

OCTOBER 7, 2009, 10:41 AM

## **H. Rodgin Cohen on the State of Bank M.&A.**

“Dismal and nonexistent.”

Those are the two words H. Rodgin Cohen, the chairman of law firm **Sullivan & Cromwell** and a preeminent adviser to financial firms around the world, used to describe the current state of the market for mergers and acquisitions involving United States banks. The news didn't come as a surprise to the audience attending SNL Financial's symposium on bank M.&A. in New York on Tuesday. One senior banker at a major firm even chuckled, “that's why we are all here and not doing deals.”

The two-day event drew a healthy crowd of investors, lawyers, regulators, bankers and analysts all hoping to connect with their colleagues and talk shop.

The overall tone, even from the usually optimistic banking crowd, was grim — and understandably so. So far this year, SNL Financial reports that there have been only 97 bank deals with a combined value of \$1.7 billion, virtually a rounding error compared to previous years. In all of 2007, by comparison, there were 304 bank deals worth a total of \$109 billion.

Mr. Cohen (pictured above) mentioned several factors standing in the way of bank deals.

“Banks do not want to engage in acquisitions until they have their own problems under control — and only a small number of banks have achieved that level of confidence,” Mr. Cohen said Tuesday. “Perhaps even more important, when banks still are more comfortable about themselves, they are still concerned about their ability to evaluate and deal with the level of asset quality and other problems at the target institution.”

A large inventory of failed banks is also adding to the logjam, Mr. Cohen said. A deal to acquire a failed bank often comes with government guarantees and loss-prevention agreements that can make it more attractive than a standard bank takeover. As a result, the industry may need to clear through all the failed banks before healthier institutions become tempting candidates for consolidation, Mr. Cohen said.

Another factor holding up bank M.&A. is the heightened scrutiny by regulators. Even without new legislation or the formal adoption of new rules, Mr. Cohen said that banking regulators have become much more aggressive, more intrusive and less flexible.

Private equity funds, which just a few years ago were buying companies left and right,

may not rush to acquire banks either, Mr. Cohen suggested. He said he believes that new rules proposed by bank regulators that would require private equity to maintain a 10 percent capital ratio creates too high a hurdle for buyout funds to justify such investments.

To encourage more bank M.&A., Mr. Cohen recommended removing a requirement that a troubled bank mark its loan book to market when it is acquired. That would allow the acquiring bank to avoid the need to raise money immediately fill the hole in the combined banks' balance sheet.

He also said that rules that allow banks to acquire the net operating losses of a takeover target, which Congress rolled back earlier this year, should be reinstated.

– *Cyrus Sanati*

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