

M&A

MERGERS AND ACQUISITIONS

Frank T. Cannone helps to demystify the vast—and robust—world of M&As

Frank T. Cannone chairs the corporate department at Gibbons, Del Deo, Dolan, Griffinger & Vecchione, a law firm based in Newark that specializes in, among other practice areas, middle-market mergers and acquisitions for companies involved in \$10 million to more than \$500 million transactions. Cannone, a practicing attorney in both New Jersey and New York, works with 30 transactional lawyers who operate full-time in the corporate arena.



Robert Zelnick

NJBIZ: We hear this term, M&As, all the time. What does it mean?

Cannone: M&A describe a transaction or an event—the merger and the acquisition. It encompasses more than that. If you're a business owner, it could be the acquisition of another business, or a product line, or even the sale of your business, or a divestiture. It could also fall under the context of a joint venture or strategic alliance or some other corporate event that deals with the furtherance of that business or the owner's economic interest in that business. In general, though, mergers and acquisitions are just that—the acquisition, divestiture, joint venture, recapitalization

or some other corporate event.

NJBIZ: What is the current M&A climate?

Cannone: The market has been very robust for the past couple of years, in particular in health care, financial services, technology and real estate. The activity in a given market is usually a function of where a particular company is in its life cycle or what is happening in the outside environment. For example, a health care company in the medical device business that is looking to expand because it has had good profits and earnings, and is looking to diversify its revenue base may want to make an acquisition locally, nationally or

even internationally. The recent M&A activity has been a function of interest rates being historically low. There has been an exorbitant amount of capital in the market to support M&As. There is a lot of capital right now in private equity funds that are looking for opportunities. These are financial buyers or investors looking to make investments in, say, a consumer products company. A consumer products company, a family-owned business, with \$100 million in revenue could, for example, be looking to divest a private company as an exit strategy, as opposed to transferring it to the next generation. That company would turn to a financial buyer

or to a strategic buyer, which would be someone from the same industry.

NJBIZ: Can you point to any specific trends that are impacting the M&A market?

Cannone: Energy is one trend I see. Energy costs have increased so dramatically that it opens up the opportunity for investors or businesses to do a merger or acquisition or a divestiture. An oil opportunity may not have made sense two years ago when oil was \$28 a barrel, but now at close to \$75 a barrel it's not only an opportunity, it's probably a home run to invest and get the capital. Our clients are investing in coal operations, oil operations, power generation—energy-related products and businesses.

NJBIZ: What do you see as the first important step of doing a deal?

Cannone: Structuring your deal team. It's the lawyer, the accountant, the financial advisor and anyone else who might be specific to your industry if you don't have that in-house capability. Financial advisors either raise capital for you if you need to get third-party financing to do the acquisition, or they give valuations. They also help give you advice on what the market is on structuring your deal. Say, for example, you are in the health care business and you are looking to acquire a health care-oriented business in the same product line. You're going to have questions about doing due diligence for that company, so you're going to want to have somebody specializing in that area. That could include legal, financial and business due diligence, which involves potentially three different advisors. It's all a function of how big of a business you are and how big the acquisition is to support all of those professionals.

NJBIZ: Does any one team member stand out above the rest in facilitating the deal?

Cannone: Your critical participant is your lawyer. Somebody needs to orchestrate this from a legal perspective, an internal

business perspective and from the marketplace. The lawyer should have the depth of expertise in that area. That's why if you're looking to do a merger, acquisition or disposition, you need to look for a law firm that has expertise in your business and your middle marketplace. We're not talking about Alcatel acquiring Lucent. Those folks have 200 attorneys in-house. They know how to move from point A to point B. However, a \$250 million company should look for a law firm that knows that middle market and is routinely involved in that \$10 million to \$500 million transaction. They need to have the core disciplines in their law firm, whether it be intellectual property, real estate, technology, health care, as well as the regulatory expertise of taxes. In New Jersey, the regulatory framework can sometimes be burdensome.

NJBIZ: Should dealmakers also get help in understanding the Sarbanes-Oxley Act of 2002, which changes the way most public companies execute M&As in terms of certification and reporting requirements?

Cannone: Sarbanes-Oxley mostly applies to public companies. It is important to private companies because it's good corporate governance to be compliant. And if you're looking to sell your business, there is in theory a value given to your company if you follow the checks and balances of Sarbanes-Oxley. It is not uncommon now to get representations from a seller that they do have the appropriate control mechanism of Sarbanes-Oxley. If you're a buyer of something, you want to make sure that you have mitigated the risk of that decision. Sarbanes-Oxley is another comfort level that this entity you are going to buy has been run properly.

NJBIZ: How costly is the dealmaking process for a company that is, say, selling a business?

Cannone: This speaks directly to the need for a strong deal team. An experienced deal team is efficient. They have been

through the process and can help you orchestrate the team players quickly. A client comes to you and wants to make the acquisition of a company for \$100 million. Experienced members of the team will tell you right away: Get out the due diligence. Understand the terms of the deal. Do we need any third-party consents from stockholders? Are there any regulatory issues? How are we going to address those? Do we need financing? The cost is a function of the experience of the deal providers. They can typically do it more professionally instead of learning on the job. The complexity of the deal also has a bearing on the cost, as well as a bearing on the amount of time it takes to get a deal done. The old story is that Disney bought ABC over a weekend. It's a public company so all that due diligence or searching for risk you have to do up front is out there already. When you are dealing with a private company, all that information is in your offices. As a member of the deal team, I need to find it, I need to review it, and I need to make sure it's accurate. That can take time.

NJBIZ: What advice would you offer a buyer going into an acquisition deal?

Cannone: If you're a buyer of another private company within your industry, otherwise known as a strategic acquisition, it is very important to foster a good relationship with the principles of the seller. That will go a long way in facilitating the deal. Go out and meet with them and try to understand why they are selling their business. What are their driving factors? They may have key employees that they want to continue after they leave. Or the principles may want to stay in the business in a consulting arrangement after the deal is done. Or they may want to preserve the legacy. It's all about information-gathering and relationship-building. Then you need to make sure that you've got the team that knows how to get a deal done. ■

| E-mail news@njbiz.com