

OPALESQUE

PRIVATE EQUITY STRATEGIES

Issue 20 | August 29, 2014

Editors Letter

Welcome to the August issue of Private Equity Strategies. We hope you're enjoying the holiday week and weekend. Summer, normally a slowdown time in the finance world has seen a brisk pace of dealflow, fundraising and M&A activity.

In this month's issue we will highlight recent deals, along with a new update on potential fundraising tool coming from New York.

Our regular features - Regs Watch and Quick Hits round up the state of regulation and dealmaking.

Finally, we look at the departure of a private equity veteran Patrick Boyce, who is leaving for sunnier climes, and an examination of Bermuda as a new hot spot for hybrid fund structures.

We hope you enjoyed the summer, and will enjoy this issue!

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New ACE Portal/NYSE Platform Could Facilitate Private Equity Fund Raising

Roger Mulvihill
Dechert, LLP

An enduring challenge of private equity is fund raising, whether in connection with fund formations, portfolio company financings or limited partner secondary sales. The recent modification of the SEC's rules on general solicitation and advertising, which formerly prohibited general solicitation and advertising in private placement offerings relying upon Regulation D, has created an opportunity for intermediaries to introduce innovative platforms to access a larger universe of potential investors and streamline the offering process. This article describes the new ACE Portal/NYSE Platform, which was recently created in part to take advantage of the changes in the SEC's solicitation restrictions and which could facilitate private equity fundraising.

Pursuant to the JOBS Act, the SEC in July 2013 amended Rule 506 and Rule 144A under the Securities Act to permit an issuer, in certain circumstances, to engage in general solicitation and general advertising in connection with private placements. Typically, such private placements were completed under Regulation D which previously prohibited general solicitations, such as emails, mass mailings, public websites and the like in connection with the offering even if the ultimate purchasers were in fact accredited investors or qualified purchasers. As a practical matter, this limitation significantly restricted the manner in which issuers and their placement agents could canvas the field of possible investors. Since in the view of many practitioners the placement agent needed to have a substantial preexisting relationship with potential offerees, it was difficult to expose an offering (whether a new fund or a portfolio company) to a large pool of investors. Because broad based solicitation was difficult under the rules, placement agents often contacted only a limited number of clients with whom they had a previous relationship (and tracked contacts, delivery of numbered PPMs, follow



up indications, etc on elaborate spreadsheets), even though the offering might be of interest to many more eligible purchasers. The SEC's new Rule 506(c) permits general solicitation and general advertising – thus removing this impediment – so long as the issuer takes reasonable steps to verify that the actual purchasers of the securities are accredited investors and otherwise complies with the usual conditions of Regulation D.

In September 2013, ACE Portal, Inc. and the New York Stock Exchange entered into a partnership in part to take advantage of these changes by creating a secure, centralized online marketplace for new issuances of private securities including private companies and funds. The platform has proved to be popular. According to ACE, over 40 private placements for 22 different agents totaling \$1.1 billion in aggregate offering value have been offered to date, and 16% of the 40 deals listed on the platform have been private equity limited

partnership offerings.

According to ACE, the new issuance market for private securities in the US is approximately \$900 billion annually. In addition, Prequin reports that \$218 billion was raised in the first half of 2013 for private equity. The regulatory restrictions noted above often resulted in a highly inefficient and labor intensive fund raising process with inefficient pricing, failed offerings and extensive delays. On the other hand, as ACE points out the potential investor market for private securities is widespread, including over 40,000 qualified institutional buyers and approximately 8 million individual accredited investors as well as thousands of family offices and other qualified purchasers. Until recently, no single centralized platform existed for investors to review and invest in private securities offerings.

