

## Deal Strategy

1. Acquisition Planning
2. Deal Return Modeling
3. Strategic Options Analysis
4. Alternative Buyer Comparison

## Deal Preparation

1. Sale Preparation Management
2. Offering Memorandum Development
3. Strategic Pitch Book Design
4. Candidate Profile Creation

## Deal Representation

1. Buy Side Representation
2. Sell Side Representation
3. Letter of Intent Development / Negotiation
4. Creative Deal Structure Alternatives

## Deal Analysis

1. Agency Fair Market Valuation
2. Market Comparables / Deal Benchmarking
3. After-Tax Return Optimization
4. IRR, ROI and EPS Analysis

## Deal Execution

1. Diagnostic and Confirmatory Due Diligence
2. Intangible Asset Allocation - GAAP Reporting
3. Fairness Opinion
4. Definitive Agreement Best Terms and Conditions

## Post-Deal Management

1. Post-Closing Integration
2. Goodwill Impairment Testing
3. Peer-to-Peer CEO Exchange
4. Earn-Out Maximum Consultation

<b>SNL Financial</b> <b>M&amp;A Advisor Rankings</b> <i>Insurance Broker Merger &amp; Acquisition Deals</i> 1997-2010 YTD				
Rank	Firm	1997 - 2010 # of Deals	2009 # of Deals	2010 YTD
<b>1</b>	<b>Marsh Berry &amp; Co. Inc.*</b>	<b>277</b>	<b>23</b>	<b>5</b>
2	Hales & Co. Inc.	126	14	4
3	Reagan Consulting Inc.	122	7	2
4	Mystic Capital Advisors Group, LLC	96	11	5
5	Macquarie Capital Advisors Group, LLC	46	8	2
6	Bank of America Merrill Lynch	22	2	0
7	Sica Consultants, Inc.	18	3	0
8	B.H. Burke & Co., Inc.	16	0	0
8	Harbor Capital Advisors, Inc.	16	0	0
10	Keefe Bruyette & Woods, Inc.	15	0	1
11	North Bridge Advisors, Inc.	13	0	0
12	Sandler O'Neill & Partners, L.P.	11	1	0
13	Philo Smith & Co.	10	0	0
14	Credit Suisse (USA) Inc.	9	0	0
15	Business Management Group, Inc.	8	0	0
15	Curtis Financial Group, LLC	8	0	0
15	J.P. Morgan Securities, Inc.	8	0	0
18	Boenning & Scattergood, Inc.	7	0	0
18	Gill and Roeser Holdings, Inc.	7	0	0
18	Nexus Group, Inc.	7	0	0
21	2nd Generation Capital Corporation	6	0	0
21	Garland McPherson & Associates, Inc.	6	0	0
21	Goldman, Sachs & Co.	6	0	0
24	Lazard Freres & Co. LLC	5	0	0
24	Wells Fargo Securities, LLC	5	0	0
24	Austin Associates, LLC	5	1	1
27	Nomura Securities International, Inc.	4	0	0
27	Piper Jaffray & Co.	4	1	0
27	Russell Miller Corporate Finance, Inc.	4	0	0
27	UBS Investment Bank	4	0	0

All States // Completed Transactions  
Whole deals as reported by SNL Financial, June 8, 2010

**\* MarshBerry has closed 28% of total deal flow since 1997**

MarshBerry's clients are committed to realizing their fullest potential with respect to growth, profit, survival and shareholder value. Our agent, broker, bank and carrier clientele engage us to achieve their goals within the retail and wholesale channels of the insurance distribution system. Our unparalleled industry-specific services include consulting, performance benchmarking, peer-to-peer exchange networks, merger and acquisition intermediation and producer recruiting.