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Q&A With Seyfarth Shaw's Steve Ferrer

Law360, New York (November 11, 2009) -- Esteban A. ("Steve") Ferrer is the incoming chair of Seyfarth Shaw LLP's corporate department. He is a transactional attorney whose practice is focused on: general corporate, corporate governance, corporate finance, federal securities law and mergers and acquisitions (including strategic corporate alliances). His practice includes a special focus in the healthcare and biotechnology fields. Fluent in Spanish, Ferrer has experience in a variety of cross-border transactions in Latin America.

Q: What attracted you to your practice area?

A: As a corporate attorney, I spend my days working on matters that are key components of my clients' business strategies. I get to be a "counselor" in the truest and broadest sense of the word as my clients consider core business initiatives, such as M&A opportunities, structuring strategic alliances, finance and corporate governance matters, and a broad spectrum of challenges that businesses face on a daily basis. The types of matters I work on day in and day out are the same subjects covered daily by the business press. It's an exciting field that's always interesting.

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

A: Two recent M&A deals come to mind as among the most challenging I've encountered for different reasons.

The first concerned the defense of a hostile tender offer by an 80 percent parent company for 20 percent of a subsidiary in the hands of public stockholders. (Our client was the subsidiary.)

Complicating this deal was the fact that the parent company had multiple business and personal relationships with the board and management of the subsidiary, and the offer price for the subsidiary was well below what the public paid for the subsidiary's stock in its IPO only one year prior to the tender offer. Further complicating matters, our client's

investment bank believed that the value of the subsidiary stock was much higher than the offer price.

Since the subsidiary was a Delaware corporation, we had to be guided by the state's "entire fairness" doctrine, which meant that despite multiple personal and working relationships between parent and subsidiary, neither I nor anyone else at the subsidiary could communicate directly with the parent.

Our goal in this deal, which we ultimately achieved, was to force the parent to pay more for the stock of the subsidiary, while also (1) avoiding public disclosure of R&D results that would harm the client's competitive position, and (2) avoiding a lawsuit by institutional investors who otherwise could have assumed that the deal was tainted by the working and personal relationships.

The second deal concerned the sale of a publicly held company with the goal of extracting the highest possible price while knowing there could only be one interested buyer and contending with deep fissures among our board members.

Q: What are the most challenging legal problems currently facing clients in your practice area?

A: In the securities area, the impact of proposed legislation and regulations affecting executive compensation disclosures are currently posing tough challenges to my clients. These new controls are driving behavior by boards that perhaps gives more weight to "political correctness" than to what is truly in the best interests of stockholders.

Q: Where do you see the next wave of activity in your practice area coming from?

In my M&A practice, "strategic" (company-to-company) acquisitions should heat up as folks become comfortable that values have come down enough, and prospects for future economic growth have improved enough, to start using healthy balance sheets to better position their companies in a strategic way. Also, we are seeing strong M&A activity by "sovereign" private equity funds.

On the securities side, biotech and health care companies could soon see a return to the IPO market and other means of raising the capital needed to fuel continued growth.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: Robert Miller, based in the L.A. office of Paul Hastings Janofsky & Walker, is a smart, hardworking, trustworthy attorney who is fair and always looking for a win-win solution.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: Despite the decreased demand for transactional lawyers over the past 18 months, corporate and finance law remains a great area for attorneys. It combines the opportunity to hone one's legal skills while simultaneously gaining knowledge about the world outside the confines of the legal profession, including the business, regulatory and political environment.

As a transactional attorney, a young lawyer also is exposed to alternative career paths she or he may want to consider pursuing in the event that they discover working in a law firm setting isn't a perfect fit.

Also, the outlook for transactional lawyers has been looking better recently. "Traditional" transactions are returning, albeit slowly, and new types of transactions, such as those concerning renewable energy-related ventures and major outsourcing matters, are surfacing or accelerating.

That said, my advice to attorneys entering the profession is to look for job opportunities in areas where you will be needed by the firm or organization you will be joining. With fewer jobs available and fierce competition for the ones that exist, it would be wise to be less selective about your desired practice focus as you seek entry into the profession.