Q&A With Seyfarth's Michael Dunn

Law360, New York (April 10, 2013, 2:39 PM ET) -- Michael T. Dunn is a partner in Seyfarth Shaw LLP's New York office. He concentrates his practice on counseling public companies on registration and reporting obligations under the Securities Act of 1933 and the Securities Exchange Act of 1934. He has experience counseling public companies with respect to periodic and current reporting obligations, U.S. Securities and Exchange Commission staff comment letters, proxy and information statements, Section 16 forms, primary and secondary offerings of securities (including spinoffs), and requests for confidential treatment. He also has experience with corporate governance compliance activities including compensation risk assessments, FINRA compliance, insider trading compliance programs and 10b5-1 trading plans, and compliance with NYSE, NASDAQ and NYSE Amex rules.

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

A: The most challenging transaction I have worked on was a merger transaction between two public companies that was consummated simultaneous with a spinoff of a subsidiary of the acquired company. Because the subsidiary’s shares would not be listed on an exchange, the shares were not a federally covered security and preemption of state regulation was not applicable. As a result, in addition to the regular multitude of M&A transaction documents and merger proxy required to complete the merger, the distribution of the spinoff securities required a concurrently filed Form S-1 registration statement and separate registration by coordination filings in over 40 states.

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

A: The securities regulation regime in the United States has been largely the same since the 1933 and 1934 acts were adopted by Congress. In the modern era of the Internet and social meeting, those rules are difficult to apply and even more difficult to enforce. Bringing our regulatory framework of capital markets into the 21st century is underway and is critical to our economy.

The adoption of the JOBS Act in April 2012 was a good first step toward reforming the capital markets to enable easier access to capital by smaller companies through initiatives like crowdfunding, unregistered public offerings to accredited investors in Rule 506 offerings and the expansion of Regulation A offering limits from $5 million to $50 million. But our securities laws have a long way to go to evolve from a paperwork regime to the demands of a consumer and business world that is largely digital.

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

A: An important issue in the securities practice area is maintaining the pace of investor protections with the pace of regulatory reform for capital raising. While the evolution of the U.S. regulatory regime is important to maintaining the strength of our national economy and enabling our capital markets and financial services industries to keep up with their European and Asian competition, the many Ponzi schemes that we see in the headlines every week demonstrate that appropriate safeguards must accompany the reforms. While Rule 506 and crowdfunding reform provide significant capital-raising opportunities for small business, they have the potential for creating just as many opportunities for perpetrators of fraud looking to capitalize on the

proverbial “widows and orphans” who are unsophisticated investors.

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

A: Alan Beller. For securities law attorneys, attendance at PLI’s annual institute on securities regulation should be obligatory. Each November, senior staff at the SEC and respected practitioners from the nation’s top firms gather in New York for three days to discuss current trends and pending or prospective changes in securities laws. For as many years as I can remember, Alan Beller, a former director of the division of corporation finance at the SEC and currently a partner at Cleary Gottlieb Steen & Hamilton, has been a leading panelist at the institute on securities regulation and is an institution in and of himself among securities practitioners. During the year that the executive compensation reforms were adopted and for a few years thereafter, he would receive countless questions on whether various types of compensatory arrangements had to be disclosed as such. To this day, the sound of his voice proclaiming over and over again that “all means all” echoes in my head.

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

A: My grandfather was a carpenter. Growing up, I spent many Saturday afternoons in his garage workshop learning about tools and playing with scrap pieces of lumber. The most important rule of carpentry, as he would explain every day, was simple: Always measure twice because you can only cut once. In my experience, this axiom applies equally to every task we as lawyers undertake in our practice, particularly those that seem simple or mundane.

As a junior associate, I was once tasked with distributing a revised draft of a purchase agreement to a client that a senior associate had marked up after discussing the document with the client. While attaching the purchase agreement to an email for distribution to our client, I did not realize that the senior associate had saved the revised markup as a new file rather than a new version. As I did not bother to open the attachment and check it, I distributed a draft that did not reflect any of the client’s input. The lesson learned was always check twice because you can only press send once.

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