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In This Issue

Editors Letter

Welcome to the August issue of Private Equity Strategies. This month we have a power packed issue including news on regulation changes and several market trends that could lead the second half of the year.

Insider trends opens the issue with an in-depth discussion on M&A activity, and the potential impact crowdfunding will have on this and other parts of the transaction landscape now that JOBS Act rules are going into effect.

Following this theme we speak insurance and risk management advisors from Crystal & Company about often overlooked areas of transaction risk insurance, as well as changes in how the market uses and views those policies.

Regs Watch will take us through some other notable regulation changes.

In our Dealmakers Q&A we look at Waud Capital's choice to merge two of its portfolio companies and still maintain a long-term investment in the resulting entity.

We also check in with the Small Business Investor Alliance on efforts to expand and improve the SBIC program with Congressional support. Attorneys for Schulte, Roth & Zable, John M. Pollack, David E. Rosewater, Michael E. Swartz and Pavel A. Shaitanoff have also contributed their top 10 considerations for portfolio companies looking to sell to a private equity firm.

Finally, as always, Quick Hits highlights new transactions and events to be aware of. Thanks again for your on-going feedback and tips, please keep them coming.

Best,
Bailey McCann
Editor

Bailey McCann
Editor, Private Equity Strategies
mccann@opalesque.com

Insiders View: M&A, Crowdfunding Trends

Bailey McCann
Private Equity Strategies

Activity in middle-market M&A fell to its lowest level in 18 years, according to investment bank R.W. Baird & Co., there were just under 200 deals last month according to the bank – marking the lowest number of deals in a given month since 1995. Observers note that this may be an indication that the post-2008 M&A recovery was just a flash in the pan. However, there are still pockets of activity, according to John Sensiba, Managing Partner at Sensiba San Filippo LLP, Northern California-based CPA and business consulting firm.

"Right now there is a real stretch in the high tech world to get high quality people . Once you've got a team that could be attractive, the multiples to sell with that staff is higher than any product you would be able to develop," he tells Private Equity Strategies.

This reality reflects a long held contention of many businesses, that the skills gap is holding back economic growth.

"Small team acquisition is very popular right now, and those teams don't always exist in California, they could be scattered in a number of locations and working remotely. It's going to depend on what an individual firm is looking for through the acquisition. Old economy sectors like manufacturing are also seeing activity," he says.

In the industries with activity, a number of factors are driving deals – there are generational issues, and many large private and public companies with a lot of cash on hand.

"We're primed for M&A right now because there are so many private companies without succession plans in place, those issues are generational - people want to retire or do something else, and there's no one then, to take over really outside of a private equity firm," Sensiba says.

In other industries like automotive dealerships, strategic acquisitions are driving deals as many dealership groups find themselves with plenty of cash on hand. According to a semiannual report from Presidio, a San Francisco financial services company that brokers dealership sales, public auto-retail companies spent $133 million on U.S. dealership acquisitions, up 8 percent from the year-earlier period. Large privately held dealership groups are also hot on their heels.

Registered investment advisory firms are also getting into the mix, and are willing to solve some of the issues that may slow down a traditional private equity deal, according to recent analysis in Investment News.

Overall though, activity still remains low, indicating that the recovery many hoped for is still far off. Against this backdrop some troubling trends are starting to creep back in. "It's surprising to me a little bit, to see some of the multiples that are being paid, we tend to repeat our mistakes in the business world and I'm not saying there are ridiculous yet, but they are getting higher and there are people who are doing deals to do deals," Sensiba says.

Crowdfunding enters the fold

After much feet dragging, the SEC has started to deal with the rules surrounding crowdfunding, as included in the JOBS Act. The regulator was fundamentally opposed to crowdfunding, well before the JOBS Act, and still seems hesitant to put any weight behind it as an investment vehicle. However, some say crowdfunding could have real impact for M&A, growth equity and the IPO markets as well.

Critics of crowdfunding say that the opportunity for fraud is too high, and that investors in this space may not always understand what they're getting into. While supporters argue that crowdfunding can help democratize finance and provide capital for businesses that would otherwise have a hard time.

