

# MERGERS AND STRATEGIC ALLIANCES IN HIGHER EDUCATION

## Guiding You Through Challenges and Changes

Even before the COVID-19 pandemic, the higher education industry faced economic uncertainty precipitated by declining enrollments, shifting demographics, online alternatives, rising fixed costs and fluctuating governmental support. Many institutions are under financial pressure to stay afloat. It is imperative for institutions of higher education to assess their organization with a fresh look at enterprise risks.

More and more institutions are considering options such as pooling resources with other institutions, creating strategic alliances in key programmatic areas or merging with other institutions.

We understand the sensitivity of your situation. Turning to advisers who have extensive experience with all the permutations of options available is a wise first step. We are those advisers. Bond, Schoeneck & King works closely and confidentially with key institutional leaders in exploring options for mergers, strategic alliances, collaborations or acquisitions.

### Broad Experience in Higher Education

Bond attorneys have a wealth of experience counseling higher education institutions as well as involvement in business collaborations, mergers and acquisitions. In addition to experienced lawyers who have been advising higher education clients for many years in their private practice, Bond has a number of lawyers who previously served as general counsels or senior administrators at a variety of public and private colleges and universities. This in-house experience provides an enriched perspective on client issues arising in affiliation transactions. The firm currently provides a comprehensive range of services to more than 100 institutions of higher education and more than 200 non-profit organizations. We also act as a sounding board to college presidents and board members as they analyze the panoply of fiscal and corporate options available to remain competitive in this increasingly demanding academic environment. Clients receive sound counsel that addresses:

- The fiduciary responsibilities of Boards to ensure the financial stability of an institution;
- Analysis of different options for strategic alliances or other collaborations in which institutions remain independent while sharing costs and maximizing efficiencies; and
- Steps to prepare for and execute a merger or consolidation between institutions.

Our lawyers advise clients on important considerations at each stage of the process, including:

- Meeting due diligence requirements;
- Advising on and/or conducting negotiations;
- Handling employment issues and concerns;
- Addressing financial, real estate and endowment issues;
- Assisting in accreditation and regulatory requirements and implications;
- Advising on tax issues and implications; and
- Branding and trademark issues.

Higher education mergers and affiliations are handled by attorneys in our higher education practice who are supported as needed by other practice groups in the firm,

### About Bond, Schoeneck & King

Bond serves individuals, companies and public-sector entities in a broad range of areas.

With more than 300 lawyers and 15 offices, we represent clients in manufacturing; agribusiness; commercial lending and real estate and construction; energy; health care and long term care as well as municipalities, school districts, higher education and other exempt and nonprofit organizations. We maintain 11 offices across New York; and one each in Boston; Kansas City; Naples; and Newark.

Bond is committed to understanding our clients' needs and providing comprehensive, practical, high-quality and responsive solutions. We strive to maintain the highest professional and ethical standards, and to provide leadership in community activities, pro-bono work and service to the Bar.

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including business and transactions, employee benefits and executive compensation, environmental, intellectual property, labor and employment and tax.

### Navigating Schools Through Spin-Off

For a variety of reasons, larger universities may seek to spin off certain schools, divisions or programs into independent entities. Bond attorneys have a great deal of experience with respect to the varied and complex issues that arise when implementing a spin-off. We advise universities, commercial entities and exempt organizations in connection with the founding and operation of separate enterprises for the exploitation of unique services, offerings, technology or product lines.

### Assisting Institutions in Obtaining Necessary Resources From Restricted Endowment Funds

Faced with an existential threat, institutions must make difficult decisions. If they choose to proceed without a partner, they must next decide whether to continue by redefining themselves or to cease existing through an orderly wind-down and closure. To proceed with either choice, institutions will require substantial resources, the lack of which typically drives them to their predicament in the first place. Bond attorneys have been responsible for setting the leading case law that allows for institutions to access resources from restricted endowments, which would otherwise be unavailable, to meet these financial needs.

### Alliances

The following are examples of our work in this area:

- Represented an institution in working with another that had decided to close to transition students, staff, programs and physical assets to our client. The net result was that every student was provided a seamless pathway to complete their studies in their chosen major in the same time frame and cost that they had originally expected. This transaction was heralded by the regulatory agencies overseeing the transaction as a new “high-water mark” for what can be possible;
- Represented an institution in its acquisition by merger of another institution by providing due diligence investigation, advice to the Board of Trustees and executive team and negotiation of the definitive merger agreement, and securing the necessary external approvals, including approval from the New York State Board of Regents and the U.S. Department of Education for continued participation in federal Title IV financial aid programs, and approval of a substantive change from the parties’ regional accreditor, the Middle States Association of Colleges and Universities;

- Represented a university in its exploration of a strategic alliance with a nearby college. Bond assisted the university’s Board of Trustees and executive team in evaluating the different relationship models for the two institutions, which ranged from a purely contractual relationship to a governance control relationship between two separate institutions to a full merger. Following thorough consideration, the parties agreed to continue their historic collaborative relationship without further integration;
- Represented a free-standing law school in the negotiation of an affiliation with a public university. We assisted the law school in evaluating ways to overcome challenges posed by a private and public institutional partnership and developing and negotiating an affiliation agreement between the institutions that has enabled their relationship to continue to develop and flourish;
- Served as transactional counsel in connection with the spin-off of a college and its programs from the university of which it was part, and the establishment of a new independent institution to operate the college;
- Represented a large university in connection with spin-off of a branch campus as an independent institution;
- Represented a graduate school of education before the New York State Education Department, Board of Regents and Middle States Association to have the school chartered as a separate graduate school in New York; and
- Various other collaborations and affiliations between and among institutions of higher education and other nonprofit organizations.

Please contact a member of our firm’s Higher Education practice if you are interested in a confidential conversation about the options that might be available to your institution.

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