Debevoise & Plimpton

Private Equity Report

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"A hacker broke into our computer system and, in a random act of kindness, organized all of our files."

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"Dealing" with Cybersecurity: Evaluating Transactional Risks

Cybersecurity has emerged as a significant business risk that requires active management by companies and their boards. Increasing attention is being paid to the effect on M&A transactions of cybersecurity regulations and standards. In America, cybersecurity is a complex issue, with sector-specific laws and regulations at both the federal and state levels; a wide range of government and industry groups issuing comments and guidelines; and many other attempts to codify best practices. Understanding how that fast-changing landscape affects potential portfolio companies is an important investment consideration in 2015. Failing to understand how cyber risk can impact the value of a portfolio company can mean the difference between a successful and unsuccessful (or less successful) investment.

Costs to Meet Regulatory and Industry Requirements

If a target company's IT infrastructure fails to comply with current – or, more likely, upcoming – regulatory and industry standards, upgrading the company's IT infrastructure to meet regulators' standards could entail a significant outlay of capital.

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Consider, for example, consumer-facing companies that accept credit cards. Every merchant that accepts name-brand credit cards must comply with a set of data security standards known as the "Payment Card Industry Data Security Standard," or "PCI DSS." Major merchants annually must demonstrate compliance with the standard through an external assessment. (Merchants who process a smaller volume of transactions demonstrate compliance through a self-assessment.) Potential buyers of such businesses should be aware of – and know how the target company is preparing for – any significant changes to PCI DSS or the industry rules governing how credit card transactions are processed.

In fact, the American credit card industry is on the verge of a seismic shift away from relying primarily on magnetic strips and towards "EMV technology" that uses an electronic chip built into the cards (and is already widely in use in Europe). This is good news for minimizing fraud – but also could present a significant cost to merchants. They may have to upgrade credit card terminals, train employees on using the new terminals, and upgrade other hardware and software to implement the changes. The major card brands have announced that merchants who fail to implement such changes by October 2015 will bear the liability for fraudulent transactions that occur using the less-secure magnetic stripe technology. If you're considering a deal involving a retailer, these expenses may not be readily apparent, but they're foreseeable if you know where to look.

The credit card industry is not alone in facing potentially significant changes driven by cybersecurity concerns. In a recent speech, Benjamin Lawsky, the outgoing Superintendent of New York's Department of Financial Services ("DFS"), announced that the agency is "currently considering regulations that would mandate the use of multi-factor authentication" for financial institutions regulated by DFS. The practice requires an additional step – such as an access code algorithmically generated by a token in the user's possession – beyond entering a username and password in order to access a computer system. Just as with the switch to chip-based credit cards, moving a company's systems over to two-factor authentication could be costly and time-consuming, which would be useful information to learn during pre-acquisition due diligence.

> As a first step, evaluate the target company's market sector for cybersecurity risk and relevant regulations. Whether cybersecurity standards are prescriptive, in development or essentially undecided may depend in large part on the sector in which the target company operates.

Costs of a Data Breach

Another potential due diligence consideration is the risk that a potential portfolio company may be the subject of a data breach, which in some cases could be material to the business. Although there is no easy way to quantify this risk, both the sector in which a particular company operates, as well as its cybersecurity practices, can help buyers assess that risk. The costs incurred in responding to a significant data breach can be material. For instance, Target reported breach-related costs of some $191 million in the 2014 fiscal year (offset by about $46 million in insurance payments).

What Steps Should a Private Equity Firm Take?

Given these concerns, what steps should a private equity firm take in order to evaluate properly cybersecurity concerns in the deal context?

Consider the Sector. As a first step, evaluate the target company's market sector for cybersecurity risk and relevant regulations. Whether cybersecurity standards are prescriptive, in development or essentially undecided may depend in large part on the sector in which the target company operates. Ensure that you (or your outside advisers) have looked not only to regulatory rules, but also are aware of guidance issued by self-regulatory bodies, as well as so-called "soft"

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Leveraged Lending Guidance Update: Structuring Alternatives and Limitations

“Although creative structuring has enjoyed limited success, several factors have impeded more fundamental shifts in the leveraged acquisition financing markets away from leveraged loans in favor of high-yield bonds and away from regulated institutions to unregulated institutions.”

As most private equity professionals are aware, in the spring of 2013 the Federal Reserve Board (the “FRB”), the Federal Deposit Insurance Corporation (the “FDIC”) and the Office of the Comptroller of the Currency (the “OCC”) (collectively, the “Agencies”) issued the final version of their Interagency Guidance on Leveraged Lending (the “Guidance”). The Guidance includes two critical metrics: (1) a borrower should be able to fully amortize its senior secured debt, or a significant portion (*e.g.*, 50%) of its total debt, over the medium term (*i.e.*, 5-7 years) using free cash flow and (2) borrower leverage levels of greater than 6x total debt to EBITDA “raise concerns” for borrowers in “most industries.”

Anecdotal evidence suggests that the Guidance has led to meaningful tightening in underwriting standards at regulated institutions and lower leverage levels in the leveraged lending market generally; for example, average leverage multiples have dropped from 6.26x in 3Q14 to 5.6x in 1Q15. In the context of frothy equity valuations and robust purchase price multiples, the leverage limits and repayment requirements imposed by the Guidance disadvantage potential acquirers that rely more heavily on the leveraged lending market (*i.e.*, private equity and other below investment grade buyers) relative to other potential acquirers (*i.e.*, investment grade or public company buyers), particularly if those buyers are able to fund a portion of the acquisition consideration with their own highly valued stock. While M&A activity is on a record pace in the first quarter of 2015, volumes in the debt financing markets have been decidedly skewed in favor of investment grade acquisition financings (an increase of 19% from the previous year) and against leveraged acquisition financing markets (a decrease of 13% from the previous year).

Competitive Imbalance: Structuring Responses and Limitations

In response to this competitive imbalance, some market participants (particularly private equity sponsors) have considered (and in some cases successfully executed) structural alternatives to increase leverage levels to meet sellers’ price expectations while maintaining desired investment returns. Although such creative structuring has enjoyed limited success, several factors have impeded more fundamental shifts in the leveraged acquisition financing markets away from leveraged loans in favor of high-yield bonds and away from regulated institutions to unregulated institutions.

In addition, notwithstanding the availability of structures that may be compliant with the express language of the Guidance, regulated institutions are reluctant to participate in such structures. The Agencies have made clear that they are approaching the leveraged lending market from a “macroprudential” perspective,

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i.e., by regulating markets to mitigate perceived systemic risks, and not only risks to the financial institutions regulated by the Agencies. Given the Agencies' broad regulatory authority over significant participants in the U.S. leveraged lending market, as well as the Agencies' seriousness of purpose and willingness to take supervisory action, institutions subject to the Guidance are reluctant to be viewed as avoiding (or facilitating avoidance of) the Guidance through creative structuring.