The ACE platform is structured around the investment banker or placement agent. An issuer, whether a portfolio company or fund in formation, cannot go directly to potential investors through the platform. Instead, the issuers' investment bank or placement agent first registers with ACE Portal which reviews the qualifications of the intermediary with an emphasis on reputational quality. ACE says that to date 56 investment banks and placement agents are registered with it. The investment bank or placement agent then posts the transaction to ACE which to date has had an average deal size in the neighborhood of \$50 million or more. Upon paying ACE a posting fee and posting the transaction, the investment banker or placement agent and the issuer can upload disclosure information onto the platform. ACE has declined to list about 20% of proposed transactions, either because an agent was not involved or the transaction did not meet ACE's minimum size requirements. Once listed, the platform will serve as a centralized point for the investment bank or placement agent to manage all aspects of the transaction and investor communications (including a virtual data room) as well as monitoring compliance and confidentiality requirements, updating transaction documentation and timetables and addressing investor questions and due diligence requests.

Investor members access the platform by signing on to the site (www.ACEportal.com) and agreeing to an ACE Member Agreement for Investor Members. Eligible investors can confidentially review offerings currently available on the platform through a password protected site. ACE considers itself a technology provider and does not assume any responsibility for the accuracy or completeness of information on issuers. Accordingly, it would be prudent for an investor to undertake its own due diligence, including possibly engaging an investment adviser or consultant.

The Member Agreement for investors provides for information regarding the investors' status as an accredited investor, qualified purchaser or qualified institutional buyer; provisions on unauthorized use of the site; restrictions on use of site information; dispute resolution procedures; and extensive disclaimers and indemnities, principally designed to underscore the independent nature of ACE Portal's involvement. The indemnity in favor of ACE covers any claims arising out of the investors' access to or use of the site, including negligence claims.

Although the portal could be attractive to a typical issuer and its investment banker (including in appropriate cases, a fund portfolio company) ACE points out that the platform is also intended for fund formations, whether private equity, venture or hedge. To date, it has been extremely difficult to raise funds for smaller fund vehicles through the customary fund raising process, even for experienced teams with impressive track records (such as groups spinning out of well known fund groups). For the most part, the only game in town for such potential sponsors is the SBIC program (which can provide SBA backed slow pay debentures of up to about \$150 million on a 2 for 1 basis), but even SBIC approval is often difficult to obtain and in any event a slow and sometimes tedious process. To the extent that there exists an appetite for alternative investments (such as from high net worth individuals, family offices and the like) which cannot be reached through the traditional fund formation process, platforms like ACE Portal could offer an attractive opportunity.

Finally, the ACE platform is also set up to handle secondary sales by limited partners of fund limited partnership interests. This too is a market which would benefit from more transparency and a larger universe of potential purchasers.

3i Acquires A&A Manufacturing After a Round of Successful Exits

Private Equity Strategies

3i Group plc, alongside management, has agreed to acquire A&A Manufacturing, a leading manufacturer of engineered, mission critical protective equipment. 3i is investing approximately \$110 million. The enterprise value of the transaction, which is subject to customary closing conditions, is \$202.5 million.

The announcement comes after a round of successful exits for the firm, which has been taking full advantage of the frothy financing and exit markets.

Headquartered in New Berlin, Wisconsin, A&A's products are made from a variety of materials ranging from composites to exotic metals. The products are designed to protect and elongate the life of valuable machinery while promoting worker safety by keeping crucial equipment functioning properly. Since its establishment in 1945, A&A has grown to be a market-leading global manufacturer of niche engineered protective and safety equipment, primarily for various industrial applications. The Company has manufacturing operations in North America and Germany and sales throughout the world; it employs 474 staff globally and generated revenues of approximately \$91 million in 2013.

3i has invested in similar companies in the sector including MoldMasters, Hilite, Hyva and NORMA. The firm recently exited its investment in Hilite for a return of 2.1x.

In sterling terms, the total proceeds to 3i Group and funds represented a 2.1x money multiple on the original investment of €190 million (£172 million). Proceeds to 3i Group from the transaction were £155 million, representing a 32% uplift against a value of £117m at 31 December 2013 and a 17% uplift against a value of £133 million at 31 March 2014.

The sector represents a favorite investment thesis of the firm, and one that has attracted repeat attention from LPs.

3i is a public company traded in London, one of a handful of private equity firms that have decided to go public themselves in recent years.

