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Q&A With Dinsmore & Shohl's Scott Fruechtemeyer

Law360, New York (December 04, 2009) -- A. Scott Fruechtemeyer is a partner in the corporate department of Dinsmore & Shohl LLP. He focuses on the representation of public and private companies in strategic transactions and securities matters. Scott has significant experience in structuring, negotiating and closing mergers, acquisitions, divestitures and venture capital investments.

Fruechtemeyer has represented issuers in public offerings and private placements of debt and equity securities, including private offerings of debt securities pursuant to Rule 144A and debt and equity securities pursuant to Regulation D. He also advises clients on a variety of securities and corporate law issues, including corporate governance matters, annual and quarterly reports, proxy statements and other periodic SEC reports.

Q: What attracted you to your practice area?

The things that attracted me to law school — critical thinking, writing and problem solving (to name a few) — were instrumental in my becoming a transactional attorney. Unlike some of my colleagues, I did not go to or graduate from law school necessarily planning to be a corporate attorney.

As a first-year associate, my firm had a rotation program where each new associate spent four months working in the transactional practices and four months in litigation based practices. I spent my first rotation in the transaction practice. My first deal involved the acquisition of a group of radio stations, and I was hooked from the start. I really enjoyed the whole process — from due diligence and drafting to strategizing with the client, negotiating and closing.

From there, my practice grew as I had the opportunity to work with public and private companies in mergers and acquisitions and securities transactions.

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

A: As a senior associate, I had a significant role in the initial public offering of Mirant Corp. (formerly known as Southern Energy Inc.) in 2000. My role was as primary draftsman of the registration statement and prospectus and responses to the numerous SEC comments and as coordinator of the directed share program. Mirant's offering involved some novel and complex issues.

Prior to the offering, Mirant was a wholly owned subsidiary of The Southern Co., one of the largest utilities in the country. There were complex issues involved in the separation of the two companies, including corporate governance issues and transition services agreements. Ultimately, approximately six months after the IPO, Mirant was spun out from Southern Co.

In addition, concurrently with the common stock being offered in the IPO, Mirant undertook an offering of convertible trust preferred securities. This necessitated the preparation and filing of two separate registration statements and prospectuses.

Mirant was an international energy company with global operations, which presented unique challenges in coordinating the directed share program with local counsel in more than a dozen countries.

What are the most challenging legal problems currently facing clients in your practice area?

A: I think the challenges faced by companies today are more from economic factors than from legal issues. However, a number of clients have expressed concern over the impact of adopted or proposed regulatory changes. For example, the SEC's recent proposed rule regarding shareholder proxy access and the reforms described in the Obama administration's White Paper on Financial Reform, could result in significant changes that impact our public company clients and financial institution clients.

While it is too early to predict the exact formulation of these regulatory changes, it is clear that the financial crises will give rise to the adoption of revised or new regulations. Most clients are in a wait-and-see mode right now.

Q: Where do you see the next wave of activity in your practice area coming from?

A: Private capital-raising activity has increased in the past several months. I have worked with a number of clients who have the need for additional capital, including to fund acquisitions, but are unable to obtaining financing through their historical methods. One of the causes is from the lack of available commercial credit. Although our recent experience indicates that commercial credit appears to have eased for some borrowers, most companies do not meet the current "enhanced" underwriting criteria.

Rather, I have seen profitable companies who would have qualified for commercial credit (on reasonable terms) 18 months ago, undertake private placements to raise capital, willing to suffer some dilution in order to fund future growth. In addition, we are

seeing a number of deals in the public-private partnerships. I think this trend will continue as the economy recovers.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: One lawyer who had a great influence on me is Jim Smith, a corporate and securities attorney at Troutman Sanders. I was an associate and then a partner in the corporate and securities practice group at Troutman Sanders from 1997-2003. During that time, Jim was the practice group leader and I was fortunate enough to work on a number of transactions with him. Jim set a great example for me and other attorneys - both within and outside of the firm - of how to practice law with great integrity, precision, fairness and professionalism. Jim is a great teacher and a true gentlemen.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: These are unprecedented times for our lawyers as deal flow is sporadic and clients look to cut costs by keeping work inside their organization. My advice to young lawyers is to get out of your office, seek diversification, and read to expand your understanding. First of all, make a concerted effort to get out of your office. Start networking now by getting involved in civic and professional organizations that interest you.

Second, seek out opportunities to gain experience in related practice areas. For example, seek out opportunities to work on a bond issuance or a bankruptcy or restructuring. Many of the issues involved in these areas are transferable or complementary to a corporate finance practice.

Finally, read everything you can to learn concepts and issues. Read the law, read articles in a legal journal such as Insights or The Business Lawyer, or even read a bestseller such as "Den of Thieves" by James Stewart (an interesting tale about the insider-trading scandals of the late 1980s).

For something a little heavier for new attorneys, I recommend reading Chapter 1 of "Corporate Financing and the Securities Laws" by Charles Johnson and Joseph McLaughlin, which provides a well-written history and overview of the Securities Act of 1933. As a young lawyer, you should focus on learning new concepts or "filling in the gaps" on issues you have encountered.