Against this backdrop, we describe below potential structuring alternatives that market participants have considered in response to the Guidance. Each involves risks, complexities and costs that would not be present in a traditional leveraged financing transaction.

"[In the article we describe] potential structuring alternatives that market participants have considered in response to the Guidance. Each involves risks, complexities and costs that would not be present in a traditional leveraged financing transaction."

Unregulated Institutions

Unregulated originators (*i.e.*, market participants not subject to the supervisory jurisdiction of the Agencies) are not subject to the Guidance and can offer for their own account, or arrange, more highly levered acquisition financing packages than the Guidance permits. As a result, some commentators have predicted a relatively larger role in the leveraged finance market for loans arranged by less-regulated providers. This trend has been evident in the market, and we expect it to continue for the short to medium term (*e.g.*, during 1Q14, Jefferies was the only non-bank originator to appear in the top ten of the Thompson Reuters LBO Bookrunner League Tables; during 1Q15, Macquarie and Nomura joined Jefferies in the top ten). However, there are limits on this market transition:

1. Unregulated entities typically have less developed syndication infrastructures and expertise than regulated financial institutions. Private equity sponsors and other leveraged borrowers may be reluctant to entrust large and complicated debt financings, in which syndication execution is critical, to unregulated institutions. Moreover, sellers and borrowers in major transactions may have concerns regarding the creditworthiness of certain unregulated lenders and the reliability of their commitments to fund the debt financing. This concern could put a potential buyer relying on debt financing from unregulated arrangers at a competitive disadvantage to those with committed financing from traditional sources and, therefore, should be considered carefully by bidders (and sellers) in competitive auctions.
2. Discerning borrowers may be wary of relying on revolving credit commitments from unregulated financing sources for critical working capital and other liquidity needs over the term of the facility. Unregulated originators generally lack a full-service depository institution and, therefore, may be unable to provide the same balance sheet support as a traditional bank. Sourcing revolving commitments from regulated institutions is not a solution to the limitations imposed by the Guidance; the Agencies have been clear that if any portion of the debt capital structure is subject to the Guidance because it is provided by regulated institutions, the entire structure will be subject. Some unregulated originators have teamed with unregulated financial institutions with strong balance sheets in response, with varying success. Another potential solution is funding debt proceeds to the balance sheet of the borrower (*e.g.*, by way of funded term loans or high-yield bonds) for future working capital and other liquidity purposes. This approach carries additional costs beyond that of a traditional unfunded revolving credit facility.
3. Unregulated originators rarely have the capacity to issue letters of credit, again because they generally lack full-service bank affiliates. There are other solutions (*e.g.*, cash

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GUEST COLUMN (PricewaterhouseCoopers):

Demystifying the Working Capital Adjustment Mechanism

The concept of working capital, while familiar to most people involved in running a business, is often misunderstood in the context of a purchase price adjustment mechanism in an acquisition agreement. This mechanism can be an easy way to lose significant value in a deal if it is not structured and negotiated properly. This article will walk through the basic elements and common misconceptions of working capital adjustment mechanisms to examine ways a buyer or seller can use those mechanisms to improve its pricing position and, additionally, to protect against a potential adverse shift in value.

What is a Working Capital Adjustment Mechanism?

Working capital is the difference between current operating assets and current operating liabilities, but can be thought of as the capital needed to run a business day to day through holding inventory, and extending credit to customers, for example. A working capital mechanism is typically included in an acquisition agreement to prevent the seller from stripping this capital from the business at or prior to closing to the point where a buyer would need to infuse additional capital to fund operations post-closing, effectively increasing the purchase price.

A buyer of a private company typically bases its bid price on the enterprise value of the business on a cash free, debt free basis, *"assuming a normal level of working capital."* This "normal" level of working capital (typically the average working capital that is required to generate the EBITDA that served as the basis of the enterprise value in the buyer's bid, or sometimes, the working capital projected to exist as of the closing) will be a point of negotiation and essentially an element of the overall purchase price. The amount determined to be "normal" is often a fixed amount included in an SPA as the "target working capital," and the seller will pay the buyer if the working capital delivered at closing is less than this target amount, while the buyer will pay the seller additional consideration to the extent working capital at closing exceeds the target working capital.

Often target working capital is based on the average working capital of the business in the past twelve months. There are two main reasons a twelve month average is typically used. The first is because a full year average will remove any effects of seasonality. Secondly, the EBITDA number underlying a buyer's bid is usually measured in the trailing twelve months so it makes sense that there would be a match. If a company is growing rapidly and bids are based on forecasting EBITDA, then the target working capital should ideally be based on the forecast average working capital over the same period. Because forecast net

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working capital is often not available, it is common to see buyers apply a growth rate expected to be achieved in EBITDA to historical working capital when calculating the working capital target. If, in the case of a growing business, forward looking earnings are priced but historical working capital (where working capital is positive) is used to set the target, this target will typically be lower than expected in the future, thus the normal level of working capital set in the price could be artificially low, hurting the buyer.

Some believe that if closing working capital exceeds the target and the buyer pays an additional post-closing adjustment, then the buyer is somehow losing out. However, because the buyer is receiving more working capital than expected (which can be used to generate earnings which will convert to cash), there should be no net change in the equity value paid at closing.

Also, we would argue that it does not actually matter when closing occurs in a seasonal business as long as intra-month working capital has been considered when setting the target. For example, if a business is sold in a peak period (and working capital is therefore greater than the target), while the buyer will pay additional purchase price for the excess working capital, the buyer will also receive this cash back from the business as the additional working capital unwinds and converts to cash. Conversely, if closing occurs at a trough in the seasonality cycle, even though the Buyer will likely receive a cash adjustment in its favor, it will still need to infuse additional cash in the business to build the working capital back up as the year progresses.

Aggressive Approaches

So how can buyers and sellers be aggressive with working capital?

First, by setting a target that is not the true normal level of working capital. Buyers will of course always push for a higher target, and sellers will push for a lower target. One way to move the target away from an average is by making normalization adjustments for one time or non-recurring working capital items, or by excluding certain current assets or liabilities.

