

# WORLD FINANCE

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AWARDS

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# THE QUARTERBACKS OF DEAL-MAKING

*With complex issues and new regulations in today's M&A environment, the lead corporate lawyer in any transaction needs to be sensitive to every detail.*

*Eleni Chalkidou speaks to Richard W Silverthorn*

■ Engaging in business transactions in today's rapidly evolving global marketplace demands superior ingenuity and attention to detail. Technology, new trade pressures, economic uncertainties, and cumbersome regulatory regimes (to name a few) have transformed the way large corporations approach transactions. This has, in turn, caused astute corporate lawyers to rethink their approach to corporate and M&A transactions. To better understand some of these changes and how they are impacting deal-making throughout the world, we asked the distinguished M&A lawyer, Richard W Silverthorn, to discuss his view of the deal world and his philosophy for approaching transactions. Silverthorn is a corporate and M&A specialist at the 68-year-old law firm of Whyte Hirschboeck Dudek S.C. (WHD), which is headquartered in Milwaukee, Wisconsin, US.

According to Silverthorn, "Now, more than ever before, the role of a corporate lawyer is similar to that of a quarterback in a game of American football. He is responsible for coordinating the entire transaction from inception to closing. He is also the primary person in charge of liaising directly with clients to assess their desires and objectives, and negotiate the transaction with these objectives in mind."

With the increasingly complex issues that arise in today's M&A transactions, the lead corporate lawyer in any transaction needs to be comfortable managing the many players involved in the deal. "It is not uncommon for a large M&A transaction to involve several area-specific experts, such as tax, employee benefits, labour/employment, antitrust, regulatory and environmental lawyers, as well as financial and insurance advisors," says Silverthorn. "If the lead corporate lawyer mismanages any of these relationships, or fails to involve the appropriate legal specialists, the outcome of the transaction could suffer, and that is simply unacceptable."

For this reason, he believes that clients should not look for a lawyer who simply "knows the law," but instead find a lawyer

who has also mastered the art of coordinating a transaction from start to finish.

Silverthorn knows a thing or two about M&A deals. For the past two decades he has represented several national and international companies in sophisticated corporate and M&A transactions, both domestically and internationally. Throughout this process, he has seen his practice evolve to match the demands of the marketplace and the needs of his clients. As Silverthorn explains, each transaction is different, and requires corporate practitioners to analyse the circumstances surrounding each deal before recommending the best way to proceed.

"Identifying up-front the issues inherent in a given transaction and the risks associated with those issues can be quite intricate, and requires continual monitoring of the legal landscape," he says. "Certain issues are present in all transactions, but other issues arise on a case-by-case basis; and can be the result of a unique set of circumstances of a particular deal, or the result of new laws, new regulatory developments, environmental circumstances, or antitrust concerns. Being able to identify and effectively respond to these issues is what separates a good deal lawyer from a great one."

## STRATEGIC CONSIDERATIONS IN M&A

The corporate lawyer is often the first point of contact for clients. Silverthorn believes it is that initial contact that helps congregate the various facets of a particular transaction. A good lawyer will be able to recognise the difference between a strategic and a financial buyer at the outset of a transaction, and plan accordingly. Silverthorn notes: "Understanding whether the transaction is being approached for long-term value creation as part of an overall strategic plan or for short-term financial gain will help a lawyer serve his client's needs more effectively."

It is the job of a transactional solicitor to craft and implement strategies to address fundamental tactical considerations, because



## ABOUT RICHARD W SILVERTHORN

Richard W Silverthorn is a shareholder in the Milwaukee office of Whyte Hirschboeck Dudek S.C., where he is a member of the firm's Corporate Practice Group. Silverthorn offers clients the benefit of his broad-based experience in M&A, strategic alliances, and general corporate and business matters. He has significant experience representing clients in the energy, utility, chemical, electronics, food, automotive, and transportation industries. He works closely with businesses owners and their management teams, often serving as outside general counsel, to help them achieve their short- and long-term strategic objectives. Silverthorn was selected as one of the pre-eminent Corporate/Mergers and Acquisitions lawyers in the 2008, 2009, 2010, and 2011 *Chambers USA* editions of 'America's Leading Lawyers for Business.' He was instrumental in his firm being named Best M&A Firm, USA, 2012 by *World Finance*, and Clients' Choice – Wisconsin M&A Law Firm of the Year by *Corporate INTL*. He was also instrumental in WHD being named Mergers & Acquisitions Law Firm of the Year (USA) for 2011 by *Finance Monthly* magazine, for which he was awarded individual recognition for his national M&A experience.

