

Silicon Scene

DEALINGS IN A HIGH TECH WORLD

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Cooley backs Brocade in \$3 billion buy

Managing the legal team on one of the biggest Silicon Valley deals this year wasn't exactly an easy task.

"Some might be inclined to call it a three-ring circus," said **Richard Climan**, who led the **COOLEY GODWARD KRONISH** team that represented San Jose's Brocade Communications in its \$3 billion acquisition of Santa Clara-based Foundry Networks.

But a well-run circus, the Palo Alto partner added: "A remarkably well-managed and well-coordinated effort on all sides."

The backdating-beleaguered Brocade will pay for the acquisition with \$1.5 billion in debt, \$1.4 billion in cash and \$100 million in equity. According to Securities and Exchange Commission filings related

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to the buy, Brocade and Foundry hope that the deal will better position the combined data networking company in the over-\$20 billion market, in which San Jose-based Cisco Systems is a major competitor.

Climan, the head of his firm's M&A practice, had to manage three groups of lawyers in negotiating the acquisition agreement, conducting the necessary due diligence, and negotiating the debt financing, which he said is often not included in strategic acquisitions.

"Many deals — particularly smaller deals — don't have this debt financing element," he said.

Joseph Scherer, the San Francisco partner who heads Cooley's credit finance and debt securities practices, worked on that part of the deal, which he said went smoothly.

"Notwithstanding what you hear generally about the financing market, when you have a strong company and a strong deal ... you can still get a good deal and a strong commitment," he said.

The common conception that financing



SMOOTH SAILING:

Cooley partner Richard Climan oversaw Brocade Communications' recent \$3 billion acquisition, a potential "circus" that he says was more like a tightly run ship.

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today is particularly difficult to get can be misleading, Scherer said. "For a properly structured new deal, financing is definitely available."

And compared with some of the more loosely structured deals of 2007, this year's deals are easier to finance, he said. The structure of the proposed financing on

the Brocade deal was successful in that it is more traditional, Scherer said.

Brocade was both one of the first and one of the hardest-hit companies tangled up in the backdating scandal. Two former executives have received prison sentences for their roles. Foundry also restated earnings in connection with backdated stock options.

Foundry was represented by a **HELLER EHRMAN** team led by Silicon Valley partner **Steven Tonsfeldt**, co-head of the firm's M&A practice. Tonsfeldt said Foundry is not a regular client — Orrick, Herrington & Sutcliffe has been known to represent them on corporate work — but he has sold two of Foundry CEO Bobby Johnson Jr.'s prior companies.

Climan said he was in constant contact with Scherer, San Francisco partner **Mischa Marca**, and Palo Alto partner **Jane Ross**, his "chief M&A lieutenant" who began working on the deal shortly after returning from maternity leave, he said.

A deal like this, he said, "doesn't allow for a lot of sleep as you move toward [a signing and] an announcement." Also on the deal were San Francisco partner **Thomas Reicher**, Palo Alto partners **Lois Voelz**, **Keith Flaum**, **Eric Reifschneider** and **David Lipkin**, Palo Alto associates **Kara Hagen**, **Mark Bradford**, **Brandee Shtevi**, **Tali Sealman**, and one associate in New York.

The other Heller lawyers on Foundry's team included partners **Kristen Kercher**, **Mark Windfeld-Hansen** and **Richard Grimm**. Special counsel **Stuart Pixley** worked on the intellectual property parts of the deal. The team also included associates **Jennifer Cullen**, **Joshua Erikson**, **Jason Schendel** and **Joshua Sugnet**. A New York partner worked on finance aspects of the deal.

— Niraj Chokshi