



Legal Rebel

OVER HIS THIRTY-FIVE-YEAR CAREER, Frank Aquila has been called a lot of names. “Dealmaker of the Year,” by American Lawyer; “Global M&A lawyer of the year” by the Global M&A Network; a three-time “MVP” according to the online publication Law360; “M&A lawyer extraordinaire” on CNBC’s Fast Money; and even “legal rebel” by The American Bar Association, for being “one of the profession’s 50 leading innovators.”

Aquila, who’s been with the law firm Sullivan & Cromwell since 1983, has packed a career’s worth of high-profile deals into the last decade alone. He worked on the 2015 Kraft-Heinz merger, which formed one of the world’s largest food and beverage companies, and on the 2011 United Rentals-RSC acquisition, which created the world’s largest equipment-rental company. In 2008, Aquila represented InBev in its purchase of Anheuser-Busch for \$52 billion, one of the largest all-cash acquisitions in history, and eight years later, represented AB InBev

FRANK AQUILA, one of the world’s leading M&A lawyers, talks taxes, Trump, and 2018 predictions with Brunswick’s **BEATRIZ GARCIA**

in its \$100 billion mega-merger with SABMiller. Brunswick spoke with Aquila, a lifelong New Yorker, in Manhattan. The conversation drifted from predictions on dealmaking to reflections on how it has evolved and changed. “M&A has really become institutionalized, just a part of how companies manage their capital structure. In the same way that companies have to decide, ‘Am I going to buy back stock?’ ‘Am I going to issue equity, or debt?’, companies also realize that they have to decide, ‘Am I going to make acquisitions?’” says Aquila. “In the ’80s M&A was more of a swashbuckling, Saturday-night-special, all-hands-on-deck style of dealmaking. But it’s changed, and that’s a good thing.”

What surprised you in 2017?

All the biggest surprises for me really were in the US. In particular, how slow the US regulatory process was. And that may be because it’s taken a long time for appointments to be made. And it was surprising because one of the things that Donald Trump ran on was cutting regulatory red tape. While Trump cut regulation, in many cases he has been slow to appoint political appointees who can execute on that.

There were also very few all-share deals in 2017. That was in large part because US companies had plenty of cash and they also had access to cash – not just at low rates but also on very good terms. So very few all-share deals were done. We may well see that continue. The GOP tax bill could free up to \$3 trillion of offshore cash, so US companies will be even more cash-rich – and even if interest rates go up a bit, rates will still be at historically low levels and terms should continue to be very favorable.

You mentioned the tax plan. Can you talk more about how you see it affecting M&A?

Just because it goes into effect on January 1, it doesn’t mean that we are going to suddenly see all these deals announced in the first quarter of ’18. Companies are going to have to figure out what it means. But if I’m acquiring a non-US company, or if I’m merging with another company in the US, the effects under the new tax code are going to be dramatically different when you crunch the numbers that boards consider – over three-, five-, seven-year periods – when approving deals.

But to be clear, it’s not just that this tax plan is positive for M&A. *Any* tax plan would have been net positive for M&A because the drive to consolidate is there. Boards and leaders just needed to know what the tax effect was going to be so they could figure out what the exact value would be of a transaction.

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The most important thing about the tax plan is it removed uncertainty, because uncertainty kills deals.

What’s your read of this administration’s effect on dealmaking so far?

The first year of the Trump administration had a negative effect on deal-making, but not for the reasons you may think. We had fewer deals in 2017 than we would have had, and should have had, because a lot of companies were waiting to see what was going to happen with healthcare reform, just given how important healthcare is to the economy. And companies were also waiting for tax reform because you really can’t do a big acquisition, whether it’s domestic or cross-border, without some assumption around taxes. But we’ll make up for it in 2018. We’re going to have a lot of deals in 2018.

That’s your prediction?

Yes. We’ll see significantly more transactions from a number perspective and a dollar perspective in 2018. The most important leading indicator for M&A as a whole is business confidence. It’s also very rare that we have simultaneous economic growth in Europe, in China, in Japan, in North America. So when you have that sort of synchronized global economic growth, you know that there have to be high volumes of M&A just because M&A has always been associated with that level of economic growth.

Are the boards you’re talking to worried about economic nationalism and populism?

Boards certainly ask about that, in the US especially. What they’re concerned about in particular is antitrust enforcement. US antitrust enforcement under Reagan was very permissive. Under Clinton and Obama, it was more restricted, but it was all within the confines of historic US antitrust principles. The concern that boards have at the moment is that the Trump administration is looking at antitrust approvals as a means to effectuate their populist agenda. To some extent we have already seen some cases of the courts not permitting the administration from straying far from the lines, so it likely won’t have a long-term effect. But at the moment, there is some concern.