"It's the new money, that tends to overpay in transactions, that's what concerns us about crowdfunding. Investors that aren't as sophisticated might see downside from those increases in multiples," Sensiba notes.

Both sides have solid points. In our last issue we interviewed Judd Hollas, CEO of EquityNet, who is a proponent of crowdfunding, and in that interview he noted that similar concerns were voiced when self-directed investment platforms like E*TRADE and eBay first launched in the 1990s.

"I think the fact that entrepreneurs have to verify that investors are accredited is a positive step. Arguably the same questions were raised about companies like eBay or PayPal in the early days, but there have also been a lot of technological advancements driven by those companies. Those technologies and community self-policing will come along here too, some solutions are already in place," he said.

Companies like E*TRADE and eBay may be good examples for the crowdfunding conversation. Critics and supporters alike tend to focus on whether the average retail investor will understand the inner workings of a transaction. On platforms like E*Trade, and even to an extent on eBay, users are almost annoyingly informed by these firms about what they are getting into, and the consequences for fraud.

The same practices could be replicated on crowdfunding platforms, or, better still, regulators could engage in conversations about how to simplify and improve financial disclosure rules which are often arcane even to "sophisticated" investors and their sizeable legal and accounting teams. Financial journalists could easily only cover the steady stream of regulatory changes that are meant to provide more transparency, and instead often just result in more, and conflicting reports. In all, only holding retail investors responsible for their ability to navigate this system seems a bit disingenuous.

"There is a huge opportunity to simplify accounting practices internally and externally when you look at some of the disclosures that are required," Sensiba says. "Many times those disclosures mean nothing to average users of financial statements. When you look at Craigslist, people show the dents on their cars and they explain what they're selling, what is wrong, and why they think the value is fair. But we don't do that in the business world, instead we keep changing regulation around instead of just being transparent."

Structurally, crowdfunding may play an increasingly important role in a low liquidity environment. Crowdfunding could have implications business decisions in terms of growth opportunities, whether to stay private, or when to sell.

As banks consolidate, and are required to keep more cash on hand, providing small lines of riskier credit, rubs up against new regulations. This reality is already opening up new opportunities for private equity firms and hedge funds. Still, there are some businesses that may be sound, but aren't going to fit the mold for alternative investment firms. (Consider the troubling trend of some VC firms considering women owned businesses innately too risky, as one example.) Could these firms be a good fit for crowdfunding? Maybe. Crowdfunding may be a way for businesses to grow into something that is a better fit for investment firms. Watch this space.

Tools of The Trade: Transaction Insurance: What Firms Need To Know

By: Bailey McCann
Private Equity Strategies

In recent years, the insurance policies held by parties in a private equity transaction have changed and expanded, to provide investors better piece of mind and firms with new ways to defend themselves if a claim arises. In our May issue we highlighted SRS data showing that two-thirds of deals have material closing issues that result in claims. Here we speak with Kevin Maloy, Senior Managing Director, M&A, Special Practices, and Brian E. Dunphy Managing Director, Management & Professional Risk Group, of Crystal & Company, about issues in transaction insurance.

Crystal & Company, is an insurance and risk management firm that advises on a broad range of investments and transactions. Crystal & Company is the second largest firm of its type in the United States and is a family owned and operated business. Clients include private equity firms, infrastructure funds, distressed investors and hedge funds.

Within private equity, the two men note that there are three coverage areas that should be considered. The first is fund closure insurance. PE firms with vintage funds that have lingering periods of indemnification before all proceeds can be released to LPs, can use this type of coverage to accelerate the release of those proceeds.

Transactional risk insurance markets in conjunction with the broker community, have developed a product to assist private equity firms in accelerating release of money back to LPs. A private equity firm can secure a blanket rep and warranty insurance policy, across all sold portfolio companies and transfer risk to insurance market. Therefore, if a buyer makes a claim for indemnification, alleging breach of representation, the insurance carrier will bear the responsible for claim, relieving the private equity firm of the need to withhold a portion of sale proceeds.

