

## Deals Boom, Enforcement Forecast Shaped '21 For DC Firms

By Justin Wise

*Law360 (December 10, 2021, 2:33 PM EST)* -- An extremely active corporate deals landscape combined with a Democrat in the White House made for a year in which law firms invested heavily in their presence in the nation's capital.

Driving much of firms' business was an unrelenting pace of mergers and acquisitions, creating exceptionally high demand for lawyers in a number of practices, including regulatory experts highly concentrated in the capital, recruiters told Law360. Practices including intellectual property, litigation and government contracts also remained particularly busy.

And while anticipation around a potential enforcement uptick with the new Democratic administration hasn't been fully realized, attorneys told Law360 that signs from the White House, including its political appointments and policy statements, point to an acceleration in the coming months.

"The administration is still putting personnel in place, but every signal that they're sending is that this enforcement wave is coming," said Joseph Palmore, managing partner of Morrison & Foerster LLP's Washington, D.C., office.

Here, Law360 looks at four of the biggest trends in the Washington legal industry in 2021.

### **M&A Activity Makes For High Demand in Corporate, Regulatory**

A frenetic mergers and acquisitions landscape is behind much of BigLaw firms' success this year, according to recruiters and legal consultants. In the first nine months of 2021, financial market data provider Refinitiv tracked more than 40,000 global transactions totaling \$4.4 trillion, the highest total it's ever recorded for the first three quarters of a year.

Corporate practices are as busy as ever, and Washington is no exception. The region is most well known for its regulatory practices, but it's also become a robust market for deals work across areas such as aerospace, technology, pharmaceuticals and private equity funds, attorneys say.

"As much as it's a government and regulatory town, it's also very much a business town, and there's a lot of business that drives the work we do here," Sheppard Mullin Richter & Hampton LLP Chair Luca Salvi **told Law360 Pulse in August.**

The high rate of deals activity has spilled into firms' regulatory practices, many of which are largely

based in D.C. Antitrust lawyers who advise on merger requirements, for example, have seen a huge surge in work, as the number of deals that require reporting to federal agencies skyrocketed.

That, in addition to the current administration's aggressive rhetoric on competition enforcement, has been a major driver for some firms' recruiting efforts, as they prepare for more work.

As of early November, hiring of antitrust practitioners in D.C. by the 200 most profitable law firms was up 45% from the previous four-year average for the same timeframe, according to Firm Prospects LLC, an analytics firm.

"M&A activity is driving an increased need for expertise in a number of regulatory areas," Lauren Drake, a partner at recruiting firm Macrae, told Law360 Pulse.

"That is probably the main thing behind this 'feeding frenzy' in the D.C. market," Drake added, noting firms' demand for attorneys exceeds the supply in multiple regulatory practice areas.

Garrison & Sisson Inc. partner Dan Binstock noted that how corporate practices are performing can typically be a good barometer of success for BigLaw firms.

"The [Federal Reserve] was pumping all this money into the economy, and as a result of that, companies were doing deals, mergers, SPACs, all of these different transactions," he said. "And as a result of those corporate transactions, so many of the ancillary practice groups get pulled in to support."

### **Biden Administration Signals Enforcement Surge**

President Joe Biden has appointed champions of more aggressive competition oversight to the Federal Trade Commission and the U.S. Department of Justice's Antitrust Division. He tapped a former Commodity Futures Trading Commission chair with a reputation as a tough enforcer as the nation's top securities regulator.

He also selected former FTC Commissioner Rohit Chopra to run the Consumer Financial Protection Bureau, in a string of appointments that securities and antitrust attorneys say portends a more ambitious enforcement agenda in the coming years.

That agenda is already beginning to be unveiled at the FTC under Chairwoman Lina Khan. The agency has altered its merger review procedures to allow for broader information requests of companies involved in transactions, and it repealed previous policy statements and guidance on its "unfair methods of competition" principles and vertical mergers.

Biden also signed an executive order in July pushing several agencies to take up actions designed to limit the power of monopolies and supercharge competition.

"The executive order has just dramatically increased what the Federal Trade Commission is doing," McDermott Will & Emery LLP antitrust practice leader Raymond Jacobsen said.

The appointments of Chopra to the CFPB and Gary Gensler to lead the U.S. Securities and Exchange Commission, meanwhile, have sent similar signals to financial services and securities attorneys.