"A&A is a great business and we look forward to working with the management team to help accelerate its expansion into international markets," said Ken Hanau, Managing Partner, 3i North America.

Regs Watch: Brief Updates on Changes in Regulation for Private Equity

A s a journalists like me and lawyers have written ad nauseum, new and ever more regulations are in the pipeline for private equity and alternatives as a whole. Here we will hit on some of the cases of note and provide links to new guidance over the past month.

An Appreciation for Hedging Your Bets on Deferred Compensation

Under Section 457A of the U.S. Internal Revenue Code of 1986 (the "Code"), certain offshore and other entities are limited in their ability to provide tax-effective deferred compensation to providers of services to those entities - [according to attorneys from Dechert](#).

National Labor Relations Board's Threatened Expansion of Joint Employer Doctrine Would Increase Employment Law Risks for US Private Equity Firms

[This article](#) discusses some of the potential employment law liabilities that private equity firms can face, and offers some tips for avoiding liability when walking the fine line between prudent oversight and excessive entanglement in the day-to-day operations of portfolio companies.

Riverside Company Gets Crafty

Following the announcement of its 100th exit earlier this year, the Riverside Company is getting crafty with its latest acquisition. The company has acquired Uinta Brewing a small craft beer company based in Salt Lake City Utah. Terms of the deal were not disclosed.

Investing in Emerging Markets: Are You Managing Your Risks?

[A number](#) of emerging market countries rank high on corruption indices, are you managing operational, reputational and business risks? Dechert attorneys offer some tips.

China's New Rules For Private Equity Aim For Self-Regulation

The China Securities Regulatory Commission (CSRC) has issued rules governing the domestic private equity industry, giving more space for industry self-regulation, according to an official announcement.

Banks Push to Delay Rule on Investments

Banks are pressing U.S. policy makers for a multiyear delay of a rule requiring them to sell investments in private-equity and venture-capital funds, the latest industry push to scale back a central provision of the 2010 Dodd-Frank law.

Asset Managers Believe Performance is Still Number One Issue: Survey

A new survey from State Street shows that asset managers still consider performance to be a critical indicator along with compliance when it comes to evaluating alternative investment funds. - [ValueWalk](#)

Alternative Investment Fund Managers Regulations 2013 - disclosure and reporting requirements for Canadian fund managers

Canadian private equity fund managers may [see changes](#) in how they have to comply with UK law when doing business there.

King Horton? Warren Buffet and BK Make Waves on Inversion

Warren Buffet, Tim Hortons, and Burger King are making waves with their latest deal announcement - a Canadian inversion. Tax dodging inversion deals have made headlines in the US as more companies exploit a loophole allowing them to become internationally based companies, while maintaining all of their US profits and business. The \$11.4 billion dollar deal will see BK get a new breakfast upgrade through Tim Hortons coffee and breakfast line.

Movers & Shakers: Highland Capital Loses Boyce

Private Equity Strategies

Texas-based Highland Capital Management is losing its head of private equity after 10 years. Patrick Boyce will continue to serve on the board of some of Highland's portfolio companies.

Highland Capital Management was founded in 1993 by Jim Dondero and Mark Okada, and primarily invests in high-yield credit. The firm has steadily expanded in the credit space and also into more pure play private equity investments.

Boyce will be relocating to Hawaii with his family, according to a statement from the firm.

Jim Dondero and John Honis will lead the firm's private equity group going forward.

Apart from pure private equity, Highland has been able to capitalize on record CLO issuance this year. Total issuance topped \$83 billion, beating last year's \$82.6 billion number. Other private equity firms including Apollo have also surpassed internal records with their CLO issuance. Apollo managed their largest CLO offerings to date in both the US and Europe this year.

Highland Capital founder Mark Okada, was featured in a two part interview on Opalesque TV where he discussed the invention and history of CLO's as well as Highland's investment approach.

"We don't do anything just because we are getting fees, or that's where money is flowing, or that's a hot idea, the only thing that we do as a firm is where we like the arbitrage and we think we can add value with our platform and our arbitrage. We may see arbitrage that we think is cheap and it's great and it's under-priced, but we don't have any people that know how to do that, that's not what we are going to do," Okada said in the interview.

