

# Financial Institution Risk Management

SEWARD & KISSEL LLP

April 30, 2026

## Kicking the Tires Without Killing the Deal: Due Diligence and Risk Management Considerations for Financial Services Transactions

When evaluating a potential acquisition, partnership, or entry into a new line of business, due diligence is a combination of art and science. The commercial objective is straightforward: understand enough about the target to make an informed decision, price risk appropriately, and avoid unpleasant surprises post-close. The challenge, of course, is doing so without paralyzing the transaction, overwhelming the business teams, or signaling risk in a way that jeopardizes the deal itself (unless, of course, the diligence findings support such an outcome).

There is no one-size-fits-all diligence playbook. No two transactions require the same treatment; and the intensity, scope, and sequencing of diligence must be tailored to the nature of the business, the sale process, the structure of the transaction, and the client's risk tolerance. Still, most transactions share common diligence pressure points—and getting them wrong can derail even well-conceived deals.

### Start Broad, Then Focus

One of the most effective ways to structure diligence is to begin with a broad, non-linear fact-gathering exercise. Before zeroing in on specific risks, it is critical to understand the target's history, how the business has evolved, and where it is headed. That context informs not only what questions to ask, but which questions matter most.

Too often, diligence devolves into what seems to be a boilerplate checklist exercise—long lists of requests that generate volume without insight, and some of which may not even be relevant to the target's business. A more effective approach is iterative: gather foundational facts, assess what they reveal, and then refine requests to probe areas of genuine risk. This allows deal teams to move from information accumulation to risk assessment more efficiently and with greater strategic focus.

## The Balancing Act: Thoroughness vs. Deal Momentum

One of the easiest ways to lose deal momentum is to overload the target with burdensome or redundant requests, or requests that are not even applicable to the target's particular business. Business teams are rightly sensitive to diligence that disrupts day-to-day operations, particularly in competitive or time-constrained transactions. Deals can and do fall apart during diligence when the process feels unfocused, inefficient, or misaligned with commercial realities.

The goal is not to ask every conceivable question, but to ask the right ones. Information that can be obtained from public sources, regulators, commercial databases, or prior disclosures should be accessed there first. Requests directed to the target should be prioritized, coordinated, and clearly tied to a diligence objective. An efficient and elegant process does more than save time—it signals interest level, credibility, and builds trust with counterparties.

## Watch the Messenger, Not Just the Message

Another critical—but often underappreciated—aspect of diligence is where information is sourced. The target company is the most obvious starting point, but it is rarely the only source. Public filings, litigation records, regulatory materials, counterparties, vendors, and affiliates may all supply valuable insight.

That said, diligence conducted outside the four corners of the target carries its own risks and should be coordinated with the target when possible, particularly if it involves contacting clients, vendors, or counterparties. Contacting third parties can create operational disruption, raise confidentiality concerns, or inadvertently signal questions about the deal that the target would prefer to manage internally. In sensitive transactions, poorly coordinated outreach can erode goodwill or prompt defensiveness at precisely the wrong moment.

For that reason, diligence teams should be deliberate about both substance and style—carefully sequencing outreach, coordinating with the target, and remaining attuned to how information requests may be perceived by the target and the market.

## Diligence in Financial Services Industry Transactions

While due diligence is important in any transaction, in financial services industry deals—where many companies are highly regulated particular focus should be given to a target company's compliance with applicable laws and regulations, such as SEC, FINRA, CFTC, banking, insurance and data privacy laws. This should include a review of public and governmental filings, regulatory inquiries or investigations, and assessing the target's internal compliance processes and procedures.

Another important area of focus should be conducting diligence on the principals and key employees of the business. Background checks on key personnel can reveal important information, including disciplinary history. It is also important to understand existing

employment arrangements, including restrictive covenants such as confidentiality, non-competition and non-solicitation arrangements, since a company's people and their business relationships are often times the single most important asset of any financial services business.

Attention should also be given to proprietary research, trading systems, and other intellectual property that a financial business may rely upon to succeed, and how the business is protecting that property, including trade secrets, copyrights, patents, and other technology.

### **Diligence Is a Risk Management Exercise—Not Risk Elimination**

Perhaps the most important mindset shift is recognizing what diligence can and cannot do. Diligence does not eliminate risk, it frames it. Even the most exhaustive investigation cannot surface every issue, and not every identified issue is a deal-breaker. Context is important, and as a practical matter some identified risks are unlikely to materialize or can be mitigated. The real value of diligence lies in allowing clients to decide, eyes wide open, whether risks are acceptable, remediable, or priceable.

In some cases, diligence findings inform representations, covenants, indemnities, or post-closing integration plans. In others, they simply clarify the business reality the buyer is stepping into. Either way, the objective is informed decision-making—not perfection.

### **The Takeaway**

Effective diligence requires judgment: knowing how far to push, when to pause, and where to focus. When done well, it protects against downside risk while preserving deal momentum. When done poorly, it burdens teams, strains relationships, and can derail transactions altogether.

The most successful diligence processes share a few common traits: early context-building, disciplined prioritization, thoughtful sourcing of information, and constant alignment with the client's commercial objectives. Get that balance right, and diligence becomes a strategic advantage rather than an obstacle to closing.

\* \* \*

If you have any questions concerning any of these matters, please contact your primary Seward & Kissel attorney or a member of the [Financial Institution Risk Management](#) practice at Seward & Kissel.