Second, by changing the way working capital is calculated under the acquisition agreement at closing as compared to how working capital may have been calculated by the business in the past (and in calculating the target). This could be done up front through careful drafting and negotiation of the working capital definitions and related accounting principles in the acquisition agreement. Or it can be done on the back end when the buyer is preparing the post-closing working capital statement. For example, a buyer could adjust working capital amounts (*e.g.*, increase judgmental reserves, etc.), while still staying within the confines of the SPA, to come up with a lower closing working capital amount if the acquisition agreement employs broad and flexible accounting policies. Acquisition agreements frequently include as a baseline standard that "closing working capital shall be prepared in accordance with GAAP," as GAAP is a well understood concept. However, GAAP only provides guidelines, which are subject to an individual business' interpretation. For example, with respect to "allowances for doubtful accounts," GAAP simply states that a company must have a reserve for debts it does not anticipate collecting, but GAAP does not set out how this reserve is to be calculated. An aggressive buyer could determine that the reserve has historically not been adequate and increase it on the closing balance sheet thus reducing

"Acquisition agreements frequently include as a baseline standard that 'closing working capital shall be prepared in accordance with GAAP,' as GAAP is a well understood concept. However, GAAP only provides guidelines, which are subject to an individual business' interpretation."

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10.5 Things You Should Know About the New UK Tax Rules on Disguised Management Fees

"The DMF Rules apply to all disguised management fees. Any amount 'arising' to a management team is treated as a disguised fee unless it satisfies the definition of either carried interest (carry) or a return on investment (co-invest)."

Effective from April 6, 2015, new rules in the UK seek to tax "disguised investment management fees" as ordinary income (the "DMF Rules"). The trick is to know a disguised management fee when you see one. The DMF Rules may affect not only funds managed or operating in the UK, but potentially any fund that undertakes activities in UK (for example, a represenative of the manager meeting with a UK investor). This article serves as a starting point to help readers make sense of the new regime in 10.5 points.[1]

1. The DMF Rules apply to all disguised management fees. Any amount "arising" to a management team is treated as a disguised fee unless it satisfies the definition of either carried interest (carry) or a return on investment (co-invest).

   1.5 We note that the rules rest heavily on the meaning of the word "arising," which is not a defined term. HM Revenue & Customs ("HMRC"), the UK tax authority, has issued guidance that an amount arises when an individual has access to the funds – including where the individual can direct how the funds are used.

2. The exceptions for carried interest and co-invest reflect an imperfect vision of commercial reality. It is therefore important not to jump to the conclusion that carry and co-invest arrangements are automatically outside the scope of the DMF Rules.

3. To fall within the carried interest definition, a return must be made out of profits, variable and at risk of not arising. If it is virtually certain that an amount will arise, such amount will not be treated as carried interest.

4. A carried interest safe harbor applies where returns are made out of profits, after external investors have received back all of their invested capital together with a preferred return of 6% annually compounded interest. In practice, we do not expect this safe harbor to be heavily used, as most carried interest arrangements should fall within the basic definition of carried interest.

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1. *Note: For those interested in a more technical analysis of the DMF Rules, Debevoise has published two Client Updates: "Are Your Carry and Co-Invest Returns Safe from UK Income Tax? (Sadly Your Management Fee Probably Isn't.)" and "More UK Tax? Additional Guidance on the Disguised Management Fee Rules. These updates are available on our website at* http://www.debevoise.com/~/media/files/insights/publications/2015/03/20150325_client%20updateare_your_carry_and_coinvest_returns_safe.pdf *and* http://www.debevoise.com/~/media/files/insights/publications/2015/03/client_update_new_uk_tax_client.pdf, *respectively.*

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5. Co-investment returns are trickier. The return needs to be an arm's-length return in respect of an investment made directly or indirectly by a member of the management team. To be arm's-length, a return must be comparable to the returns of an external investor (although importantly, HMRC has accepted that a co-invest return paid free of management fee and/or carry is still comparable to the return obtained by an external investor).

6. The difficulty with co-invest stems from the requirement in the DMF Rules that the investment be made by the individual. Although the investment may be made directly or indirectly, indirectly looks vertically down the chain of ownership, not horizontally. Therefore, in a leveraged co-invest arrangement where the general partner obtains third-party financing and invests the borrowed money into the fund on behalf of the individuals, it is difficult to argue that the investment is made by the individuals. This may not be an insurmountable problem, however, as one may argue that any co-invest return flowing to the team in respect of such an arrangement satisfies the carried interest definition in the DMF Rules. In particular, the safe harbor for carried interest may come into play in the analysis.

7. The application of the DMF Rules to management fee reduction or deferral mechanisms throws up interesting questions. The variety of such mechanisms is so extensive that it is difficult to make generalizations about their treatment under the DMF Rules. We note, however, that mechanisms where there is minimal discretion in the application of the fee reduction – and where the management team takes downside risk in respect of the value by which the management fee is reduced because returns are based purely on the existence of distributable profits – appear to fare better. Again, it is possible that the carried interest safe harbor could prove useful when analyzing these mechanisms.

> "The application of the DMF Rules to management fee reduction or deferral mechanisms throws up interesting questions."

8. It remains to be seen how corporate (as opposed to partnership) structures will be treated under the legislation. In particular this is relevant to funds that have a corporate general partner. HMRC has hinted that it will respect genuine corporate arrangements, but where a corporate entity lacks substance it is possible that the arrangement will be open to challenge by HMRC on the basis that an amount has arisen to the management team as soon as money is distributed to the corporate entity. Where cash is not immediately distributed out to the shareholders this could give rise to a "dry" tax charge (without any corresponding cash income), which would effectively prevent pre-tax co-investment programs from working properly.

9. UK funds are typically structured so that a general partner's share is paid by the fund to the general partner. In the early years when there are no profits this amount is paid as a non-recourse loan. Out of the general partner's share, it pays the management fee to the manager, and any excess left in the general partner's share is then distributed to the management team. The distribution is treated as a profit share and therefore, in a fund pursuing a buy out or similar investment strategy, potentially treated as capital gain. For UK taxpayers this distribution

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Financial Buyer Participation in the Insurance Industry: An Update for 2015

"Multiple insurance regulatory authorities, the most vocal of which has been the New York Department of Financial Services, have expressed concern about the growing presence of private equity firms in the insurance industry and, in particular, the annuities markets."

Last year, like 2013 before it, continued to see financial buyers make significant commitments to the U.S. insurance space. Key transactions included the Canada Pension Plan Investment Board's $1.8 billion acquisition of Wilton Re and the acquisition of Philadelphia Financial Group, Inc. by funds managed by the Tactical Opportunities Group of The Blackstone Group L.P. 2014 also saw the closing of some significant transactions announced in 2013, including the acquisition of Lincoln Benefit Life Company from Allstate by Resolution Life Holdings. Beyond announced transactions, interest in the U.S. insurance space by a number of financial buyers remained high.

This year is likely to be another active year in the U.S. insurance market. While the drivers of this activity are numerous, a few trends, beyond the basic business rationale for insurance company acquisitions, are worth highlighting. One such driver is increasing clarity around regulatory conditions likely to be imposed on financial buyers. The other is a continued broadening of the types of financing and the number of financing counterparties available to fund acquisitions in the life and annuity space in particular.

