

Dealmakers Q&A: Kaye Scholer's Joel Greenberg

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Kaye Scholer Senior Corporate Partner Joel Greenberg speaks with *Law360* about current trends in dealmaking, areas of regulation in need for reform, and the most challenging deals he has ever worked on.

Q: What's the most challenging deal you've worked on, and why?

Greenberg: I like to think that my skills and knowledge have grown over the years that I have been practicing, so that it is difficult to compare the challenge of a deal I worked on years ago with one that I did recently. That being said, I believe that two major carveout transactions on which I led the legal team a few years ago—the acquisition of the aerostructures business of The Boeing Co. and the acquisition of the medical imaging business of Eastman Kodak Co.—were among the most challenging on which I have ever worked. These transactions combined all of the normal issues presented by major M&A transactions with the challenge of separating two or more businesses that have developed and operated on a unitary basis for many years and structuring both short-term and long-term relationships between the newly independent companies. In order to do this effectively, a deal lawyer needs to learn a fair amount about the businesses involved and work closely with key members of the client's management team. It is a challenge to do this well but it can be very interesting and, when a good result is achieved, satisfying.

Q: What aspects of regulation affecting your practice are in need of reform, and why?

Greenberg: The pre-merger notifications required for multinational transactions. The process has become very inefficient as the requirements for pre-merger notification have proliferated around the world. The parties to an M&A transaction need to evaluate the different standards for determining whether a filing is required in every country in which either or both parties

operate or into which either or both sell their products. They must then make all of the required filings, which differ greatly in form and the nature of the information required. Often, this requires the involvement of numerous local counsel.

There is no substantive reason why this process could not be more uniform since the objective of each country involved is substantially the same: identification of proposed transactions of concern to local antitrust or competition authorities. An international pre-merger notification system, under which there was a uniform standard for determining the countries in which a filing is required, and a uniform set of standards for the form and content of those filings, would eliminate unnecessary cost for the parties and might facilitate cooperation among national competition authorities in investigating transactions of common concern.

Q: What upcoming trends or under-the-radar areas of deal activity do you anticipate, and why?

Greenberg: We have begun to see effects on the M&A process from the efforts by bank regulatory authorities to discourage highly leveraged loans, although it is not yet clear how the leveraged acquisition market will respond. It may be that some transactions will be done with reduced leverage. However, we have already begun to see competition for these loans from lenders whose activities are not governed by the bank regulatory authorities, including investment banking firms, foreign banks and other nonbank lenders. We may also see an increase in financing structures that permit bank lenders to participate on a basis that satisfies the bank regulatory authorities while providing equity sponsors with the leverage that they seek. What is clear is that in the short term, while this sorts itself out, financing acquisitions on a highly leveraged basis has become more challenging.

Q: What advice would you give an aspiring dealmaker?

Greenberg: Learn as much as you can. You will be a more effective dealmaker and a more valuable counselor to clients if you have a working knowledge of the tax, employee benefits, antitrust, intellectual property, financial, regulatory and other disciplines that bear on M&A transactions. Of course, the specialists in those disciplines are essential participants in M&A transactions, but the lead deal lawyer should understand what they are doing and be an active participant in their negotiations. Doing so not only results in a more effective negotiation of the transaction, since all issues are addressed with the perspective of the entire deal, but it is also more fun.

Q: Outside your firm, name a dealmaker who has impressed you, and tell us why.

Greenberg: Eileen Nugent at Skadden. She is very bright, experienced and knowledgeable. She is also willing to take the time to share her knowledge and experience, both through law school and CLE programs and as the co-author of a major M&A treatise.

About Joel



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