How has the way you communicate around deals changed?

I’m obviously aging myself, but I remember the days when you were doing a deal and you would have somebody go up to Chicopee, Massachusetts, which was where *The Wall Street Journal* was printed. And

another person go over here [in Manhattan], by *The New York Times*. We knew when the papers came off the presses, so we would immediately get copies of the papers. That was often the way you would find out if the other side had launched its tender offer for your client, or if there was a story about your client. Then, you knew that you had until 3:00 p.m. the next day to respond.

Today, M&A is like a political campaign during a major election, with the 24-hour news cycle. You need to be able to respond very, very quickly. Before you could be reactive because you knew you had a certain amount of time. But now, you need to be preparing in advance. What are the issues? What are the concerns that people are going to raise?

There weren’t any leaks in the days of Chicopee?

Oh, there were plenty of leaks. But you just didn’t know about it until the papers came off the presses. And sometimes you knew because you were getting a call from some reporter asking questions, and you’d be suspicious about why they were asking you particular questions.

Another change, I imagine, has been the role of women in M&A.

When I first started doing M&A, there were extremely few women. So it’s changed quite a bit. You’re seeing more women M&A bankers and lawyers today.

There certainly is not parity by any means, but there are more women than ever before and that’s obviously a good thing. At Sullivan & Cromwell, we have five female M&A Partners, and our retired Partner and Of Counsel Janet Geldzahler was really one of the first female M&A Partners in the country.

You’ve been involved in a number of activist battles. How has activism changed M&A?

Activism has changed corporate America in many ways. Clearly activism leads to more M&A. But what it really does is it leads boards and managements to become increasingly focused on shareholder value. M&A is one of the tools that boards and management teams use to create shareholder value.

One of the key messages I have for boards is: forget about activism, think about creating value. To understand the rise of activism you only need to consider corporate America generally. In the 1950s, 5 percent of US equities were owned by institutional investors, while 95 percent of equities were owned by individuals. Today, it’s the exact opposite.

Individuals only own 5 percent of US equities, and 95 percent are owned by institutional shareholders – though the reality is individuals actually own 100 percent, they just own them indirectly, whether it’s through a 401(k), a pension plan or a mutual fund.

If boards should forget about activists, who shouldn’t they forget about?

What I tell boards is that they should regularly engage with their institutional shareholders. Go out, talk to them. Most CEOs and CFOs and IR heads will tell you, “Well, I do go out, and I do talk to my institutional shareholders on a regular basis.” But they’re talking to the investment managers – the people who make the investment decisions.

Today, board and management also need to talk to the people who vote the shares. In most institutions, there is a separation between the investment decisions and the corporate governance

decisions. The people who vote the shares have an ethical screen between them and the investment managers. So the investment managers may love you, but the corporate governance folks, they vote the shares based upon certain principles. You need to talk to them and explain why you’re doing certain things and why you’re not doing other things.

How much of a difference does it make?

What I find is that companies that have that dialogue, first and foremost they have fewer incidences of activism. And when they do have activism, they have high credibility with their institutional shareholder base. They usually are very successful.

BEATRIZ GARCIA is a Director in Brunswick’s New York office. She specializes in global media relations, reputation and brand management, with a focus on financial services.

FRANK AQUILA

Widely acknowledged as a legal pioneer in M&A and corporate governance, Frank Aquila has been with the law firm Sullivan & Cromwell since 1983. He is a member of the Firm’s Management Committee and was formerly the co-managing partner of the firm’s General Practice Group. He received his J.D. from Brooklyn Law School, and his Bachelor’s Degree from Columbia University.



M&A **Renaissance**

A 16TH CENTURY PALACE IN ROME, A SITE that has historically hosted several illustrious Cardinals of the Roman Catholic Church, serves as the offices of law firm Gianni, Origoni, Grippo, Cappelli & Partners. The rarified atmosphere befits the 30-year-old firm’s reputation as a world-respected counselor for international companies doing business in Italy. Brunswick spoke to Francesco Gianni, a founding partner and one of the top European lawyers in M&A and structured finance, about his view on Italy’s place in the current international business

Top M&A lawyer **FRANCESCO GIANNI** sees a growing wave of deals in Italy and Europe. He talks to Brunswick’s **ALESSANDRO IOZZIA** and **LIDIA FORNASIERO**

landscape, the growing roles of technology and activism, and the enduring attraction of quality and experience in business services. Advising multinationals such as ArcelorMittal, Atlantia, Hitachi and ProMach in multibillion cross-border deals, Gianni has a privileged viewpoint over the dramatically changing M&A market in Europe.

What does the Italian and European M&A market look like over the next two years?

The economy is in a growing phase – not at the same pace all over the world but there is certainly