Increasing Clarity on Regulatory Conditions

Acquisition of "control" of a U.S.-domiciled insurer currently requires the prior approval of at least the domestic state insurance regulator of the target insurer, with control generally presumed if any person directly or indirectly owns or controls 10% or more of the voting securities of the insurer.

Multiple insurance regulatory authorities – the most vocal of which has been the New York Department of Financial Services – have expressed concern about the growing presence of private equity firms in the insurance industry and, in particular, the annuities markets. These concerns have focused on the potential disconnect between the perceived short-term profit interests of some financial buyers and the long-term, conservative investment profile traditionally implemented by insurance companies. These concerns are focused primarily on private equity and hedge fund acquirers, but they can extend to other financial buyers as well.

While it was initially unclear what these expressions of regulatory concern would mean for the future of financial buyers in the domestic insurance space, a regulatory consensus has formed around one or more of the following.

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Heightened Capital Standards. An acquirer may be required to maintain minimum capital levels.

Backstop Trust Account. A trust may also need to be funded and drawn on to top-up the target insurer's capital if it falls below a specified threshold.

Enhanced Regulatory Scrutiny of Operations, Dividends, Investments and Reinsurance. Any changes to the insurers' plans of operations, including investments, dividends and reinsurance transactions, may require prior approval. This requirement may be combined with a temporary dividend block.

Stronger Disclosure and Transparency Requirements. Each target insurer may be required to file more frequent reports regarding its capital level than the annual reporting generally required and agree to provide additional information concerning its corporate structure, control persons and operations.

While conditions such as these have not necessarily been welcomed with open arms by financial buyers (strategic acquirers have for the most part not had similar conditions imposed), they have not scuttled any announced deals to date. Importantly, whereas as few as 12-18 months ago many financial buyers were left to make semi-educated guesses as to what conditions may be imposed by a regulator considering a change-of-control application, the significant focus on these transactions by multiple state regulators has provided financial buyers considering a transaction today significantly greater certainty as to what may be required of them.

An Increasing Variety and Sources of Financing Options

A variety of regulatory impediments, most notably dividend restrictions at the target operating insurers, restrictions on pledges of insurance company assets and restrictions on the ability of target insurers to issue or guarantee acquisition debt, have historically required that acquisitions of insurance companies in the United States be financed with substantially less leverage than acquisitions in other industries. However, financing in various forms is becoming increasingly prevalent in insurance-sector transactions even though such financing can differ significantly from financing used in a typical leveraged acquisition. Equity issuances, bank debt, bonds, insurance reserve financings and reinsurance transactions have all been employed in recent acquisitions, and a single acquisition may involve multiple types of financing.

Particularly when looking at life insurer acquisitions, it is important to understand the types of insurance-specific financing that are available to supplement or replace more traditional acquisition debt.

Reserve Financings. Acquirers of U.S. life insurers may finance a portion of the statutory reserves of a target insurance company. These structures typically involve reinsurance to a captive reinsurer and can have the effect of increasing the capital and surplus at the target insurer. Such facilities require separate regulatory approval and have come under enhanced regulatory scrutiny from state regulators and the National Association of Insurance Commissioners in recent years.

"Financing in various forms is becoming increasingly prevalent in insurance-sector transactions even though such financing can differ significantly from financing used in a typical leveraged acquisition."

Despite this, insurance reserve financings have been important parts of several recent life insurer acquisitions, including Harbinger's acquisition of Old Mutual's U.S. operations, Resolution Group's acquisition of Lincoln Benefit from Allstate and Global Atlantic's acquisition of Aviva's U.S. life insurance business.

Reinsurance. By reinsuring a portion of a target insurance company's portfolio, an acquirer can use less of its own capital to finance an insurance company acquisition without incurring debt on the insurance company's balance sheet that may run afoul of regulatory constraints. Reinsurance can take various forms, including sales of portions of a target company's business that the acquirer is not interested in

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Backing Into Europe: Making Sense of the AIFMD Reverse Solicitation Rules

"Reverse solicitation generally is important for a non-European fund manager but is likely to be most important (1) where a prospective investor is domiciled or has its registered office in a European jurisdiction where it is not possible to market actively to that prospective investor... and (2) where there are strict time limits in respect of a fundraising that would make it difficult or impossible for the non-European fund manager to adhere to the new AIFMD obligations and requirements."

The implementation of the Alternative Investment Fund Managers Directive (the "AIFMD") in Europe has significant implications for U.S. and other non-European fund managers wishing to access European capital.

When raising a private investment fund, a non-European fund manager will not be required to comply with the AIFMD obligations and requirements in respect of a prospective European investor where that European investor made an unsolicited request for information about the private investment fund (referred to as "reverse solicitation" or "passive marketing").

Reverse solicitation generally is important for a non-European fund manager, but is likely to be most important (1) where a prospective investor is domiciled or has its registered office in a European jurisdiction where it is not possible for the fund manager to market actively to that prospective investor (*i.e.*, where it is only possible to interact with a prospective investor if there is a valid reverse solicitation in respect of that prospective investor), and (2) where there are strict time limits in respect of a fundraising that would make it difficult or impossible for the non-European fund manager to adhere to the new AIFMD obligations and requirements (*e.g.*, where the non-European fund manager is looking to establish a co-investment vehicle to invest alongside an established fund for the purpose of taking advantage of a particular investment opportunity and desires to offer participation in that co-investment vehicle to European investors).

AIFMD: A Brief Background

The AIFMD is an EU directive that aims to establish a harmonized regulatory and supervisory framework for fund managers (European and non-European) that manage and/or market alternative investment funds[1] in Europe. However, the AIFMD is implemented into national law independently by each EU member state[2] (and, in due course, by each EEA state as well[3]), and at present there is very little central guidance on many of the concepts under the AIFMD (including as to the practical meaning of "marketing").

As things stand currently (absent a reverse solicitation), a non-European fund manager wishing to "market" a fund in Europe must (1) rely on the national private placement regimes then effective in the relevant European jurisdictions

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1. *The AIFMD introduces the term "AIF" (alternative investment fund). The concept of "AIF" is very broadly defined and includes almost any investment fund – whether closed or open-ended, irrespective of investment strategy or structure – other than European regulated retail funds.*
2. *The EU member states (subject to future expansion) are: Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.*
3. *The EEA states that are not also EU member states are: Iceland, Liechtenstein and Norway.*

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and (2) comply with the AIFMD disclosure rules and the "no asset stripping" provisions applicable on the acquisition of control of a European portfolio company.[4] In addition, a non-European fund manager marketing in Europe should be aware that cooperation agreements – intended to help regulators oversee potential systemic risk – must be in place between the regulator in each European jurisdiction where the non-European fund manager is marketing, and the regulators in the jurisdiction(s) in which the fund and the fund manager are established.