[Watch Part 1 here.](#)

[Watch Part 2 here.](#)



Bermuda: The Premier Choice For Private Equity And Hybrid Vehicles

By: Sarah Demerling
Appleby, LLP

Fund structures that combine a hedge fund approach to investing in liquid assets with private equity style features are growing increasingly attractive to fund managers.

The “hybrid fund” combines a traditional hedge fund investment mandate with the characteristics of a private equity fund (such as being closed-ended, a waterfall distribution of profits and a specified investment period).

In its 2013 report, J.P. Morgan identified the key drivers for this upswing in hybrid hedge fund vehicles as being major changes to the global credit market aligned with the growing regulatory pressures (not least the pressure on European banks following Basel III). This finding is echoed in the February 2014 report by New York-based law firm Seward & Kissel, which points to an increasing convergence between hedge funds and private equity funds, with hard lock-up periods as well as tougher redemption terms.

Forming and operating a hybrid fund, or a private equity structure, which can successfully combine a mix of asset classes and investment strategies, needs the right legal framework and knowledgeable and experienced professionals to implement it.

Bermuda’s strength and breadth of private equity service providers, together with its robust yet responsive legal and regulatory environment, make it a strong choice of jurisdiction for both private equity fund formations and for the selection of service providers required to service such funds.

EXPERIENCE IS THE DIFFERENCE

Bermuda’s history with private equity dates back to the early 1980s and 1990s. Over the past 30 years, Bermuda has developed a network of knowledgeable service providers and advisers to the private equity industry who work closely with regulators to create a world class jurisdiction for the private equity industry.

The Bermuda Monetary Authority (BMA) – the industry regulator – takes a risk-based approach to financial services regulation and has continually demonstrated a dedication to collaboration and consultation with the private equity industry, as well as with the financial services industry more broadly.

The continually changing regulatory landscape, and variety and complexity of fund structures (such as the hybrid fund vehicle), has increased the value of access to highly qualified and skilled private equity professionals. The resources required to attract, train and retain highly qualified industry professionals have increased as the value associated with this expertise has intensified. The outsourcing of private equity services is not only a benefit from a cost perspective, but also provides the private equity managers with access to staff with wide-ranging experience across multiple clients and fund structures. Bermuda has spent 30 years developing a unique network of skilled private equity professionals and is in position to fully leverage that talent.

Having a service professional that has extensive expertise in private equity funds provides the general partner with a great source of guidance on industry best practices. This expertise can be leveraged by the general partner, beginning with the fund formation stages to determine reporting formats and managing subsequent close calculations, and then continually through the life of the fund to assist with distribution waterfall calculations, portfolio valuations, best practices and limited partnership agreement provision calculations, and interpretations.

Scott Burns, head of private equity services for ISIS Fund Services in Bermuda, has been servicing private equity clients from the country for close to 20 years.

He says: "One big advantage Bermuda has over other jurisdictions, is the depth of private equity experience in all areas of the service provider landscape. One reason our clients continue to choose our administration services in Bermuda is the incredible depth of experience in the law firms, accounting firms, directors and consultants. Our relationship with the staff in these other firms goes way back. For some of our clients, I worked as the fund accountant when they were formed in the late 1990s and the current audit partner was a senior on those early audits. This close proximity of such depth of private equity experience gives Bermuda a strong advantage in the selection of a private equity fund formation domicile and service provider selection."

INDUSTRY DRIVEN STRUCTURING OPTIONS

Bermuda has a history of a collaborative relationship between investment industry professionals and regulatory stakeholders.

A recent example of this successful collaboration is demonstrated in Bermuda's dominance in the insurance-linked securities (ILS) space, with close to half of all ILS stock now issued in Bermuda. Bermuda has also leveraged this alignment of a world class financial regulator and deep industry knowledge to create a very favourable structuring environment for private equity and hybrid funds.

