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## COMMUNITY BANKING EXCELLENCE

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### Conversation with a Community Banking Professional

By Timothy R. Moore  
Executive Editor &  
Community Banking Group Co-Chair

#### Linwood "Wood" P. Britton, III The Orr Group, LLC

Wood Britton is a Managing Director of The Orr Group, LLC. His professional experience includes a combination of finance, marketing and technology. During his 10-year investment banking experience, he has been involved in numerous bank acquisitions on both the buy-side and sell-side.

Q: A recent KPMG survey that was published by American Banker said that ½ of all community bankers expect to be in a deal (either as buyer or seller) within the next two years. Do you think that is true? Why or why not?

A: I don't doubt the responses but that would end up with ½ of the number of community banks being acquired over a 2 year period if half thought they would sell and half thought they would buy. Of course if they all thought they would be acquirers then there would be no

### Signs of a Federal Investigation by Sharon L. Potter

Ms. Potter is a member in the firm's Wheeling, W.Va. office, where she leads the firm's white-collar criminal defense practice and focuses on high-stakes litigation. She is the former U.S. Attorney for the Northern District of W.Va.

Federal statutes and regulations impacting the banking industry run the gamut from a basic forgery to fraud and insider trading. Financial institutions need to be informed and know where to turn if illegal activity is discovered by bank management or if the bank is the focus of a federal investigation.

When the management of a financial institution uncovers wrongdoing by one of its employees, officers or customers, the approach for handling the conveyance of the information to law enforcement or regulatory agencies often dictates how the institution fares down the road in the investigation. In light of mandatory disclosure requirements, corporate compliance issues and the risks inherent in sharing

deals so it is hard to tell from the statement. I think the overriding sentiment is that bankers think the industry will start consolidating at a more rapid pace like we had seen prior to the recession.

Q: What do you believe is the main driver of this consolidation or M&A activity? Will it be other community banks, expanding regional banks, or private equity groups?

A: One of the main drivers of future consolidation will be the same driver that we have seen in the past. There is an over capacity of banking institutions in the U.S. Acquisitions have been feasible because of the efficiencies that can be gained by consolidating backroom operations and in some cases branch elimination. The other driver which has come about due to increased regulation is that the cost burden is much greater for smaller banks, which in turn makes it very challenging for a community bank to generate the type of ROE that we have seen in the past.

Q: There seem to be a lot of "sellers" out there (more sellers than buyers), so why do you think that there are so few deals? What are the buyers looking for?

A: The industry is over the credit hump to a large degree. However, I think buyers are still cautious when it comes to the target's portfolios. Sellers are also trying to come to grips with merger pricing parameters, which can be very sobering in many instances. Last, since some banks are over the hump, they may no longer be an active seller; instead they have decided to continue to fight it out and stay independent.

Q: If a board is considering selling the bank, what should it do? Is there anything that it can do to make itself stand out?

A: The board should hire an experienced investment banking firm to assess the market conditions and the current operations of the bank in order to give the board a solid lay of the land. The board should have as much information in hand as possible before they decide if and when to go to market.

Q: What makes a deal fall apart after it has been announced by the boards?

A: Deals rarely fall apart nowadays since not only the LOI but also the merger agreement has been negotiated prior to an announcement being made. If they do, and it is not a regulatory issue, then it usually is that there has been some "material adverse change" to the target such as its financial condition worsening or its stock price falling.

Q: Is the community bank a dinosaur? Is the business model now that one has to be over a billion or so to survive?

A: When we started our business 17 years ago, everyone was saying that the magic number was \$1 billion in assets. I think we have found over time that the

information without assurances regarding prosecution and privilege, it is certainly advantageous to consult experienced counsel before taking any overt action. The specific facts of uncovered wrongdoing will dictate how counsel will advise the institution to proceed, and this article provides an overview of the possible steps a bank confronts in the face of a federal criminal inquiry.

[Read the full article on our website.](#)

## Why is Your Bank or Bank Holding Company Still a Public Company?

by [Hugh B. Wellons](#)

Mr. Wellons is a member in the firm's Roanoke, Va. office. He co-chairs the Community Banking Practice Group and has extensive experience in regulatory and compliance law.