There is no consistency as to the national private placement regimes in place across Europe. Broadly, the regimes may be characterized as follows:

No active marketing. A non-European fund manager may not "market" its funds; a U.S. fund manager may only rely on reverse solicitation to engage with prospective investors (*e.g.*, Austria, France, Greece, Italy and Spain).

Approval of local regulator. A non-European fund manager may "market" its funds but only after obtaining the approval of the local regulator (*e.g.*, Denmark, Germany and Sweden). The relevant regulator may take up to three months to grant its approval, although the exact period varies from jurisdiction to jurisdiction. In some jurisdictions the local regulator will only approve an application if additional conditions not required by the AIFMD have been satisfied – for example, in Denmark and Germany, the appointment of a depositary to perform certain specified services for the fund.

> "As a general rule, 'brand' marketing – where a fund manager provides general information about itself without providing information on any funds that are or will become open for investment – will not constitute 'marketing.'"

Notification to local regulator. A non-European fund manager may actively market its funds, but only after notifying the local regulator (*e.g.*, Belgium, Finland, Ireland, Luxembourg, the Netherlands and the United Kingdom). In some jurisdictions, the local regulator must acknowledge a notification before "marketing" may begin (*e.g.*, Belgium, Finland and Ireland).

Reverse Solicitation: The Basics

It is only where a non-European fund manager "markets" a fund in Europe that it has to comply with (1) the rules that constitute the national private placement regimes and (2) the additional AIFMD obligations and requirements.

Reverse solicitation (or passive marketing) – where a fund manager responds to a genuinely unsolicited request for information that is made at the initiative of a prospective investor – does not constitute "marketing," meaning that the fund manager does not have to comply with the rules constituting the national private placement regimes or the additional AIFMD obligations and requirements.

However, like "marketing," reverse solicitation is defined differently in each European jurisdiction. Furthermore, it is defined narrowly in most, so should be relied upon with caution.

Impact of "Brand" Marketing

As a general rule, "brand" marketing – where a fund manager provides general information about itself without providing information on any funds that are or will become open for investment – will not constitute "marketing."

However, a fund manager should take care where brand marketing is not in the ordinary course and takes place during (or in the run up to) fundraising for a particular fund product because such brand marketing may prejudice a fund manager's later reliance on reverse solicitation.

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4. *See "AIFMD and Fundraising in Europe: Practical Considerations for Non-EEA Fund Managers" in the Fall 2013 issue of* The Debevoise & Plimpton Private Equity Report *for more information.*

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guidance that may portend future changes that could materially affect the target's operations.

Beware Prior Data Security Incidents. How often a potential portfolio company has been the subject of a cyberattack or actually experienced a breach of security can provide important insights into the adequacy of the company's data protection procedures, as well as its risk profile. It is important to examine the nature of any prior attempted and/or successful breaches, as well as the company's response to such attempted and/or successful breaches. Among other things, you may want to confirm that a U.S. target, if required to do so, has properly disclosed any prior data breaches consistent with the disclosure laws of 47 states.

For publicly traded U.S. companies, understanding prior data breaches is important for another reason: the U.S. Securities and Exchange Commission has issued specific guidance suggesting that companies that have suffered breaches should consider disclosing information about them in their annual Form 10-K filings or, if the incident is material to the company's operations, through a Form 8-K filing. Failure to properly disclose a prior data security incident could result in an enforcement action.

Review Cybersecurity Assessments. Many companies conduct so-called "penetration testing" in which ethical hackers hired by the company attempt to breach the company's computer network. These "white-hat" hackers might be outside consultants, or part of an internal "red team" specifically tasked with conducting ongoing assessments of the company's IT infrastructure. Under some regimes – including PCI DSS, as noted above – annual assessments of a company's cybersecurity protocols are mandatory, so the target should have them readily available. Consider seeking these reports as part of your due diligence.

Consider the Vendors. Reviewing the target's IT infrastructure means understanding how it stores its data. What functions are outsourced? Who are the vendors? What sorts of security protocols do those vendors maintain? Here, reviewing vendor questionnaires (if available) may give insight into the risks that the third parties pose to the target company.

Relatedly, which third parties have access to the target company's IT systems? Some recent, high-profile data breaches have been linked publicly to usernames and passwords that were stolen from vendors, and then used to access the company's computer systems, so how a company vets and monitors third-party access is top of mind for many regulators.

Examine Corporate Governance. Understanding how IT security is managed by the target might provide valuable insight into how the company prioritizes cybersecurity. Increasingly, regulators expect that there will be a single person designated to oversee IT Security, such as a Chief Information Security Officer ("CISO"). In fact, for example, the New York Department of Financial Services recently announced that its examination questions on cybersecurity would include a request that regulated banks and insurance companies provide the CV for their CISO. Whether IT security is a standalone function, whether one person owns it, and what that person's reporting lines are (*e.g.*, direct to the CEO or buried on the org chart) can offer evidence of the strength of the target's commitment to IT security.

Are the Target's Policies and Procedures Commensurate with the Risk? In considering these issues, there is no one-size-fits-all approach. Appropriate due diligence should enable the buyer to assess whether the target's approach to cybersecurity is commensurate with its risk profile. By asking the right questions, private equity firms can get the information they need in evaluating cybersecurity-related deficiencies and risks in moving forward with the deal.

Conclusion

Focused due diligence can help a private equity firm properly evaluate a target's cybersecurity risk and identify otherwise hidden costs, making post-closing surprises less likely. Of course, the need to manage cybersecurity risk doesn't end with the closing of the acquisition. There are several steps that can be taken to mitigate post-acquisition risk on an ongoing basis. We will discuss some of those steps in the next issue of *The Debevoise & Plimpton Private Equity Report*.

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collateralizing), which also involve incremental costs.

Each of the aforementioned concerns is more acute in acquisition financings, as opposed to refinancings of existing debt capital structures (assuming the existing revolving facility can remain outstanding without being refinanced, amended or waived). While this may appear to be a very thin silver lining in an otherwise cloudy sky, it is worth spotting. The Agencies have been clear that the Guidance applies to refinancings and restructurings of existing credits, including those that do not meet the Guidance ("Non-Pass Credits"). While the Agencies have noted that the Guidance is not intended to discourage institutions from refinancing Non-Pass Credits, they have also stated that such refinanced credits should be strengthened by way of "meaningful improvements in structure or controls." These improvements may include the addition of new covenants or the tightening of existing covenants, additional equity injections, line reductions, increased amortization, addition of collateral or restrictions on new acquisitions or issuance of additional debt (*i.e.*, mere reductions in interest rate, extensions of maturity or decreases in bank exposure will not suffice). This type of credit enhancement is unlikely to be attractive to many leveraged borrowers.

