Dealmaker
Breaking Up Is Hard to Do
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CRAVATH, SWAINE & MOORE LLP

ACQUIRING MINDS
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Fine Print

Breaking Up Is Hard to Do

Faiza Saeed challenges convention in style and (legal) practice — most recently by eschewing the entrenched reverse breakup fee in leveraged buyouts BY DAVID MOSS

On a cold day last January, Faiza Saeed rooted herself in her Midtown Manhattan office at Cravath, Swaine & Moore, her thoughts swirling around a single contract proviso. Negotiations were heating up on Laureate Education's $3.8 billion sale to a blue-chip consortium that included Kohlberg Kravis Roberts, Citi Private Equity and SAC Capital. Morgan Stanley, Laureate's financial adviser, was relying on Saeed to help it with the legal wrangling. On a key conference call with Morgan bankers, she leveled her opinion: The reverse breakup fee provision had gone unquestioned long enough. Now, she maintained, it was time to draw a line in the sand.

As Saeed, now 42, saw it, the fee was a one-way option held by the buyers, easing their ability to break the deal with no further recourse for Laureate. Instead of embracing this status quo, the artful lawyer sought to adopt a more imaginative provision — used sporadically in other deals — that ensured an airtight financing condition while also enforcing equity funding through

Cravath's Faiza Saeed challenges conventional wisdom when structuring merger deals.

PHOTOGRAPH BY IAN SPANIER

third-party beneficiary rights and retaining specific enforcement abilities to make the agreement stick.

"Faiza is no wallflower," says Mark Van Lith, head of the media-banking group at Bear Stearns, who got to know her while working on opposite sides of the table during DreamWorks SKG's sale to Viacom's Paramount Pictures. "She's really good at deconstructing the Rube Goldberg machine."

Morgan was sold on Saeed's logic, immediately negotiating the new provision into the final agreement that was signed at the end of last January. Good thing: By the time the deal was completed in mid-August, the summer credit crunch had put dozens of buyout deals in jeopardy, spurring some firms — Harman International,* Acxiom, SLM and United Rentals, among others — to play the breakup-fee card. As Richard Brail, Morgan Stanley's lead banker on the Laureate deal, attests: "If we didn't have the appropriate provisions or features and had merely to rely on the reverse breakup fee, the buyer potentially could have paid the fee and gone home. There may not have been a deal."

Challenging conventional wisdom and demystifying complex situations have always been in Saeed's DNA. A would-be scientist in her earlier life, she spent most of her college career at Berkeley as a molecular-biology major, studying protein functions and trying to uncover the secrets of the human genome. After taking a few economics classes, though, she opted to split hairs instead of atoms. She trekked to Harvard Law School and, later, Cravath, where she put her scientifically honed critical-reasoning skills to work structuring merger deals.

A partner for nine years, she has risen to the highest ranks in corporate law and is one of a handful of women who have constructed some of the most significant mergers and acquisitions of the past decade, advising Vivendi in its three-way, $46 billion transaction with Seagram and Canal+, and Time Warner in its ill-fated $165 billion merger with AOL. But the legal ace still finds time to revel in her individuality: In this whitest of white-shoe law firms, her office walls are splashed with lavender; one prominently displays a psychedelic painting charting the history of rock n' roll.

Indeed, Saeed's defiant nature helped her spot the shortcomings of the reverse breakup fee, which many of her peers had begun to accept as the norm. Last year, 77 percent of going-private deals included the fee, up from just 17 percent in 2005. "There's nothing illegal or illegitimate about doing a deal with a reverse breakup fee," she concedes. "But in the PE boom, it seemed that the market came to accept the structure without really appreciating the downside risk."

Though reverse breakup fees will undoubtedly reemerge in some form in the future, Saeed and her team have provided a viable alternative blueprint — and in the process made breaking up leveraged-buyout deals a lot harder to do. D

SCORECARD
Faiza Saeed

Age 42

City New York

Firm Cravath, Swaine & Moore

Position Partner

Education B.A. in economics and molecular biology from Berkeley in 1987; J.D. from Harvard Law School in 1991

Career Arc Joined Cravath as an associate in 1991; made partner in 1999

Really Big Deal In the summer of 2007, Saeed counseled Viacom and MTV in the formation of the Rhapsody digital-music joint venture with RealNetworks, which many analysts saw as a direct shot across iTunes' bow.

* FOOTNOTE

In the fall, KKR and GS scrapped their $8 billion buyout of Harman International. To avoid a $225 million breakup fee, the PE firms came up with a twist: They bought $400 million of debt, convertible into common stock at $104 per share — the first time an M&A fight involving a public company settled using a PIPE deal.