For these closed-ended structures formed as limited partnerships, the benefits of forming it in Bermuda include less regulatory scrutiny as the partnership legislation does not look to regulate the affairs of limited partners; the general partner can be based outside of Bermuda; and a Bermuda limited partnership can elect (in a similar way to Delaware limited partnerships) to have separate legal personality.



A hybrid fund may also be formed as a Bermuda mutual fund company. Bermuda offers key advantages as a jurisdiction for establishing a fund company as the legislation (including segregated accounts legislation) allows for the creation of bespoke governance and economic arrangements within a single entity. Options exist to 'opt in' to the amount of regulation a fund requires based on its investor base. Closed-ended structures fall outside of the Investment Funds Act and therefore there are no filings, no approvals and no restrictions on the use of chosen service providers. In addition, there is no requirement under Bermuda law for local auditor sign-off.

These factors, coupled with low fees and same day incorporations, make Bermuda a superior choice as a jurisdiction for forming private equity as well as hybrid fund entities.

Sarah Demerling, partner of Appleby (Bermuda) Limited and member of the asset management committee of the Bermuda Business Development Agency, has been working closely with the asset management industry, the BMA and the Bermuda Government to reinvigorate the industry in Bermuda.

"Bermuda is listening to the needs of the industry and responding accordingly. Bermuda's reputation and sensible balance of regulation provides investors with confidence and our current environment is very supportive of the industry as it continues to expand and evolve," she says.

Another key incentive to forming a hybrid investment vehicle in Bermuda is the tax neutrality of the jurisdiction. There is no Bermuda income, capital gains or withholding tax, corporation or profits tax applicable to a fund or to its shareholders.

BERMUDA, A COMPLETE JURISDICTION FOR HYBRID FUND/ PRIVATE EQUITY VEHICLES

As the private equity industry continues to evolve due to changes driven by regulators, investors and general partners themselves, Bermuda is well positioned to be a leading choice as both a location to domicile hybrid funds, traditional private equity entities, as well as general partners and also as a leading choice for private equity professional service firms.

Bermuda has spent three decades creating a landscape tailor-made for private equity, and continues to be a responsive and innovative jurisdiction, which strives to implement new structures and products to provide solutions to the challenges which arise in the private equity arena.

Article first published in HFM Week Bermuda Report, August 2014

Quick Hits

LendingClub Corp., a San Francisco-based peer-to-peer lending marketplace, has filed for a \$500 million IPO.

Advent International has agreed to acquire a 49.99% stake in Cataratas do Iguacu SA, operator of concessions stands around Brazil's Iguazu waterfalls. No financial terms were disclosed.

KKR and Borealis Maritime have acquired a portfolio of nine feeder container vessels from a consortium of German KG funds. No financial terms were disclosed.

Brentwood Associates has acquired Marshall Retail Group, a Las Vegas-based operator of specialty retail stores at casino resorts and airports, from ICV Partners.

The Foreign & Colonial Private Equity trust has raised its exposure to co-investments as part of plans to bring direct investments in private equity up to 25 per cent of the overall portfolio.

European private equity firm Bridgepoint has bought British foreign exchange provider Moneycorp for 212 million pounds (\$351.8 million), the fund said on Friday.

CDI Computer Dealers, which is backed by H.I.G. Growth Partners, has promoted Erez Pikar from chief operating officer to president. Pikar began at the firm as a director of operations. Headquartered in Markham, Ontario, CDI is a refurbisher and remarketer of IT equipment to educational institutions.

Attero, India's largest electronic asset management company based in Noida, today announced a \$15 million Series C round of investment in a round led by Forum Synergies (India)

Private equity firm Samara Capital on Wednesday said that it has acquired a 45% stake in Iron Mountain Inc., a provider of storage and information management services, according to BusinessWeek

Events

Best Practices for Overseeing PE Portfolio Companies Generating Alpha --

15 Operating Partners Share How They Drive Value Creation

Oct 2014 | New York, NY
Hosted By: Capial Roundtable

"Top Questions to Ask When You're Expanding Your Franchise Portfolio"

Oct 23, 2014 | New York, NY
Hosted By: Capial Roundtable

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