Bond Offerings; ABLs

High-yield bond offerings are outside the direct scope of the Guidance, to the extent they take place in broker-dealers regulated by the Securities and Exchange Commission. Instead, the issuance and sale of these securities are subject to federal and state securities regulations that generally address investment risk issues through detailed disclosure to sophisticated investors. In contrast to the Guidance, securities regulations impose no leverage limits or repayment requirements and leave the investment decision to investors, as long as there has been appropriate disclosure. As a result, market participants have theorized that high-yield bonds and other structures involving broker-dealers could replace leveraged loans that would be subject to the Guidance in a typical acquisition financing. The bonds could be structured to mimic term loans (*e.g.*, secured, with a floating interest rate and call protection more similar to term loans than to traditional high-yield bonds). There are impediments to this approach, however.

1. First, one must confront the issues noted above regarding working capital and other liquidity needs of the borrower. In a high-yield bond offering, in addition to the potential structuring solutions outlined above, it may be possible for regulated institutions to provide such a liquidity facility in the form of asset-based loans ("ABL"), which the Agencies have noted may not be subject to the Guidance if they are the dominant source of funding for a borrower. While this statement appears to leave open the possibility that a capital structure using an ABL revolver in combination with a financing product outside the direct scope of the Guidance (*e.g.*, high-yield bonds) may be workable, regulated institutions may shy away from this structure for fear of running afoul of the Agencies' macroprudential policy intent.
2. Further, in a committed (as opposed to best efforts) financing, the committed debt is a bridge loan and not high-yield bonds. The Agencies have reportedly informed regulated institutions that a committed bridge loan, and thus the entire debt capital structure, would be subject to the Guidance. Some have queried whether the bridge loan can be replaced by a forward underwritten high-yield bond offering. However, a forward underwriting structure may present other issues, including under other regulatory regimes (*e.g.*, the Volcker Rule's restrictions on proprietary trading).
3. Moreover, marketing and syndication practices with respect to debt securities and bank loans differ significantly. As noted above, the securities regulatory regime is based on extensive disclosure (including 10b-5 liability for material misstatements and omissions) and, thus, securities offering documents are often dense, highly engineered and time consuming to produce. In contrast, bank loan marketing documents are traditionally less comprehensive and can, when necessary, be produced on a much tighter time frame. "Bridge teasers" (*i.e.*, the documents used to syndicate bridge loan

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commitments) often take the form of slide decks and can be produced in a matter of days. Arrangers may not be amenable to a forward underwritten bond offering, even if structured to meet regulatory and other hurdles, because of these marketing implications.

4. Finally, many of the most significant broker-dealers, although not directly subject to Agency jurisdiction, are part of a corporate group subject to consolidated supervision by the FRB. These corporate groups may steer clear of structuring alternatives involving their broker-dealers for fear of an adverse supervisory reaction.

Holdco Facilities

Another structure that has been deployed to address limitations imposed by the Guidance is incurring a portion of the debt (the "Holdco Facility") that might otherwise be funded at the operating company level (*e.g.*, leverage above 6x) at a direct or indirect holding company of the operating company, which is outside the credit group (*i.e.*, it does not provide a guarantee or other credit support in connection with the operating company facility (the "Opco Facility")). The Holdco Facility might be structured as debt or preferred stock depending on commercial, tax and other considerations but, in any event, it would be structurally subordinated to the Opco Facility and, therefore, subject to certain exceptions noted below, should be treated as common equity and ignored for purposes of compliance with the Guidance. One aspect of a Holdco Facility that, arguably, should be considered in determining compliance with the Guidance is any impact the anticipated payment of interest and principal on the Holdco Facility might have on the operating company's ability to meet the repayment test under the Guidance. The prospective borrower should expect that (1) assumptions will be made with respect to the repayment of the Holdco Facility, (2) those assumptions will be unfavorable to the borrower group (*e.g.*, that all available restricted payment capacity under the Opco Facility will be used to prepay the Holdco Facility, even if the holdco debt is pay-in-kind) and (3) those assumptions will be reflected in the model used to determine compliance with the repayment test under the Guidance. Further, experience suggests that regulated institutions interpret the Guidance differently with respect to whether Holdco financings should be included or excluded for purposes of determining compliance. Some regulated institutions are more receptive to this structuring alternative than others. Regardless of whether regulated institutions and the Agencies acknowledge the structurally subordinated nature of a Holdco Facility, the institutions extending credit certainly do and, as a result, this structure likely involves incremental costs.

> "These and other structuring alternatives could ameliorate the competitive imbalance that currently exists between private equity sponsors and other potential buyers that has been exacerbated by the leverage and repayment tests imposed by the Guidance."

Creative Structuring But Limited Success

These and other structuring alternatives could ameliorate the competitive imbalance that currently exists between private equity sponsors and other potential buyers that has been exacerbated by the leverage and repayment tests imposed by the Guidance. However, because of the limitations noted above – including most importantly the Agencies' articulated macroprudential regulatory intent and broad authority over many of the most significant participants in the U.S. leveraged lending market – such structuring alternatives have met with limited success. Whether market realities, in the form of the upcoming refinancing wave, force the Agencies and regulated institutions to become more flexible with respect to these structures remains to be seen.

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closing working capital and leading to a price adjustment in the buyer's favor.

In response, we frequently see sellers proposing very specific and detailed accounting policies for the calculation of the closing statement, in particular working capital. Instead of making accounting policies simply "in accordance with GAAP" sellers will go on to say "consistent with past practices" and will often include a separate exhibit of specific accounting policies to be used when preparing the closing statement. These specific accounting policies are sometimes set out as a hierarchy that include: (1) specifically listed accounting policies; (2) to the extent not specifically listed in (1), all the accounting policies, methods and procedures utilized in the preparation of the most recent audited financial statements; and (3) to the extent not included in (1) or (2), in accordance with GAAP. In addition to this, sellers can include a detailed illustrative example of how working capital should be calculated, which will go to the trial balance account level of detail to show which accounts should be included. Even though this exhibit may add several pages to an agreement, setting out such detail enables the seller to exert significant control over the preparation of the closing statement, even though the buyer is usually the party actually preparing it. Additional detail and definition also reduces the risk of post-closing disputes.

"Working capital adjustment mechanisms are often a difficult point of negotiation for both buyers and sellers in the context of acquisition agreements, in part because they lie at the intersection of corporate finance, accounting and law, but a well advised buyer or seller can take advantage of the adjustment mechanism to support its pricing model and optimize any potential value shifts that may result."