"There really is an expectation that there is going to be a lot more securities enforcement and a much

more ambitious agenda on the part of the SEC in terms of what types of resolutions of cases it might be looking for," Quinn Emanuel Urquhart & Sullivan LLP partner Sarah Concannon told Law360 in November, pointing to public statements from Gensler since he stepped into the position.

Gensler has said, among other things, that he expects to ramp up enforcement of cryptocurrency trading and lending platforms. He also has urged lawyers to help the platforms register with the SEC as opposed to advising them on how they can maneuver around securities laws.

Some areas, such as white collar, have remained quieter than initially expected, according to attorneys and recruiters. However, the DOJ this fall unveiled a list of new initiatives around the agency's corporate criminal enforcement, including taking a harder line on companies with a history of illegal behavior.

Palmore, Morrison & Foerster's D.C. office head, said all these signals suggest the "enforcement wave" will break by next year.

### **Talent Wars Place More Pressure on DC Firms**

Firms braced for revenue hits when the pandemic hit in 2020, fearing the demand for legal services would dwindle. Those concerns have long since evaporated. The biggest concern from firms now is having enough lawyers to handle the incoming onslaught of work, recruiters said, which has given way to an intense war for talent.

Firms are hiring across practices in the capital but particularly in areas like corporate, antitrust, international trade and privacy. Government contracts and life sciences attorneys are also in high demand, according to firm leaders and recruiters, as a number of biotech firms and pharmaceutical companies team up with the government during the pandemic.

Hiring in litigation also began to pick up earlier this year, recruiters said, a sign that work in that department is reaching pre-pandemic levels.

In just the first half of the year, the 350 biggest firms in the U.S. made a combined 1,242 lateral associate and partner hires in D.C., a 33% increase from the previous three-year average for the same time period, according to data provided to Law360 Pulse by Firm Prospects and Decipher Competitive Intelligence, a company that provides due diligence on lateral hires for law firms.

By September, BigLaw firms including Latham & Watkins LLP, Cooley LLP and Gibson Dunn & Crutcher LLP had made at least 30 lateral attorney hires in D.C., which office leaders told Law360 came in response to the tremendously high demand they've seen.

"There was a fear when the pandemic hit that there would be a crimp [in the flow of work]," said Sarah Van Steenburg, a managing director at recruiting firm Major Lindsey & Africa. "The worries this year aren't so much about the work, the worries now are about their talent and their staffing."

Firms are offering more bonuses and higher compensation offers in response, a dynamic that is placing more pressure on D.C.-based firms whose revenues are a tier below the most profitable New York-based shops, said Jeff Lowe, Major Lindsey's D.C. managing partner.

"It's definitely putting more pressure on them," Lowe said. "The indigenous D.C. firms aren't at quite the same level of profitability as the big blue-chip New York firms. There will always be that point where the

compensation gets to a level where they just can't compete. But they want to and are trying to."

### **More Firms Plant Feet in DC**

The evolving regulatory and IP landscape in D.C. is behind at least some of the several law firm expansions in the region this year.

Fenwick & West LLP, a Bay Area-based shop with a sizable tech and life sciences client base, announced in August that it was entering the region, in a move leaders connected to the increasing scrutiny federal regulators and lawmakers are placing on Silicon Valley.

The move also comes as the life sciences industry rapidly expands, which multiple attorneys told Law360 is engendering increased government interest and requiring more sophisticated legal services.

Prominent IP shops Desmarais LLP and Irell & Manella LLP also announced expansions into the D.C. region this year. For Desmarais, the move was partly in response to the increasing activity at the International Trade Commission, given some of the backlogs in patent litigation in the district courts.

Justin Wilcox, a Desmarais partner who relocated to the capital as part of the firm's expansion, said "D.C. is a really vibrant market for talented IP attorneys" and that having a presence in the region would bolster its capabilities.

Other notable moves include Jesse Barrett, the husband of U.S. Supreme Court Justice Amy Coney Barrett, leading the D.C. office opening for Indiana-based boutique SouthBank Legal. Los Angeles-based litigation boutique Browne George Ross O'Brien Annaguey & Ellis LLP is also opening an office in the city after scooping up former White House counsel Pat Cipollone and a host of other former officials from President Donald Trump's administration.

--Editing by Brian Baresch and Alyssa Miller.