



Article 3

FICC NON-QUALIFIED RETIREMENT PLANS CAN SURVIVE AN ACQUISITION

Mike Quigley was not concerned about losing his nonqualified retirement benefits when his bank, First DeWitt Bank of West Caldwell, New Jersey, was being acquired by Sovereign. In fact, because his FICC plan provided “bullet proof” change-in-control protections, Mike is assured of receiving his retirement benefits. The plan’s design also helped Mr. Quigley assure that his severance payments were not subject to excess parachute payment excise taxes, that the price per share paid First DeWitt’s shareholders was not reduced, and that Sovereign was able to deduct all of the severance payments.

Mike explains, “The change-in-control protections provided in the FICC plan and related provisions in our employment agreements allowed First DeWitt’s accountants and attorneys to optimize the amount that the top two executives received. Larry Chinn of FICC provided us with all of the necessary assistance to ensure that our non-qualified retirement plan was adequately funded before the merger closed. Most importantly, we were able to demonstrate to Sovereign that the plan’s informal funding was more than sufficient to offset its cost. So, the value realized by our shareholders was not reduced.”

How is this possible? There are several key elements to FICC’s “secured benefit” non-qualified plans. The first is the contract between the bank and the executive – the supplemental retirement income agreement (“SERP”). Change-in-control concepts are incorporated into the SERP agreement and are integrated with Rabbi and Secular (or grantor) Trust documents. The final key to the cost effectiveness of these plans is the type of informal funding method utilized. FICC is usually able to structure its plans in a manner, which has a positive impact on the bank’s income statement in every year, after recognition of all plan-related expenses, including FICC’s fees and the bank’s cost of funds. Thus, there should be no economic reason for an acquiring institution to reduce the price being paid.