Working capital adjustment mechanisms are often a difficult point of negotiation for both buyers and sellers in the context of acquisition agreements, in part because they lie at the intersection of corporate finance, accounting and law, but a well advised buyer or seller can take advantage of the adjustment mechanism to support its pricing model and optimize any potential value shifts that may result. This requires close coordination among the accountants, attorneys, internal finance staff and the deal team.

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is subject to 28% tax, and for non-domiciled UK taxpayers the distribution retains its original source, which may be non-UK. The source is important because UK non-doms pay UK tax only on amounts that are remitted to the UK or which have a UK source. Going forward, these distributions or payments of management fees will be deemed to be UK source and taxable at 47% for UK resident taxpayers.

10. Technically, the DMF Rules could also apply to non-UK residents to the extent that such persons undertake investment management activities in the UK. Investment management activities are defined very broadly in the DMF Rules and include fundraising activities and research. However, the UK has a very large treaty network; therefore, we would expect the majority of investment managers to benefit from a double tax treaty to prevent any double taxation arising. But those managers relying on a treaty must learn to recognize a disguised fee under the DMF Rules to begin with.

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Financial Buyer Participation in the Insurance Industry: An Update for 2015

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and capital relief transactions, which typically take the form of modified coinsurance. These transactions may require separate regulatory approvals as well. Reinsurance, in varied forms, was used by Athene to transfer Aviva's U.S. life insurance business to Global Atlantic in connection with Athene's acquisitions of Aviva's broader U.S. operations and by Resolution Group to provide additional capital support to Lincoln Benefit.

Finally, in addition to using insurance-specific types of financings, insurance company buyers have also been looking to a broader number of potential financing counterparties, including in connection with more traditional acquisition debt. A prime recent example was Blackstone's acquisition of Philadelphia Financial, where Hannover Re, a global reinsurer, provided acquisition financing that in other contexts would typically be provided by a bank.

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A Practical Application

AIFMD marketing rules apply per fund vehicle (that is, to each feeder fund, parallel fund, main fund, etc.) and therefore a private fund manager making a marketing notification or receiving a marketing approval in a European jurisdiction must be undertaken on a fund vehicle by fund vehicle basis.

When a non-European fund manager considers establishing a multiple investor co-investment vehicle, there are a number of European marketing considerations that may need to be addressed:

1. If participation in a co-investment vehicle will be offered to European co-investors, subject to paragraph (2) below, the offer likely will constitute "marketing" and the rules constituting the national private placement regime in each relevant European jurisdiction will need to be complied with. The practicalities of compliance may prove to be impossible, particularly in those jurisdictions where a marketing approval must be obtained.
2. If participation in a co-investment vehicle will be offered to European co-investors that are existing investors in an established fund (or the "main fund"), it may be possible to rely on reverse solicitation as a mechanism to offer participation in the co-investment vehicle to those European co-investors that have provisions in their main fund side letters indicating their interest in future co-investment opportunities.
3. The AIFMD does not apply to a non-European fund that completed European marketing before 22 July 2013 (an "out-of-scope fund"). However, if a co-investment vehicle is established to invest alongside an out-of-scope main fund and participation in it is offered to European co-investors, in some respects the out-of-scope fund will be impacted by the AIFMD. The most obvious impact will arise where the co-investment opportunity is in respect of a European portfolio company and the co-investment vehicle is subject to the AIFMD notification rules and "no asset stripping" provisions in respect of that European portfolio company.

In summary, reverse solicitation under AIFMD should be relied upon with caution, but in a number of circumstances may be the only possible route for U.S. and other non-European fund managers to raise European investor capital.

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Recent and Forthcoming Events

July 15
Kenneth J. Berman
"Overview of Program; Who Is an Investment Adviser?"
Fundamentals of Investment Adviser Regulation 2015
PLI
New York

July 9
Ceinwen Rees
Richard Ward
PE CFO Tax Breakfast Series
Debevoise & Plimpton LLP
London

July 1
Rebecca F. Silberstein
"Raising a Private Equity Fund: Current Terms"
Sixteenth Annual Private Equity Forum
PLI
New York

June 18
Geoffrey Kittredge
Christopher Cartwright
"Venture Capital Fund Structures & Management"
Foundation for Venture Capital Investment Professionals
EVCA
Brussels

June 11
David H. Schnabel
"Basics of Private Equity Structures, Topside Planning to Accommodate the Tax Objectives of Fund Managers and Investors"
Tax Planning for Domestic & Foreign Partnerships, LLCs, Joint Ventures & Other Strategic Alliances 2015
PLI
San Francisco

June 10
Geoffrey Kittredge
Alan J. Davies
Pierre Maugüé
BVCA Debt Funds Breakfast Roundtable
BVCA
London

June 4
Steven S. Michaels
Mark P. Goodman
Maura Kathleen Monaghan
Sean Hecker
Andrew M. Levine
"Legal Ethics Issues in Compliance Investigation Matters"
Debevoise & Plimpton LLP
New York

May 21
Geoffrey P. Burgess
"What Are African Countries Doing to Facilitate Private Equity Investment?"
BVCA Investing in Africa Forum
BVCA
London

May 19
Peter Wand
"Legal and Regulatory Issues: Dealing with Multiple Jurisdictions, Operating Environments and Shareholder Structures in Europe"
Activist Investing in Europe 2015
Arrowcon Partners
London

May 19
Satish M. Kini
"Foreign Banks"
The Volcker Rule 2015: What it Means for Financial Institutions and Markets
PLI
New York

May 19
Katherine Ashton
"Men and Women Shifting the Balance"
Women in Private Equity Forum 2015
BVCA
London

May 15
Helen V. Cantwell
Karolos Seeger
Asia/Europe Litigation Seminar
Debevoise & Plimpton LLP
New York

May 14
Peter A. Furci
Geoffrey Kittredge
Gavin Anderson
"Legal Strategies: Protecting GP Interests and Maintaining Competitive and Marketable Positions to LPs"
Fundraising Masterclass
EMPEA
Washington, D.C.

