Q&A
Jim McNally, SRZ

HAMLIN LOVELL

Q&A with Schulte Roth & Zabel's Jim McNally, investment management and M&A partner, based in the firm's London office.

THFJ: What factors are driving high levels of merger and acquisition activity amongst, and between, alternative asset managers, hedge fund managers and traditional asset managers?

McNally: There are a number of factors at play. Certainly one factor in Europe is the ever increasing costs of doing business, and managers are looking to gain economies of scale in terms of operational infrastructure. Firms which were established, say, a decade ago have seen great turmoil in the financial markets and a more than healthy increase in the complexity of financial and non-financial regulation, and the principals of some of those firms are thinking about succession planning. That's a backdrop against which overtures for M&A activity in this sector can be well received.

THFJ: What are common deal breakers in asset manager M&A deals?

McNally: There are all the usual factors as you would see on any deal, and then the more particular issues one sees on having a group of business people, sometimes with different financial goals or strategies, needing to act in unison. Sometimes that is straightforward and the degree of stakeholders' alignment is clear. Other times the pressures of a deal only highlight the differences of perspectives between them. As buyers are looking for stable and properly incentivised teams, sellers able to present a unified team will – all else being equal – be in a stronger position. Typically, however, this does not translate into better terms for a seller, but whether a deal will proceed at all.

THFJ: For cross-border deals, if one entity is incorporated under common law, e.g., in UK or Ireland, and another entity is incorporated under civil law, e.g., in Luxembourg or Switzerland, does that add complexity to the deal? Which legal systems are the most and least compatible, in your experience?

McNally: I'm not sure it makes much of a difference. In this market, most players are used to dealing under English or NY law, and as such the vast majority of deals are documented under those two legal systems, both being common law based. Some counterparties may, of course, have preferences elsewhere but those are typically overcome. That all said, it is important for all parties to be cognisant of what expectations counterparties from other jurisdictions might have culturally as well as legally. It remains to be seen as to whether Brexit might have an impact on those proposing to choose English law and jurisdiction, as there is some small risk that English judgments might be more difficult to enforce in a post EU UK (which is of course a factor to assess in most of the cross border deals here, given the commonly seen elements of deferred consideration and post-completion covenants). That risk is, in reality, very likely to be overcome in practice, though as with so much of the Brexit debate, much is yet to be clarified. We certainly are not seeing any Brexit-shift away from a choice of English law at this stage.

THFJ: How does the breadth of SRZ's practice and experience help to inform decisions and processes for firms that are undergoing corporate transformations?

McNally: This type of activity is specialised and requires both a deep understanding of asset managers and how their businesses work and are regulated, as well as how that translates into the nuts and bolts of an M&A deal. Many can offer one but not the other, and some can offer both, but not in an integrated way. Because of the long-time focus of SRZ on asset management, these two disciplines are properly "joined up", and with our deep experience in this area we are exceptionally well-placed to help plan, navigate and ultimately execute a deal. We naturally welcome (and encourage) conversations at an early stage so clients can start to understand the likely moving parts of a deal, and plan for them. **THFJ**