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Dealmakers Q&A: Dechert's John Timperio

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A partner in the finance and real estate practice at Dechert LLP, John M. Timperio has more than a decade of experience advising issuers, commercial and investment banks, financial guarantors and others on securitization and various types of restructurings. His practice focuses on asset-backed securitization, collateral manager mergers and acquisitions, structured lending, workouts and collateral loan obligation transactions.

John Timperio

Timperio has been extensively involved in the development of the middle-market CLO sector, including having represented the placement agent in the first ever rated middle-market CLO comprised entirely of unrated mezzanine and subordinated loans.

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

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

A: The most challenging deal I've worked on was the ACAS 2000-1 Business Loan Trust deal, which was the first ever rated middle-market collateralized loan obligation transaction back in early 2000. I was counsel to the placement agent (First Union) on the transaction and, as a result, I was responsible for the legal structure and documentation. For those not familiar with all the acronyms we like to throw around in the securitization markets, a middle market CLO is simply a vehicle set up to provide financing for a pool of leveraged (noninvestment grade) loans made to small and medium-sized U.S. businesses (i.e., EBITDA less than $50 million). Thus, in their most basic sense, middle-market CLOs are a means (in fact, the primary means) by which small businesses in the U.S. can get cost-effective capital that they can in turn use to hire employees and grow their businesses.

What made the transaction so challenging and memorable (aside from the fact that it was done at a time when deal toys were still given out) was that it was done prior to there being any rating agency or other criteria for this type of transaction. We were lucky in that the folks at First Union had a lot of expertise in the dealing with the assets and were thought leaders in the space. However, since we were operating in largely uncharted territory, we spent a lot of time analyzing the possible risks (including things like licensing, liquidity as well as unique features of the underlying loans themselves) and what the appropriate legal structure and disclosures would need to be to address those risks. Fast forward 14

years and tens of billions of dollars of issuance, there is a now a thriving and well-established market for middle-market CLOs which utilize many of the features we crafted back in 2000.

I have thought a lot about that transaction over the past couple of years. Not only because the deals performed phenomenally well during the credit crisis but also because this is a market that we remain very actively involved with. In addition, as the securitization markets emerged from the fog of the credit crisis we have worked with a number of parties on new and untested asset classes like peer-to-peer lending in which I have drawn on my past middle-market CLO experience and the lessons I learned working on the ACAS 2000-1 Business Loan Trust deal.

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

A: The finance (and, in particular, the securitization) market is definitely not suffering from a dearth of regulatory attention. If anything, now that we are years removed from the credit crisis, what would be helpful is a more dispassionate approach toward new regulation and the need therefore. In fact, while motivated by the best of intentions, the history of regulatory reforms in the finance and securitization markets is a dubious one. Most of the regulations have been backward-looking in their focus and aimed at what at the time were conventionally (and incorrectly) identified as the causes of the last crisis rather than aimed at preventing the next one.

Needless to say, the cure has been worse than the disease. By distorting normal market incentives, the unintended consequences of such regulations has in many instances caused future problems, crises and issues that were far greater than the perceived ills they were aimed at correcting. Now that we are finally beginning to see the animal spirits return to the economy and finance markets, a pause in new regulation right now would be very timely and beneficial.

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

A: The biggest trend we are seeing now in the finance markets generally is an increase in the role of nonbank finance entities (the so-called “shadow banking entities”), including business development companies, specialty finance companies, asset managers, private equity funds and hedge funds. These nonbank finance entities have grown to be huge in size (rivaling some of the best capitalized banks) and are assuming many of the core functions previously played by banks in our financial system. In addition, since they are not currently subject to many of the regulatory burdens stifling the banking industry, they have been able to be creative and nimble in ways today’s banks cannot be.

Suffice it to say, these nonbank finance entities are where a lot of the action is right now and that will only increase with time. One subtle manifestation of this shift in the context of securitization markets can be seen in the fact that many of these nonbank finance entities are increasingly the ones primarily responsible for the legal structuring and documentations as opposed to having the investment banks control this process. While having the party that will live with a transaction after it is completed be the one primarily responsible for the principal documentation related thereto makes perfect sense, it nevertheless would not be occurring absent the dynamics we are witnessing in the finance markets more generally.

Q: What advice would you give an aspiring dealmaker?

A: In today’s legal world, whatever the practice are and whatever the venue being an effective dealmaker is a key differentiator. Sometimes we hear folks talk about “rainmakers” but that suggests a

focus on only one aspect of the business. Being an effective dealmaker is one of the things that most frequently separates those that have long, enjoyable and financially remunerative careers from those that do not.

In a transactional practice like mine, I like to think about dealmaking on two-step process. First, aspiring dealmakers should focus on mastering the basics and the building blocks, including the deal management process. Having the technical legal and negotiating skills and substantive knowledge to do a great job for a client is the first and most essential step in being a dealmaker. Second, aspiring dealmakers need to take the time to understand (on both an institutional and individual level) the challenges and opportunities the clients face and look for ways to create value for the client. Said another way, clients value lawyers that don't look at their relationship as a one-way street.

What really helped me early on in this process was an accident of geography. Namely, as a young finance lawyer I was fortunate to live in Charlotte, North Carolina (the second largest banking center in the U.S.), where there was not a lot of separation between the lawyers and (our clients) the bankers. I can recall, almost two decades ago when I first moved to town, a young, up-and-coming investment banker commenting to me after we closed a deal, "John, I noticed you don't have many friends. I will introduce you to mine." He kept to his word and introduced me to his friends, all of whom were investment bankers like himself and, in many instances, were also the clients I was already working with on a regular basis. One important (albeit inadvertent) byproduct of this was that I got acute insights into the way clients see, and what they value from, their lawyers.

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

A: The dealmaker that has impressed me the most in my career is the late Frank Blanchfield. Frank was not only a brilliant tax attorney who did the groundbreaking legal analysis that provided the basis for a small regional bank to become Bank of America, but he was also someone who was a legend in the Charlotte, North Carolina, civic and charitable community for his visionary leadership and boundless personal generosity. For reasons not entirely clear, Frank befriended me and took a personal interest in what was at the time my fledgling legal career. In the legal profession, having good mentors to model is very important and being able to listen to Frank's stories and observe how he dealt with people was invaluable to me in my professional development.

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