May 14
Peter A. Furci
"Adjustments to the Basis of Partnership Assets (Sections 734, 743 and 754)"
Tax Planning for Domestic & Foreign Partnerships, LLCs, Joint Ventures & Other Strategic Alliances 2015
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Tax Planning for Domestic & Foreign Partnerships, LLCs, Joint Ventures & Other Strategic Alliances 2015
PLI
New York

May 13
Andrew M. Ostrognai
"Private Equity: Year in Review and Looking Forward"
Maples Insights Hong Kong
Maples and Calder
Hong Kong

May 12
Peter A. Furci
"Adjustments to the Basis of Partnership Assets (Sections 734, 743 and 754)"
Tax Planning for Domestic & Foreign Partnerships, LLCs, Joint Ventures & Other Strategic Alliances 2015
PLI
New York

May 7
Jonathan Adler
Gavin Anderson
Parveet Singh Gandoak
"What's New and What to Expect in 2015"
Private Equity in India Seminar
Debevoise & Plimpton LLP
New York

May 5
Michael A. Diz
Adele M. Karig
David J. Schwartz
"Trends and Issues in US Private Equity Industry"
US-China Cross-Border Investment Forum
Debevoise & Plimpton LLP;
Youhe Invest LLC and ZHIsland
New York

April 30
Geoffrey P. Burgess
"Equity Investments: Core Documentation"
Legal Agreements Training
AVCA
London

April 30
David H. Schnabel
"Basics of Private Equity Structures, Topside Planning to Accommodate the Tax Objectives of Fund Managers and Investors"
Tax Planning for Domestic & Foreign Partnerships, LLCs, Joint Ventures & Other Strategic Alliances 2015
PLI
Chicago

April 24
Kenneth J. Berman
"Successfully Managing the Impact of Investigations and Enforcement Actions"
Regulatory Compliance Association Symposium – Regulation, Operations and Compliance (ROC) – Bermuda 2015
Regulatory Compliance Association
Bermuda

April 16
Katherine Ashton
Geoffrey Kittredge
Cécile Beurrier
John W. Rife III
"Private Equity Secondaries 101"
Debevoise & Plimpton LLP
London

March 31
Paul R. Berger
"Panel: Where Is Your Organization Vulnerable? Assessing the Top 5 FCPA Risks for Private Equity and Hedge Funds"
ACI Summit on FCPA, AML & OFAC Risks for Private Equity & Hedge Funds
ACI
New York

March 26, March 25, March 24
Geoffrey Kittredge
"Update on European Regulation and Fund Terms"
European Private Equity Forums: The U.S. Roadshow 2015
BVCA
New York, Boston, Chicago

March 17
Geoffrey Kittredge
Richard Ward
"GC Fund Formation"
Debevoise & Plimpton LLP/ Chambers & Partners
London

March 12
Alexander R. Cochran
Marilyn A. Lion
Jim Pastore
Eric R. Dinallo
David Grosgold
Nicholas F. Potter
Ethan T. James
Thomas M. Kelly
James C. Scoville
Michael D. Devins
"Private Equity Investment in the Insurance Sector"
Half Day Insurance PE Seminar
Debevoise & Plimpton LLP
New York

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March 9
Jonathan Adler
"Current Terms: Private Equity Funds"
IBA 16th Annual International Conference on Private Investment Funds
IBA
London

March 5
Geoffrey Kittredge
Sally Gibson
"Investment Terms"
LP-GP Roundtable Series
BVCA
London

March 3-4
David Innes
"Warranties and Indemnities"
Legal Agreements Course
BVCA
London

February 24
Rebecca F. Silberstein
Peter A. Furci
"Funds 101"
Private Equity Breakfast Seminar
Debevoise & Plimpton LLP
New York

February 13
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Gavin Anderson
Mai T. Shapiro
"Funds 101"
Private Equity Breakfast Seminar
Debevoise & Plimpton LLP
Hong Kong

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Eric R. Dinallo
Sean Hecker
James T. Johnson
Satish M. Kini
Kevin Lloyd
Gregory J. Lyons
Jonathan R. Tuttle
Bruce E. Yannett
Global Enforcement Seminar
Debevoise & Plimpton LLP
New York

February 12
Geoffrey Kittredge (moderator)
"European LP Perspectives on Debt Funds – Growing Appetite?"
Debt Funds Forum
BVCA
London

February 10
Geoffrey Kittredge
Sally Gibson
Matthew D. Saronson
"Funds 101"
Private Equity Breakfast Seminar
Debevoise & Plimpton LLP
London

February 6
Jordan C. Murray
"Private Equity: Year in Review and Looking Forward"
Investment Funds Forum
Maples and Calder
Grand Cayman

January 27
Ceinwen Rees
Richard Ward
PE CFO Tax Breakfast Series
Debevoise & Plimpton LLP
London

January 22
Gavin Anderson
Andrew M. Ostrognai
"Changing Landscape of Emerging Markets Private Equity Fund Formation"
EMPEA Fundraising Masterclass
Debevoise & Plimpton LLP
Hong Kong

January 7
Satish M. Kini
Byungkwon Lim
Gregory J. Lyons
David L. Portilla
Lee A. Schneider
Rebecca F. Silberstein
"Final Regulations Implementing the Volcker Rule: Limitations, Ramifications and Business Strategies"
Debevoise & Plimpton LLP
New York

Recent Client Updates and Publications

Listed below are Debevoise & Plimpton Client Updates and a publication issued since our last issue of this publication that are most relevant to the private equity industry. They can be found at www.debevoise.com.

Publication:

Private Equity Funds:
Key Business, Legal and Tax Issues 2015

Client Updates:

BE-10 Reporting by U.S. Persons Regarding Non-U.S. Business Holdings
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SEC Issues Cybersecurity Guidance for Registered Investment Advisers and Funds
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SEC Brings First-of-Its-Kind Action for Confidentiality Agreement that Discourages Whistleblowing
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Mary Beth Hogan
Jonathan R. Tuttle
Ada Fernandez Johnson
Ryan M. Kusmin
April 6, 2015

U.S. Authorizes Cyber Sanctions, Recommends Tech Companies Adopt Compliance Programs
Jeremy Feigelson
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SEC Staff Provides No-Action Relief from Custody Rule for Principals-Only Funds
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Rebecca F. Silberstein
Gregory T. Larkin
Jaime Doninger Schechter
March 31, 2015

More UK Tax?
Additional Guidance on the Disguised Investment Management Fee Rules
Richard Ward
Ceinwen Rees
March 26, 2015

Are Your Carry and Co-Investment Returns Safe from UK Income Tax? (Sadly, Your Management Fee Probably Isn't.)
Richard Ward
Ceinwen Rees
March 25, 2015

New German Investment Regulation Adopted
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Volcker Rule FAQ Expands Ability of Non-U.S. Banks to Invest in Private Funds
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What Will the "Eyes and Ears" of the SEC Choose to See and Hear this Year? OCIE Announces Examination Priorities for 2015
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Are Asset Managers' Products and Activities Creating Systemic Risk?
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Planning for the Worst: The SEC Plans New Regulations for the Asset Management Industry
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Federal Reserve Board Extends Volcker Rule Conformance Period for Covered Funds
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Regulators Clarify Leveraged Lending Guidance
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