



**ASSOCIATION MERGERS --
A MATTER OF TRUST
(PART II)**

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In Part I of our article published in the August 11, 2006 issue of *Association Trends*, we discussed what associations should look for while in the beginning of discussions about mergers and consolidations. In large part, we emphasized the need for leadership from both organizations to spend considerable amount of time together in order to get a better understanding of the other's culture and way of doing business.

This Article will discuss how best to make sure that a transaction that is perceived to be mutually beneficial actually comes to fruition. The article will not discuss the nuts and bolts of putting together the transaction documents, but rather how to make sure that the parties can arrive at a stage where they feel comfortable that the transaction documents can be consummated with a resulting positive closing.

The most important issue to ensure that the parties proceed with a merger or consolidation is the establishment of mutual trust. This takes place in many forms. First, representatives of both parties, while certainly tasked with negotiating a fair and appropriate deal taking into account their respective interests, must be honest and forthright with their counterparts. If, at anytime, any association representative

believes the negotiations lack candor and honesty, the negotiations and the transaction may suffer a fatal and irreparable blow.

There are a variety of situations when mutual trust can be harmed. In the beginning stages of negotiations, the parties will agree to conduct due diligence about the other organization. Aside from the mundane issues of corporate formalities, due diligence permits everyone involved to learn about the other organization's economic condition, risks and exposure (lawsuits), title to assets, etc. If an organization is unwilling to timely provide the requested materials, questions will be raised. If an organization's representations during negotiations is inconsistent with the documentation and materials received during the due diligence discovery process, considerable doubt will be raised about past and future representations.

The parties must disclose all relevant information to the other. Failure to do so will result in a failed negotiation, ill will and, if the misrepresentation is material, an unwinding of the transaction.

On the other hand, if the parties are honest and forthright with each other, and the information and documentation confirms this impression, negotiations generally

proceed in an efficient and positive manner. This reduces ill will, mistakes, and accusations (including lawsuits), while at the same time increases the likelihood of success of the transaction, the transition and the resulting unified organization. Leadership, staff and membership will be

more united and the positive aspects of each organization's culture will likely flourish. Not only will this benefit the respective memberships, but the public will perceive a valued organization that is stronger and able to better represent its constituents.