*Clients need a lawyer who has mastered the art of coordinating a transaction from start to finish*

“anticipating these issues and planning ahead is critical to a successful M&A transaction, and that’s why clients need experienced legal representation,” he says.

At the outset, the parties involved must weigh the advantages and disadvantages of the different possible structures of the transaction, as this decision will have an effect on several issues, including the assumption of liabilities, the tax consequences to the parties, and the requisite corporate, third party, and governmental consents and approvals necessary to consummate the transaction.

Also high on the list of priorities, according to Silverthorn, is performing a thorough due diligence review that will identify potential transaction risks, and help minimise or eliminate post-closing surprises. “Identifying the potential risks of a transaction is a critical function of the due diligence process, and the outcome of the negotiations over the allocation of these risks between the parties needs to be reflected in the definitive purchase agreement,” Silverthorn says.

#### ANALYSING THE MACRO AND MICRO ELEMENTS OF A TRANSACTION

Silverthorn truly knows how to structure and negotiate successful corporate transactions, and it is this awareness that wins him commendations from peers and clients alike. According to one, he “has an impressive command of corporate legal issues, and is a master of negotiation strategy.” Clients have also noted that “his pleasant demeanour is well-suited to conducting complex and long-winded contract negotiations.”

The WHD lawyer knows that clients do not just want to hear about laws and regulations: “What they need is a combination of highly technical yet practical legal counsel that fits the transaction at hand,” he says. “An in-depth understanding of the transaction is essential to ensure that the big picture, as well as the smaller details, are thought through and addressed properly.”

The distinguished Milwaukee-based lawyer has received accolades from clients who judge him to be “organised, determined and meticulous” in his approach to handling high-profile corporate and M&A transactions. Silverthorn knows today’s fast-moving economic climate well. He explains that many lawyers know and understand the law, but not all lawyers will look at an issue from all angles in order to deal with both the macro and the micro aspects of a business transaction. “The macro view revolves around the manner in which the transaction is structured, the overall allocation of risks and responsibilities between the parties, and the approach to significant regulatory hurdles. The micro element, on the other hand, is the comprehensive analysis of deal-specific issues and how these issues are reflected in the definitive purchase agreement.”

Silverthorn is of the opinion that a comprehensive analysis is of extreme significance to a successful transaction, especially since the laws and regulations relating to M&A transactions are becoming increasingly complex. “There are more regulations than ever before, and the need for good corporate lawyers has never been greater.” ◇

### ABOUT WHYTE HIRSCHBOECK DUDEK S.C.’S CORPORATE AND M&A PRACTICE

Whyte Hirschboeck Dudek S.C. (WHD) is a dynamic, full-service law firm with offices in Milwaukee and Madison, Wisconsin, and more than 150 professionals practising in 50 industry and specialty teams. WHD is committed to delivering exceptional service and innovative practical solutions to prominent international, national, regional and state clients. The firm is particularly well-known for its ability to handle complex corporate transactions, and is especially adept at applying specific industry knowledge and experience to its clients’ business and legal needs. This commitment and approach is, in part, why the firm was recognised by *Chambers USA* as one of the leading law firms for business, being viewed as “highly esteemed for M&A matters,” and for having “experts in every area.” The firm has “an unbelievable client service ethos,” *Chambers* said: “A deep and broad base of sector-specific knowledge,” and “Good links to regulatory agencies and a superb understanding of federal and state regulations.”

WHD’s Corporate Transactions Team draws on widespread experience in a broad array of business transactions. Its diverse client base includes clients as diverse as NYSE companies, large and mid-size national and international companies, privately held companies, emerging entrepreneurial businesses, and closely held family businesses. WHD provides experienced legal counsel for a broad array of corporate and commercial transactions in the US and has shown time and again that it can handle all types of sophisticated transactional work. What sets the firm apart from the competition is that WHD lawyers strive to understand their clients’ business needs, and possess the expertise to handle highly complex transactions on a national and international level, as well as the industry-specific experience to provide efficient and focused counsel. The highly accomplished lawyers at WHD have made it their business to recognise critical issues and negotiate practical solutions to those issues.