STRICTLY PRIVATE AND CONFIDENTIAL

ESCROW SERVICES

J.P.Morgan

Escrow in M&A Transactions

Overview of Holdback Escrows

- At the closing of a merger or acquisition, a portion of the purchase price is placed in an escrow account and held until the terms of the escrow agreement have been satisfied.
- Holdback escrows can serve as a risk mitigation tool: the claims process provides the buyer with an opportunity to retrieve the funds in escrow in the event that the seller fails to meet specific terms of the purchase agreement.
- Escrows can secure against future claims involving representations and warranties made by the seller about the condition of the business, or for a change in the purchase price between the merger announcement and close.
- Escrow can be used to support domestic or cross-border transactions in a wide variety of jurisdictions and for any transaction value.

Benefits of Escrow

Breadth of Claim Coverage

- Escrow agents act as independent and neutral third parties without an interest in the number or type of claims.
- Escrow covers a wide range of indemnity claims.
  - Escrow can also cover closing-related claims such as purchase price adjustments or expense claims.
- Escrow has a long and published track record of claim payouts for private target transactions.
- Escrow can serve as an effective risk mitigation tool.

Ease of Implementation

- As a neutral third party, escrow agents have a streamlined onboarding process, thus allowing for quicker turnaround times and reduced closing costs.
- Escrow legal agreements are relatively simple and standardized with well-established use in the marketplace and requiring minimal negotiation.
  - Escrow agents are neutral with respect to the issues negotiated between the buyer and seller.
- The annual fee typically ranges from $1,000 to $10,000 – there are no underwriting fees, and costs do not increase as escrow size or transaction size increases.
- Escrow deposits generally earn yields similar to what companies typically earn from excess cash on their balance sheets.
  - Investments can range from short-term (maximizing liquidity) to longer-term (providing additional yield).

Title search: Escrow Services

Also available as part of the eCourse
M&A: Representation and Warranty Insurance Policies

First appeared as part of the conference materials for the
10th Annual Mergers and Acquisitions Institute session
"Representation and Warranty Insurance Policies: They're Real and They're *Spectacular*!"