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O'Melveny & Myers, O'Sullivan Sign Letter Of Intent to Combine Forces by September

BY ANTHONY LIN

O'MELVENY & Myers and New York's 88-lawyer O'Sullivan, a leading firm in the private equity arena, have signed a letter of intent to merge, paving the way for a combination that would substantially boost Los Angeles-based O'Melveny's New York presence and strike yet another name from the shrinking roster of mid-sized New York firms.

The merger is subject to the approval of both firms' partnerships. O'Melveny chairman Arthur B. Culvahouse Jr. said O'Melveny's 216 partners will vote on the merger by the end of July, with a two-thirds majority required to approve the pact. Mr. Culvahouse said he expected the

merger to be approved without difficulty. O'Sullivan's 25 partners will also vote at the end of July and are expected to unanimously support the merger, said O'Sullivan chairman John J. Suydam.

If the combination is approved, it will become effective by September.

O'Sullivan has long been one of the most sought-after merger partners in New York, owing to its high-end transactional practice for private equity clients like JP Morgan Capital and the Apollo Group. But while offers have rolled in constantly, Mr. Suydam said the firm did not seriously consider a merger until the end of last year, after the partners decided the firm needed to merge with a global firm to keep pace with

the globalization occurring among their largest clients.

"Private equity funds have grown tremendously over the last five years," he said. "Now most of the groups will not just have operations in New York and California, but in Europe and Asia also."

Aside from New York and Los Angeles, the 753-lawyer O'Melveny has a large office in Washington, D.C., where Mr. Culvahouse is resident. The firm has offices throughout northern and southern California, along with overseas offices in China, Japan and the U.K.

The downturn in major transactions may also have encouraged O'Sullivan to seek security in diversification. The firm is most well-

known for its private equity mergers-and-acquisition practice, which has slowed along with the rest of the M & A market. Mr. Suydam acknowledged the firm's practice had slowed in 2001, and said a more diverse practice mix was an advantage of merging with a larger firm.

Even with the downturn, O'Sullivan's strong franchise and high level of profitability limited the number of firms with which it was willing to consider merging, and the terms under which it would consider doing so. Because of its size, O'Sullivan's profits are not reported in the The Amer-

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ican Lawyer's AmLaw 100 or AmLaw 200, but a source familiar with the firm said its profits per partner have been more than \$1.3 million in recent years, though probably not in 2001. Among the firms that had preliminary talks with O'Sullivan was Chicago's Kirkland & Ellis, which had profits per partner of \$1.5 million in 2001, according to the most recent AmLaw 100 figures. Mr. Suydam would not provide any numbers, but said his firm was on track to have profits per partner of more than \$1 million in 2002.

O'Melveny should also see profits per partner of more than \$1 million this year, said Mr. Culvahouse. The firm just came off a record year in 2001, with profits per partner increasing 34 percent in 2001, to \$945,000 from \$705,000 the year before. Mr. Culvahouse acknowledged the firm's improvement was key to bringing O'Sullivan to the table.

"They told us as much," he said.

When O'Sullivan was known as O'Sullivan Graev & Karabell, name partner Lawrence Graev, who left the

firm last year, routinely responded to merger offers by offering to sell the firm in return for an upfront payment equal to a multiple of firm revenues. The offer was chiefly designed to ward off approaching firms.

The source familiar with the firm said O'Sullivan, while no longer for sale, has more recently imposed steep demands on potential merger partners. According to the source, a deal fell apart last year on terms that would have guaranteed Mr. Suydam and Harvey Eisenberg, another O'Sullivan partner, more than \$3 million a year each, for a term of years, while also requiring the merger partner to bring aboard all O'Sullivan lawyers.

Corporate Practices

Mr. Culvahouse would not comment on specific terms of the agreement, though he said the agreement would not dilute partners' profits of either firm and would not have partners at one firm subsidizing partners at the other.

If the merger goes through, O'Sullivan's practices will fill a sub-

stantial hole in O'Melveny's 118-lawyer New York office, which has so far lacked strong corporate practices. The New York office is focused more on litigation, intellectual property and bank finance. O'Melveny has larger M & A and capital markets practices based in Los Angeles and elsewhere, along with entertainment, tax, bankruptcy and real estate, among other practice groups.

The two firms began discussions in January, said Mr. Culvahouse. Lynn Mestel, president of New York-based search firm Mestel & Co. brought the two firms together, he said.

The firms broke off discussions in March but resumed talks in May, he said. There were disagreements about various aspects of firm combination, including accounting issues, said Mr. Culvahouse.

If the merger is approved, Mr. Suydam will join O'Melveny's policy committee and Harvey Eisenberg, another O'Sullivan partner, will join O'Melveny's compensation committee.

O'SULLIVAN LLP



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