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Dealmakers Q&A: Schulte Roth's Stuart Freedman

Law360, New York (September 23, 2014, 10:44 AM ET) -- Stuart D. Freedman is a mergers & acquisitions partner at Schulte Roth & Zabel LLP, where he serves as co-chairman of the Business Transactions Group. He represents U.S. and offshore asset managers in acquisitions and control and noncontrol investments, including those involving companies engaged in restructurings. His practice has a substantial international component, and he regularly represents investors in transactions in China, India, Indonesia and Australia.

Stuart Freedman

Freedman is currently serving as the lead attorney advising Albertsons LLC and an investor group led by Cerberus Capital Management in the $9 billion acquisition of Safeway Inc. — the largest leveraged buyout since the 2008 financial crisis. Other high-profile matters led by Freedman include SRZ's representation of the Oxford Properties Group and The Related Cos. joint venture developing Hudson Yards, a $15 billion development in New York City.

As a participant in Law360's Q&A series with dealmaking movers and shakers, Stuart Freedman shared his perspective on five questions:

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

A: Over the years, I've worked on many challenging and complex deals. I am now into my ninth year of representing Cerberus and its consortium partners in connection with Albertsons LLC. The first deal, which started in 2005, involved taking a huge public company, Albertsons Inc., and dividing it into three parts: (1) the "core" retail food business was sold to SUPERVALU INC.; (2) the drugstore business was sold to CVS; and (3) the remaining "noncore" retail food business was bought by Cerberus.

In 2013, the Cerberus consortium purchased, for $100 million cash, and $3.3 billion in total, all of the "core" retail food business that SUPERVALU had acquired in 2006. Elements of the 2013 deal were particularly challenging, including the distressed operations of the acquired businesses, the lack of separate financial statements for the entities being acquired, the need to be able to inject new financing into the acquired business while complying with existing indentures (which in some cases had been guaranteed by SUPERVALU), and the need to deal with significant single- and multi-employer pension exposures as well as very large workers compensation liabilities. Most recently, I am advising Albertsons LLC and the Cerberus consortium in the $9 billion acquisition of Safeway Inc. For each of these deals, I led a cross-disciplinary team of Schulte Roth & Zabel attorneys that worked together to tackle these complicated issues.

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

A: I work on a wide variety of transactions in many different countries, including China, India, Indonesia and Australia. Therefore, my answer partly depends upon the type of deal and the jurisdiction in question. In China for example, where I oversee a broad range of investments, there is a remarkable lack of clarity about many of the "rules of the road," and implementation of rules can often vary greatly from province to province. China is a large country, and variation is inevitable, but greater consistency would be a huge help.

In the U.S., while this may be a broader topic than regulation, I think there is serious need for pension reform. There are a lot of companies in basic industries that have vastly underfunded pension plans, and many multi-employer plans are also in trouble. In the commercial context, it makes these companies less attractive to lenders (other than on a secured basis) and to equity investors. When acquiring a company with a defined benefit pension plan or multi-employer plan, an acquirer must be concerned about control group liability — meaning the whole investment fund, or company, is at risk if the pension plan fails. The concept of control group liability inhibits the infusion of capital into these companies — one of the solutions to pension shortfalls should be strengthening the companies that are contributing to the pension plans by making them attractive to lenders and investors.

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

A: I think the retail sector will continue to be an area of intense transactional activity. Commentators have been saying for a while that the U.S. is overretailed. During the financial crisis, this resulted in a lot of bankruptcies in the retail sector, some of which resulted in restructurings and others in liquidations. With the economy and consumer sentiment somewhat improved, we're seeing more M&A activity as companies seek to get larger in order to compete effectively by spreading corporate infrastructure costs over a broader revenue base, and obtaining better vendor pricing through increased purchasing power. Retailers are also divesting noncore operations in an effort to seek to become more efficient. Additionally, we're still seeing a significant number of retailers that are overleveraged or having difficulty competing, so I expect to see restructuring activity to continue at a significant pace.

Q: What advice would you give an aspiring dealmaker?

A: I would give two pieces of advice. My first recommendation — you must always stay focused on your client's business objectives. You need to understand the details of the transaction, but you also cannot let these details stand in the way of driving a clear path to achieving your client's business objectives, all while getting the deal done. The second bit of advice — avoid becoming too specialized. I enjoy working on many different kinds of transactions. I often can take what I learn from one type of deal and apply it to a totally different type of transaction.

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

A: I work with Richard O'Toole at Related Cos. in connection with the $15 billion Hudson Yards project. The real estate, joint venture, financing and tax aspects of the project are extremely complicated and challenging, and Richard has a terrific ability to work his way through this complexity and conflicting demands of investors, lenders, government and the sponsors, all the while maintaining his cool.

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