

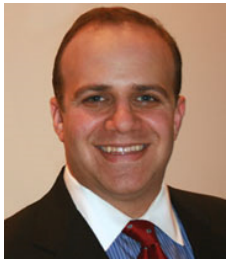


Could you use an expert opinion on a career or job-search question? We welcome your most pressing questions and are here to provide you with candid, straight-talking career advice.

By Dan Binstock

Question:

I need your help with how to best negotiate an offer I have. I am a third-year corporate associate focusing exclusively on mergers & acquisitions. I have an offer from another firm to join their corporate securities practice. Because I've focused on M&A, I don't have any real securities experience yet, but I think I can get up to speed pretty quickly, and based on what I know, I think I'll enjoy securities more than M&A. I got my offer last week, and the firm wants to bring me in as a first-year associate at a much lower salary than my current job. Their justification is that I don't have the experience of a third-year securities associate. Does that make sense, or are they being cheap? (C.C., New York)



Answer:

Dear C.C.,

The issue of "taking a lap" when you switch practice areas is very common. Often, when making a practice-area switch, taking a hit in class year makes complete sense, especially for the

incoming attorney.

I've seen numerous associates interpret reductions in class year the wrong way and think that firms are being "cheap" because they want to pay lower salaries. Usually, this is hardly the case. Rather, a firm is going to want to set your billing rate at the maximum rate possible in light of your experience and the client's needs. From a business perspective, a firm would not want to bill you out for less money than you're worth. But firms will not bill you out for more than they think clients will want to pay based on your experience. Thus, firms have a juggling act to contend with when they bring in associates who are switching areas. Remember—they want to bill you out as highly as possible, but not too highly, based on your relevant experience and their clients' needs. Your billing rate is largely driven by clients' needs.

For your benefit, taking a reduction in class year (and a lower billing rate) will afford you more time for training and getting up to speed. Partners will be more lenient if a project takes you more time because your billing rate will be lower. While you're learning a new area, why put yourself under the stress of having to complete projects more quickly? As partners often say, "the client will expect somebody at your high billing rate to complete this task much faster."

Another consideration is the fact that your performance will be judged in comparison with the performances of other colleagues at your same year level. If you enter as a third-year associate, your performance will be compared with the performances of other third-year associates, many of whom, I imagine, will have two solid years of securities experience under their belts. Would you want to step into a situation where your "equals" are much more skilled than you and you're trailing behind? This could hurt you in many ways over the years.

There are some associates who, in my opinion, place too much emphasis on the fact that they may be taking a reduction in salary without focusing on the dangers of entering at too high of a year level. When making a practice-area switch, focusing too much on the incoming salary usually does not make business sense and indicates very short-term thinking. The phrase "cutting your nose off to spite your face" comes to mind.

So, with this background in mind, let's consider your situation. Despite my comments above and based on what I see happening in the market, bringing you in as a first-year does strike me as a bit extreme. Why? As a third-year M&A associate, you have some relevant experience and are not starting from scratch. While you haven't worked in securities, you have still worked on M&A deals, and it's not as if you're coming from an insurance-defense litigation practice and have never worked in a corporate practice. Furthermore, much of the ramp-up time for first-years involves learning how to survive as an associate in a law firm. You obviously already know how to do this. Indeed, somebody at your year level and with your experience knows how to bill time, handle transactions, and essentially survive day-to-day as an



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associate in a law firm. I've seen people in situations similar to yours enter as second-year associates and get up to speed rather quickly.

In your case, if the firm has not already explained its reasons for offering to bring you in as a first-year (which I'm sure it did), I'd ask for its reasons. (Don't approach it as if you're insulted; rather, approach it as if you're simply trying to better understand the firm's business reasons for doing so.) Remember—a firm does not want to bill you out at a lower rate if it doesn't have to.

If you don't agree with the firm's rationale and you still want to attempt to negotiate entering as a second-year, you should do what good attorneys do: make your case. Point out your relevant and transferable experience and explain why you believe you will be ahead of most first-years (who just started around five months ago). Or you could try to obtain an upfront signing bonus to compensate you for the significant reduction in pay that you'll be experiencing. That way, the firm can still bill you out at a lower rate while helping to compensate you for the reduction in salary.

If, after hearing the firm's explanation, you agree that entering as a first-year makes sense, you may want to consider the following strategy (which I have seen work successfully). If, after the end of your first year, you are

performing very well and above your year level, the firm will consider bumping you up to third-year. In other words, based on your experience and the fact that you have successfully handled the transition to securities, you would skip a year level.

In short, don't lose sight of the forest for the trees. If you are looking to switch practice areas, it makes sense to be reasonably flexible and focus on your long-term goals rather than your immediate salary and year level. A little flexibility now can go a long way.

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