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The New Retro Law Firm: The Midsize Firm

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Resisting the Pressure to Merge

During the years immediately preceding the New Millennium, our law firm was regularly approached by legal recruiters and managing partners alike, each exploring whether the large national or global law firms that they either represented or managed would be an appropriate partner to acquire or merge with our shop. One of the main attractions of Morrison Cohen then, and now is, our New York City-based capital markets practice. Large out-of-town law firms seeking a New York presence have all come to recognize that in order to truly set roots in the New York market, you need to tap into Wall Street for business, and you cannot do this by merely opening an office in town and hanging out a shingle with your name on it.

Our partners have always been flattered by the regular advances by other law firms, but we nonetheless have consistently and respectfully rebuffed each of them. We never bought into the oft-repeated argument that there was no place for the midsize firm in the global market place which seemingly placed a premium on large, multi-national law firms with offices in all of the world's money centers. Contrary to the argument to merge into ever larger and more leveraged shops, we have instead always placed a premium on offering senior attorney level attention at more rational hourly billing rates than our large law firm competitors. It is a recipe that we learned worked well a long time ago, and which was confirmed in spades during my tenure as COO of J.H. Whitney & Co., a Connecticut-based, multi-billion dollar buyout shop and alternative assets investment manager.

In the current recessionary economic environment, financial institutions, operating businesses and other clients and prospects that might have once valued the large multi-national, highly leveraged law firm model, now are attracted to a "retro" law firm model that offers senior level attorney attention at more rationally priced billing rates. Ultimately, clients want thoughtful commercial advice at better pricing.

We have been asked over time why we constantly rejected the many merger overtures. The answer, although easy for us to reach, is more involved when you attempt to articulate the logic behind it. It does, however, provide significant insight into how we have constructed our law firm based on lessons learned from other law firms and business models which have both succeeded and failed over the years, as well as my own experiences and observations as a partner at a large buyout shop prior to returning to Morrison Cohen in 2001.

Staffing Models: Large v. "Retro" Firms'

To understand how we have grown our market share during these tough economic times, thereby filling in what would otherwise have been holes in our business similar to those many of our larger competitors have faced, it is important to first appreciate the basic differences in the mid sized firm "retro" model as compared to the typical "leveraged associate" large firm model. Most large law firms employ a "leveraged associate" staffing model with a ratio of at least three associates for every partner. Legal work is traditionally brought in by a senior partner and performed by talented but less experienced associates under the more experienced partner's supervision. Partners at these large shops usually charge out their time at anywhere from $700 per hour to well north of $1,000 per hour. This staffing model has proven to be highly successful and profitable for these law firms over the years. However, with clients looking to tighten their own overhead exposure during these challenging times, the model is experiencing increasing pricing pressure. The significant overhead created by so many high priced associates per partner is now a challenge for such shops to navigate, as they need to consider pricing when competing for business from both prospects and existing clients. Midsize law firms, like our own, are often able to offer an equivalent sophisticated "product" at dramatically more rational hourly billing rates because our model does not employ the same staffing leverage.

Our shop is, in many senses, a throwback to how law firms were constructed several decades ago. We have taken the best of old style law firm partnerships and married it to a more progressive, merit based, flexible compensation matrix. The end result is a better product for our clients at a lower cost.

We traditionally have one associate for each partner; the lower overhead allows us to bill out our partners generally from the mid $400's per hour to the high $500's per hour (rates that compare to where our larger competitors bill out their considerably less experienced midlevel and senior associates). Our staffing leverage comes from our partners (they are all working attorneys and not merely business gatherers). As a result, we are able to offer senior level attention, more rational billing rates and lower fees due to both the lower billing rates and the efficiencies of having more experienced practitioners actually doing the work.

Attracting and Retaining the Best Legal Talent

One of the things that I learned during my tenure as a principal and client prior to returning to the practice was that good legal representation was more about the individual lawyer and less about the name of the law firm or franchise which you engaged. My private equity colleagues regularly reached out to their favorite attorney at Morrison Cohen because they knew they would get sage, commercial advice from our experienced practitioners beginning with their very first call on the subject matter at hand (rather than have to wait for a less experienced lawyer to go up the reporting ladder to get an answer from a less engaged, more senior supervisory partner at a larger shop).

I have spent much of this article talking about the issues that attract clients and prospects and allow the midsize law firm model to be successful even in challenging economic times. In order to have the "product" to sell, you must acquire and maintain the best legal talent. Here too, the lessons learned as a principal at an investment manager which was responsible not only for its own personnel issues, but also indirectly for the similar issues at its numerous portfolio companies spanning across many different industries, service and otherwise, proved to be invaluable.

In order to both attract and maintain the best legal talent, market competitive compensation is an obvious starting point and fortunately our model allows us to be one of the more profitable shops in New York (charging lower rates, having lower overhead, and bringing dollars down to the bottom line) and to pay very competitively when compared with our larger competitors. We also employ a meritocracy, paying associates and partners alike based on the value of their annual contributions. We avoid lock step compensation like the plague, as it hits the expenses hard and arguably prevents compensation from going to those who are the most deserving in any given year. We treat each year anew and we look back to see who contributed the most to make the year in question a financial success. There is no room for resting on one's laurels!

If compensation is the starting point in attracting the best and brightest attorneys and supporting staff, then culture is the variable that keeps the band together. Although there are never any guarantees in the legal profession that a star lawyer will not pick-up and leave for a competitor (unlike most other industries, law firms are not ethically allowed to have their lawyers enter into non-compete agreements), having a culture where "stars" want to stay should be the ultimate goal of every law firm (and business). Transparency is a tremendous tool to be used towards this end. We employ transparency in every aspect of our partnership. Partners see everything from the firm's daily revenue receipts to a very detailed and comprehensive set of monthly financial reports and analyses. Every partner is openly informed of each partner's compensation; there are simply no secrets. The transparency serves as both a check/balance, and as a motivator. This course of conduct is something that law firm partnerships regularly employed many decades ago, but moved away from as they grew larger and needed more of a corporate structure in order to manage larger numbers of attorneys. We believe that our "retro" shop maintains a wonderful balance in our operation by employing many old style ways of governing (transparency, one partner, one vote, etc.), and marrying them with a flexible merit based compensation system. The end result is an open, trusting environment with a very strong team oriented approach to all matters, and a compensation and recognition system which tends to get the best efforts out of our employees on a consistent basis.

Finally, we have a very strong belief that you must have the most talented professionals, and that to a person, they must be decent human beings. At the end of the day, the most talented attorneys are also the most mobile. They have choices and they more often than not choose to work with colleagues whom they know and can trust. The indirect benefit is that you are able to work in a profitable, well-managed atmosphere with colleagues that you both respect and enjoy. It has proven to be a very successful formula.

David A. Scherl is Chairman and Managing Partner of Morrison Cohen LLP. David has considerable experience in the financing of development and growth stage companies in a variety of different industries, representing companies seeking financing, as well as traditional and non-traditional sources of financing. David also advises clients in connection with a wide range of commercial relationships and arrangements, including joint venture, distribution, licensing, partnership and employment arrangements.