

Dealmakers Q&A: WilmerHale's Brian Johnson

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Brian A. Johnson is a partner in Wilmer Cutler Pickering Hale and Dorr LLP's New York office, where he is co-chairman of the firm's capital markets group, and a member of the firm's corporate practice and life sciences group. Johnson has extensive experience representing public and private companies and financial institutions, including investment banking clients, in a wide variety of corporate finance and other strategic transactions. He also advises clients on general corporate and securities law and governance matters. He represents clients in a range of industries, with a particular focus on emerging growth and life sciences companies.



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

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

A: The most challenging deals I've worked on have involved opposing counsel who sometimes seem more interested in grandstanding and demonstrating their legal acumen than working toward a common goal or pursuing their client's broader interests. Thankfully, these situations are definitely the exception rather than the rule for the transactions in which I'm typically involved.

The vast majority of the lawyers I work with are practical, sensible and business-oriented. In the rare instance when I have found myself across the table from an opposing counsel with a difficult work style, I have tried to take a balanced approach of acknowledging when he or she makes a correct legal or factual assertion while simultaneously trying to redirect the negotiation or discussion to a place where the clients can make a reasoned decision based on their corresponding best interests. These situations can be particularly difficult when representing a client who wants to make quick decisions or concessions without understanding if it is the opposing lawyer or my client's business counterpart who is insisting upon a particular point. A mix of patience, steady persistence and cooperation have worked well for me on these deals.

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

A: I am very interested in the future applicability of the U.S. Securities and Exchange Commission's

recent regulatory guidance regarding the proxy voting responsibilities of investment advisers, the use of proxy advisory firms and the applicability of the proxy rules to these firms. Many commentators have expressed concern regarding the complete reliance by institutional investors on voting advice from, and the so-called best practices for corporate governance and compensation espoused by, proxy advisory firms. This evolving area of regulation, and potential future legislation, could be particularly meaningful for many of the newly public and mid-size public companies in emerging growth industries that I represent and for which a “one size fits all” approach to corporate governance and compensation may not be appropriate.

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

A: The public capital markets, in particular the initial public offering market, for life sciences and biotechnology companies have been extraordinarily active over the past 18 to 24 months. No hot market can last indefinitely, but with venture capital firms beginning to realize returns on their private company investments, we are seeing an uptick in renewed venture investing in earlier-stage and new private companies in this industry. These new companies could form the basis for the next crop of IPOs in future years. I am hopeful that the overall and long-term health of the investment and growth cycle for life sciences companies can be maintained while we persist through the inevitable ups and downs of the public markets.

Q: What advice would you give an aspiring dealmaker?

A: Consistent with my answer to the first question about challenging deals, I believe young transactional lawyers should keep in mind that they are not the lead actors in the deal. Ultimately, as deal lawyers, we are counselors, advisers and facilitators on behalf of our clients. Strong client advocacy is very clearly a critical component of our work and an important skill. However, a deeper understanding of a client’s business purpose and overall goals often allows the lawyer to provide more value and to focus on the issues that are worth real debate.

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

A: For many young or smaller companies without an in-house legal group, the chief financial officer or the person serving in an equivalent capacity is often the most important dealmaker for a variety of situations in which one might otherwise expect in-house counsel to take a lead role. I have been particularly impressed by the CFOs who are able to apply a broad skill set and often act in a quasi-legal capacity. These CFOs are able to quickly understand and apply advice from outside counsel while managing a deal largely on their own.

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