Is your community bank or holding company still a public company? Are you making periodic filings - 10-K's, 10-Q's, 8-K's, Proxy Statements - to the SEC or your primary federal bank regulator? Are you still subject to Sarbanes-Oxley (SOX)? Why? A large number of community bank holding companies have filed to deregister from reporting to the Securities and Exchange Commission (SEC). Similarly, many "public" community banks also have filed to deregister from reporting those forms to their primary federal regulator. It often is not that difficult. You might qualify even if you think you don't. Even if you don't qualify to deregister right now, you may be able to take actions to help you qualify soon.

[Read the full article on our website.](#)

## Should a Lender Obtain an Owner's Title Insurance Policy After Foreclosure?

by [Jessica L. Kimble](#)

Ms. Kimble is an attorney in the firm's Winston-Salem, N.C. office. Her practice focuses on banking and finance matters and commercial real estate.

In a time when foreclosures are all too common, many secured lenders end up

magic number is different for different banks. There is a lot that goes into running a high performing bank and size is usually not the one deciding factor. We believe there will always be a place for community banks but it will be harder and harder for them to find the right niche, right market and right management team to provide the type of returns that we think investors will desire. It is hard to say what that right combination or niche is but it will probably need to include a strong and reliable deposit base.

Q: What did I not ask that one needs to know about M&A in the financial industry right now or investment banking?

A: Overall, we are seeing a lot of discussions in the marketplace and think that activity will continue to pick up. At this point of the cycle, we do not have banks that are four to five years old that have experienced rapid growth looking to cash out big. I think what we have are bankers and boards that have for the most part done a good job of weathering a horrible storm and have to make a decision if they want to keep fighting the headwinds of regulation and a slow growth economy or to go ahead and marry up with someone else.

#### About The Orr Group, LLC

*The Orr Group is a leading independent investment banking firm that specializes in mergers & acquisitions, financing and strategic advisory services and has closed transactions valued at more than \$4 billion. The firm was founded seventeen years ago on the experience and guiding principles of L. Glenn Orr, Jr., Chairman of Orr Holdings. Mr. Orr is the former Chairman and CEO of Southern National Corporation, an \$8 billion bank holding company located in North Carolina, and he completed the 1995 merger of equals between Southern National Corporation and BB&T. The transaction was named by SNL Securities as one of the top ten bank mergers of the 1990's.*

## Useful Resource

Federal Reserve System's [Community Banking Connections](#)

## THE DRIVE-THRU

"If you find yourself in a hole, the first thing to do is stop digging!"

--Will Rogers

taking title to the real properties securing their loans. One of the questions, then, is should a lender obtain an owner's title insurance policy or is the loan title insurance policy sufficient?

As we all know, title insurance reduces the risk of the insured owner or lender by insuring one or both against loss or damage arising out of defects to or liens on title. Title insurance generally will pay for defending lawsuits attacking title and will either clear up title problems or pay the insured's losses. Borrowers usually obtain an owner's policy to protect against loss of title or encumbrances on title such as forged deeds, undisclosed or missing heirs, mistakes in recording legal documents, etc. At the same time, the lender will obtain a loan policy to minimize the risk of lending money for the purchase of real property. The loan policy serves as assurance that the quality of the title to the property to be acquired and pledged as security for the loan is satisfactory.

[Read the full article on our website.](#)

## N.C. Modernizes Banking Laws

by [R. Scott Adams](#)

Mr. Adams is a senior attorney in the firm's Winston-Salem, N.C. office. He concentrates his practice on consumer finance litigation and banking litigation.

North Carolina's banking laws have been comprehensively updated for the first time in 80 years and provide the state with one of one of the most modern banking systems in the country. Effective October 1, 2012, the bipartisan legislation is a product of compromise and joint effort on the part of legislators, banks and consumer advocates. In addition to streamlining rules and processes for capitalization and liquidation, the new law takes into account systematic changes resulting from Dodd-Frank and the North Carolina Business Corporation Act.

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Responsible Attorney: Michael J. Basile