

The Advisors Behind Today's Defining M&A Deals

A conversation with SRZ's leading M&A and securities lawyers

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Asset managers are impactful dealmakers in the M&A space and Schulte Roth & Zabel LLP (SRZ) is a key adviser on these complex deals for many of the world's most active and influential private equity firms. SRZ is uniquely focused on the alternative investment management industry and the lawyers are renowned for their market-leading application to sophisticated matters.

SRZ Partners Stuart Freedman and Richard Presutti serve as co-chairs of the firm's leading M&A and Securities Group. The firm's M&A transactions have been consistently recognized as "Deals of the Year" by industry rankings. Most recently, SRZ's representation of Veritas Capital and its affiliates' \$5.7bn acquisition of athenahealth Inc. won "Private Equity Deal of the Year" at The Deal Awards 2019.

SRZ advises on a wide array of matters across multiple sectors. "We represent leading sponsors in control transactions, including Cerberus, Veritas, Marlin and Greenhill, the former private equity arm of GCP Capital," commented SRZ M&A and Securities Partner Michael Gilligan. "We also work with debt funds providing acquisition finance for mid-market deals, which can sometimes become distressed, debt for equity swaps. We work across disciplines and practices helping lenders to protect against downsides," added SRZ M&A and Securities Partner Andrew Fadale.

Deal time frames can range from multi-month to multi-year, and may be longer for private company deals, where there is less disclosure and more diligence to be done. "Unlike the UK Companies House system, private companies in the US have essentially no disclosure obligations besides their corporate charter, so potential bidders may need to carry out full and complete due diligence, which will include document reviews, and representations and warranties,"

says Gilligan. "This takes longer but is still quicker than it was some years ago, because there is so much capital in credit and private equity funds. So even private processes can become hypercompetitive in a very short space of time," elaborates Fadale.

Recent SRZ deals include the firm representing Cerberus Capital Management LP in a definitive agreement to acquire businesses of Closure Systems International from Reynolds Group Holdings Limited. SRZ lawyers also advised Keane Group Inc. on its combination with C&J Energy Services in an all-stock merger of equals. The merger results in an enterprise with approximately \$4.2bn in net revenue. In addition, SRZ represented Veritas Capital and Guidehouse in the acquisition of Navigant Consulting Inc. in a transaction valued at approximately \$1.1bn; Marlin Equity Partners and its portfolio company Tangoe, in the acquisition of MOBI Wireless Management LLC; and Transfast and GCP Capital Partners in the acquisition of Transfast by Mastercard, among many other high stakes deals.

Distressed investing

German banks have faced chronic problems for over a decade and generally trade at a fraction of book value. Banks in other countries can be valued at a multiple of book value. Yet leading distressed investors have been bold enough to take stakes in several German banks, including a groundbreaking deal on which SRZ advised: the first full-privatisation of a German state-owned bank (a "Landesbank"). Fadale commented, "Because of potential control issues arising under German and European banking rules, our client looked to Schulte as well as German counsel to make sure that the deal was structured in a manner consistent with the asset manager's institutional policies and goals." SRZ also advised an asset manager on acquiring a €4bn property portfolio from a bank in Spain,

which was structured as a joint venture with the bank retaining 20% ownership.

Coal is controversial with some institutional investors no longer investing in it, but it is thermal coal, used for power generation, that has generally been blacklisted. Metallurgical coal, used for smelting steel, has generally not been excluded, and many institutional investors can invest in both types of coal. There have been at least eight bankruptcies of both thermal and metallurgical coal producers over the past two years in the United States. Liabilities associated with shut mines can force otherwise profitable firms into bankruptcy. A number of consolidators have a business model based on acquiring distressed mines, sometimes for no consideration besides assuming liabilities; yet the liabilities have sometimes contributed to additional bankruptcies.

SRZ has advised Murray Energy on its opportunistic purchases, including as a buyer in the Chapter 11 case of Armstrong Energy Inc. Part of a restructuring plan, the acquisition led to the formation of a new company producing low-chlorine, high-sulphur thermal coal. Murray Energy also participated in the Mission Coal Company LLC's Chapter 11 bankruptcy auction of the Mission assets: Mission Coal Company's Oak Grove, Seminole Alabama and Maple Eagle metallurgical coal mining complexes. "As owners of coal assets focus on capital structure and use our well-developed and complex bankruptcy code to shed debt, there will continue to be opportunities for buyers of these restructured coal assets. Prospective buyers must take into account the treatment of mine reclamation liabilities, which must be secured before assets can exit the bankruptcy process. Coal operators understand that well. Once assets are freed up for sale, creditors can be repaid," says Fadale.

US corporate law and the political environment

Most US deals are structured under Delaware law, which is flexible enough to allow for corporate activity, restructuring and rejuvenation. “Delaware has the most well-developed corporate laws, corporate governance and case laws on mergers and takeovers,” says Gilligan.

Could a Democratic president make radical changes to US corporate law in the manner that the UK Labour Party proposes for UK corporate law? Presidential candidate Joe Biden represents Delaware in the Senate and is not thought to have big plans to shake up corporate law; Delaware’s economy and state coffers benefit from it being the leading US corporate domicile. But even Elizabeth Warren might find her room for maneuver is rather restricted. “True corporate law is almost exclusively state law reserved to the 50 states, so there is less that a new administration could do as fiduciary duty is a matter of state law,” says Gilligan. Warren’s 2018 bill – the Accountable Capitalism Act – to federalise

corporate charters for companies with over \$1bn of revenue is viewed as unlikely to pass even if she became president. “The executive is not all powerful, and would need support from the Senate and Congress,” says Gilligan. “They could change more for public companies listed on a national securities exchange where the SEC regulation is at federal level across the whole US. But SEC rules are more about disclosures such as CEO pay, and substance comes from state law,” he adds.

There is one area where the Democrats could introduce change, however. “Democrats may consider tightening up antitrust rules, regardless of the nominee,” says Gilligan. Of course, many cross-border merger deals already face heightened uncertainty for another reason: the expanded scope of CFIUS rules, and the President’s interpretation of them, another thorny matter on which SRZ lawyers provide advice. Needless to say, the M&A landscape will be impacted by the political and regulatory environment and 2020 should bring opportunities as well as challenges for these dealmakers. [THFJ](#)

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