

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



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## FRANCESCO GIANNI

One of the founding partners of Gianni, Origoni, Grippo, Cappelli & Partners, Francesco Gianni is the head of the firm’s Corporate M&A department and a practicing lawyer licensed in Rome and New York. A graduate of the University of Rome, he obtained an LL.M from the University of London, King’s College in 1976 and an LL.M from the University of Michigan Law School in 1977. Early in his career, he worked in the US for top law firms.

a recovery. Northern Europe is performing very well and in Germany we still see strong M&A activity with a robust economy. Central Europe is enduring some political tensions, yet I’ve recently been in Poland and Lithuania and entrepreneurs are very positive.

In Italy, traditional foreign investors, from US, Europe and Japan, are coming back. We also see strong interest from the developing countries, and from China. It’s a sound market and it is made even healthier by two key elements: one is the active return of private equity and the other is Italian companies starting to expand internationally.

### **Is Italy a particularly ripe target for the wave of activist-inspired litigation on the M&A scene?**

I don’t think the kind of activism that leads to litigation is finding much room in Italy. There are very few truly public companies without a controlling shareholder, compared to France and Germany. Challenges such as Elliott Advisors’ and Amber’s campaign against Hitachi regarding its ownership of [railway signaling business] Ansaldo STS are very rare.

On the other hand, hedge funds in general are becoming more active in their participation in shareholders’ meetings. Our system is more conservative, but we need to confront this trend. In many cases, the funds’ objective is to improve a company’s governance with more qualified, independent board members, or to increase the value of their investment through management change. Those are more common than cases involving litigation.

### **What are the types of questions you’re asked the most?**

International investors are most often concerned with the consistency and the stability of Italy’s legal system. Investors feel our regulatory system is too easily subject to change. And they are concerned by the length of judicial proceedings, which exceeds the standards international investors are used to.

Look at what is going on with the ILVA steel plant: the Apulia Region and the Municipality of Taranto are filing an appeal against the environmental plan. We represent ArcelorMittal; they are going to invest as much as 4 billion euro. However, if the environmental plan is modified, the investment profile will change as well. So, their question is: do we invest now or wait for the judgment? It will take at least two years, what do

we do with ILVA’s 14,000 workers in the meantime? This is a serious issue.

### **How much more difficult was it to do deals before the iPhone and the internet?**

When I started – back in the Middle Ages – we typed on paper, used carbon copies and mailed the documents. We used to post mail from the Vatican, as they were using the Swiss Post, thus punctuality was assured.

Today, we can be everywhere in real time. That adds complications however, as clients also expect our response in real time. That’s not possible. We’re not a jukebox: you pop in the coin, it plays the tune. For our clients’ sake, we need the time to ponder our responses.

### **How will artificial intelligence affect M&A?**

We have set up a team dealing with AI and recently hosted a workshop here in Rome. It’s a complete revolution that will change our way of doing business. At first, we will use AI predominantly in due diligence. Instead of 50 people to examine 4,500 documents, the machine will read them overnight. I may want to know if there is a clause of change of control: the machine will pull out 50 documents containing that clause. But not all the change of control clauses are written in the same way, so I still need to read all 50 documents selected by the machine. AI helps me, but I still need human intervention. Eventually, it will reach a level of sophistication that gives us more accurate responses.

### **What was the most inconvenient call you ever received about a deal?**

The most peculiar call came on my 25th wedding anniversary. I had planned a weekend in Porto Cervo, Sardinia and waited two years before I got the confirmation of the room. We fly there and we’re in a car on the way to the hotel when my phone rings: it’s a very prominent investment banker. “Where are you? I need to speak to you. It’s confidential.” It was the acquisition of a major listed company. I spent the whole weekend writing the purchase agreement. We spent the following seven years working for that company, yet I would rather have received that phone call the next Monday.

**ALESSANDRO IOZZIA** is a Partner and Head of Brunswick’s Milan office.

**LIDIA FORNASIERO** is a Director with the firm, also based in Milan.