

Q&A With Morgan Lewis' Barbara Shander

Law360, New York (October 03, 2011, 1:58 PM ET) -- Barbara J. Shander is a business and finance partner in the Philadelphia office of Morgan Lewis & Bockius LLP. She advises publicly traded companies, private company clients and private equity funds, with an emphasis on mergers and acquisitions, dispositions, and financing transactions, as well as matters involving corporate governance, commercial agreements and corporate law.

Shander also advises investors and companies in venture capital transactions and has handled all aspects of such transactions including structuring issues and the negotiation of deal documentation. She represents clients in a wide variety of fields, including energy, utilities, technology, telecommunications, health care and manufacturing.

Q: What is the most challenging transaction you have worked on and what made it challenging?

A: I recently represented a private equity sponsor in purchasing a distressed business from a strategic seller, in a transaction that was really a grab bag of challenges. The deal had elements of a carve-out, which are always complicated; it covered two corporate product lines that needed to be disentangled from one another and then reconstructed in two separate groups of multitiered subsidiaries under a common purchaser parent; the business was in an industry with legacy environmental liabilities, and the seller had a different set of motivations and interests than the typical strategic seller displays; the seller was unusually reticent about providing complete and timely due diligence disclosure; and my client, the purchaser, was very committed to getting the deal done from start to finish in a matter of only a few weeks.

We did so, but it was a challenging deal. Interestingly, I am now representing the same client in exiting that investment, which has performed exceptionally well since the original purchase, and I can see how all of the hard work on the buy-side is paying off in a smoother sell-side transaction.

Q: What aspects of your practice area are in need of reform and why?

A: The practice of law as an M&A transactional lawyer has changed quite a lot since I started. Technology and the pace of the deal environment have made our profession far more of a 24/7 service business. At the same time, many clients are demanding smaller, more focused deal teams and increasing pressure on transaction fees, especially in the middle market.

All of these changes are making us reform our business model, to take a more efficient and cost-effective approach to staffing and managing deals, and to become better at budgeting on the front-end of a transaction and monitoring our investment throughout the deal. As we do so, we are increasingly developing and deploying more effective tools to help us understand where costs are building and how to keep them under control. Lately I have been working more and more on alternative fee arrangements, including fixed fees (either on a deal-by-deal basis or for a package of similar transactions), success fees, ways to address broken deals, phase-by-phase budgets and the like.

Every one of these arrangements represents another step away from the traditional, hourly billing, cost-plus model for the pricing and delivery of legal services, and takes us another step closer to seeing the world the way our clients see it. The revolution in the business model of the legal profession has only just begun, and the shape of the model for the future is still unclear, but there is no question that further reform is inevitable, and should be welcome.

Q: What is an important deal or issue relevant to your practice area and why?

A: The changing regulatory environment for private equity firms is beginning to have a significant impact on my practice area. As the Dodd-Frank regulatory framework takes effect, private equity firms that used to have a predictable and manageable regulatory burden are building up their compliance functions and experiencing more significant external exposure.

At the same time, other external influences such as ethical investment principles and the publicity campaigns of unions are shining an increasingly public light on the whole alternative investment sector. The whole world of private equity is becoming much more open to scrutiny; the effect on the industry will be significant and hard to predict.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: One of the things I really like about my professional life is that I am surrounded by smart and capable people. One who really stands out in my view is C. Deryl Couch, the general counsel of our private equity client, Sun Capital Partners. Deryl's background is in transactional tax work, but his current role exposes him to an exceptionally broad range of issues that take him far beyond his original professional focus.

On any given day, he may deal with the mechanics of raising and deploying Sun's investment funds, the changing regulatory environment for private equity firms, and the day-to-day legal issues regarding Sun's own business operations that arise in any in-house position, involving employment law, benefits, litigation, real estate and more.

At the same time, he covers the full spectrum of risks that arise across Sun's entire investment portfolio, which spans multiple industries around the world. While the portfolio companies are responsible for their own management, Deryl is responsible for spotting issues and understanding growing exposures that can affect the value of Sun's portfolio and Sun's ability to complete future investments and exits.

Deryl impresses me with his speed and agility in understanding different risks and how they may interact with one another, as well as with his efficiency and effectiveness in managing the range of legal risks to which Sun and its portfolio companies are exposed. He is also terrific at reviewing documents immediately and returning penetrating comments that help us help Sun get deals done quickly and consistently. Finally, he always maintains an even temper. Deryl just gets an awful lot done.

Q: What is a mistake you made early in your career and what did you learn from it?

A: The advice that almost every associate receives early in her career is to work hard and focus on learning and growing your technical skills as a lawyer, and I certainly took that advice to heart. I didn't appreciate until later the importance of working equally hard to build a personal network of professional contacts.

Like many associates, I became a partner based on my success as a working lawyer, but I wish I had started to focus from the start on keeping in touch with the people I was meeting along the way and nurturing my relationships with them. Fortunately, very early in my life as a partner, I got a lot of good advice about cultivating my network, and I really took it to heart. I started to devote the same attention and organizational skill to developing my relationships with my key contacts as I gave to developing my technical expertise as a deal lawyer.

Not only did I become better at connecting and reconnecting with people I had met professionally, but I also became much more consistent in following up on my contacts and deepening them over time. I also became active in the local chapter of an industry group that focuses on private equity deal professionals and devoted my time to getting to know everyone in the group, helping with their events and contributing to their success.

In the process, I deepened both my contact base and my knowledge of the local private equity industry. I was recently elected to the board of my local chapter and am now able to contribute even more meaningfully, and from a position of greater prominence as a leader.