

## Dealmakers Q&A: Gibbons' Frank Cannone

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Frank T. Cannone is chairman of the corporate department and a member of the executive committee at Gibbons PC in Newark, New Jersey. He focuses on mergers and acquisitions, private equity, and corporate and securities law. He has extensive experience with capital raising, private equity, mergers and acquisitions in middle-market transactions, public-private partnerships (P3)/government transactions, alternative energy and cross-border transactions.

Under Cannone's leadership, the Gibbons corporate department has become one of the region's top corporate practices, known for its complex, sophisticated transactions and strong capital markets-based approach, which makes it unique among New Jersey-headquartered firms and has led to numerous accolades, including inclusion in the National Law Journal's inaugural "Midsize Hot List" and Private Equity Analyst's lists of "Most Active Law Firms."



Frank Cannone

Cannone has also directed the expansion of the corporate department's services and value-added offerings — developing practice concentrations in corporate health care, governmental transactions (P3), cross-border transactions, and renewable energy finance, among others.

Cannone was featured prominently in Law360's "New Jersey Powerhouse" series, discussing the many transactions with significant regional impact that the Gibbons corporate department handles for major corporations and public entities alike.

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

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

A: There have been two transactions that have been particularly challenging, one on the private side and the other in the public sector. The first involved advising a national hospitality real estate investment trust with its multimillion dollar roll-up of 15 hotel properties across the country while simultaneously completing an initial public offering and listing on the New York Stock Exchange for over \$500 million. The transaction required acquiring 15 full-service operating hotels in a tax-free structure, hiring most of

their employees, structuring the new entity to operate in multiple states, establishing credit facilities, raising preferred equity, and completing an initial public offering — all of which needed to close simultaneously on the same day.

Individually, each of these transactions were complicated in their own right but because they were occurring simultaneously, subject to private party negotiations and subject to capital market risk, its complexity was unmatched. The project took over a year to complete and, on the week we were to close the transactions, the stock market had a major decline that prohibited the pricing of the public offering. We then moved forward to restructure the capital stack and subsequently closed the deal.

The other transaction that challenged me most took place in the public arena; advising Rowan University in connection with the divestiture of the University of Medicine and Dentistry of New Jersey (UMDNJ) to Rutgers University and Rowan University, pursuant to the New Jersey Medical and Health Sciences Education Restructuring Act, signed by Gov. Chris Christie in August 2012.

The complexity of the UMDNJ restructuring possessed similar corporate and transactional complexities similar to the REIT IPO but was further complicated by the challenges and obstacles arising out of conveying a substantial governmental operation under the auspices of governmental legislation as opposed to free-market sources and all with the challenging combination of academia and the highly regulated health care industry.

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

A: Two regulatory areas affecting our practice that are in need of reform are: governmental overreach/general business friendliness; and global compliance requirements.

The unfortunate bottom line in many venues is that the closely held business is being run out of business through excessive governmental overreach, including unreasonable and untenable regulations in such areas as employment and labor laws, environmental regulations, real estate and construction requirements, taxing authorities and capital raising, the costs and risks of which the middle-market business is unable to financially withstand. The irony is that medium-sized or closely held businesses are the largest employers in the U.S., substantially contributing to the economy and the tax bases where they operate. Although more authorities and jurisdictions are starting to recognize this and becoming more business-friendly, many authorities and jurisdictions are still lagging. Additionally, inconsistent compliance requirements among the states further hinder the ability of middle-market business to operate efficiently across the country.

Likewise, based on our deep experience in representing buyers and sellers with cross-border transactions, we often experience first hand the challenges of our international clients in complying with inconsistent multijurisdictional regulations. A more uniform, or at least compatible, set of global regulations in the areas of tax, capital raising and employment matters would certainly foster an increase in global transactions and cross-border mergers and acquisitions.

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

A: Unreasonably high valuations are creating unrealistic expectations and impacting the viability of many acquisitions. We are experiencing a time of excessive, overvalued offers of businesses by less disciplined buyers who are not just disrupting the market for well-disciplined, quality buyers, but are setting the stage for a backlash of disappointment by sellers who thought they had received a windfall. Prudent

sellers are accepting reasonable prices (certainly on the high side, but not unreasonably high) from quality buyers and are using discretion so as to not be tempted by unreasonably high expectations from some buyers that can lead to a financial disaster later.

An excessive buyer will often stagger the acquisition price over time by paying some cash at closing and the balance by deferring payment through a note, an earnout arrangement, a consulting arrangement or a combination of each. These excessive provisions can be traps, meaning that the seller may never collect any or much of the post-closing consideration, and in effect only buying a lawsuit or facing a “clawback” of some or all of the cash closing proceeds — or, even worse yet, the seller having to pay the buyer more than the seller ever received due to a subsequent breach-of-contract action by the buyer. The bottom line is that a seller needs to view the value expected from the sale in its totality and weigh the risk of excessive bidding by aggressive buyers with its attorneys, accountants and financial advisers to verify the reality of actual market values and not unrealistic expectations that will only lead to unrealized gains.

**Q: What advice would you give an aspiring dealmaker?**

A: In order to be a successful dealmaker, it is critical that one understands the needs and motivations of all parties to the deal so that he can, while advising from a legal perspective, structure arrangements that create a win-win situation and also protect the client’s interest. In order to do this effectively, it is necessary for the dealmaker to truly understand the goals and motivations of each of the parties as well as know the details of the business transaction, the economics of the business and the corresponding business risks, as well as the legal requirements and the legal risks of all the parties involved.

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

A: Gov. Christie is an unprecedented dealmaker who has overcome major obstacles, including political and public forces, in connection with divesting the state of New Jersey of multiple business operations that are best run by private enterprise. Each of the relevant transactions, which I and my team at Gibbons had the great privilege to represent the state interest on, brought with it the customary complexity and challenges of a sophisticated merger, acquisition or divestiture, but also the complications of effectuating the transaction of a governmental asset, which subjects it to potential litigation and claims by governmentally aligned organizations and parties, from unions to state agencies.

For instance, under his leadership, and with great resistance, he successfully enabled the New Jersey Sports & Exposition Authority (NJSEA) to transfer to the private sector operating responsibility of the Meadowlands Racetrack, Monmouth Park Racetrack, and Xanadu/American Dream real estate project in the Meadowlands.

In addition, through his legislation (the New Jersey Medical and Health Sciences Education Restructuring Act), he was able to restructure and spin off the health care assets of the University of Medicine and Dentistry of New Jersey (UMDNJ) assets to Rutgers University, Rowan University and University Hospital, which included hospitals, medical schools and university campuses. The divestiture of UMDNJ is viewed as one of the most complex restructuring of a higher education health care institution in our country.

Lastly, Gov. Christie’s administration, without much fanfare and against significant opposition, caused the New Jersey State Lottery to solicit and hire a private company to provide management services for the state lottery. A feat that only three states in the country have been able to successfully accomplish.

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