"This type of insurance can dramatically limit the possibility of clawbacks," Maloy explains. "It's not a big market yet, but there are a few carriers that place it, and it can be helpful depending on the issues surrounding a particular transaction."

The second important coverage area is IPO insurance. When preparing for an IPO, companies need to take specific action as it relates to risk management and insurance programs. On issues of general corporate governance, firms should review insurance programs to ensure proper protection for assets/operations. Specifically, preparing for an IPO creates directors & officers' liability risk well before the company is listed. By working with an advisor, companies can ensure they are well positioned to avoid those liabilities as much as possible.

"On the private equity side, it is critical to mitigate the post IPO risk, and the risk of setting up the IPO including road shows, marketing, disclosures, etc. These issues need to be understood as much as a year out or more from the IPO date, because you often see claims resulting from the process as much as post offering price/share fluctuations," Maloy says.

He notes that since the end of July there have been 7 executed or announced IPOs, indicating renewed momentum in that market. "These are conversations that we are having all of the time," he says.

Finally, an often overlooked component of a transaction is statutory and/or assumed environmental liability risk. This can allow for the use of insurance capital to transfer risk at a low cost as well as to assist a buyer and seller to facilitate/consummate a transaction.

Whether acquiring a real estate, manufacturing, or retail company, both known and unknown environmental risks can prove costly. Any indemnification offered by the seller can be subject to a knowledge qualifier and a short indemnification time period (i.e. 18-24 months). Additionally, the seller's indemnity obligation is only as good as the ability and willingness of the indemnifying party to stand behind the indemnity obligation.

"The issues here are a lot different than you'd expect," Maloy says. "Firms take a hard look at conditions on the ground at the time of initial investment but there many not always be a consideration of those conditions post closing. You could run into issues like superfund actions impacting an exit, there are legacy risk issues, etc. So you have to ask yourself what you can transfer to a third party balance sheet like an insurance company."

He notes that the market for different types of insurance coverage to transfer these risks has expanded in recent years but deal parties will have to be prepared for what that means. "The thing that's really going to move the needle for our clients is in the transaction space. If you can quantify a risk, we can pretty much find someone to transfer that risk for you, but you're going to have to consider both the risk and affordability."

Those considerations may still be easy math for firms and investors to do, according to Maloy activity in this space is picking up. "There's a big uptick in rep and warrant activity, the product is still relatively new, and it earned a reputation as maybe not being as effective as it was meant to be. But, what we've noticed is, as the market has matured, we've seen terms and conditions get quite broad, and costs go way down. Product is becoming more common in the US and is extremely common outside of the US. Our activity and inquiry in this space is up well over 100%."

He explains that rep and warrant insurance is now viewed as a more reliable method of bridging the differences between buyers and sellers. Buyers are getting more comfortable accepting an insurance policy as recourse in the event of misrepresentation in a deal.

Directors and Officers (D&O) insurance is also expanding. "The policies that are in existence right now are really pretty broad and they've broadened over the last 8-9 years. Insurance is a reactionary industry, so things aren't going to be granted or excluded without a precipitating event. So, if you get a groundswell around an issue, as soon as on insurer says yes, everyone is going to jump in. The number of underwriters offering D&O has expanded dramatically," Dunphy says.

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

As 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.

ERISA Liabilities of Private Equity Funds: First Circuit Addresses Control Group Liability

In a decision of significance to private equity funds, the United States Court of Appeals for the First Circuit recently held that: (1) a private equity fund can be liable as a "trade or business" for the withdrawal liability of its portfolio company; and (2) by structuring its portfolio company investment to avoid ERISA's 80 percent parent-subsidiary common control threshold, the private equity fund did not engage in a transaction to "evade or avoid" withdrawal liability

China Securities Regulatory Commission (CSRC) Became Sole Regulator of Private Equity (PE) Industry

The long fight between China's regulatory agencies for the private equity (PE) and venture capital (VC) industry has finally been concluded.

Recent SEC 'Bad Actor' Provisions For Hedge Funds, Private Equity Funds, Could Unearth Unethical Backgrounds Of Executives: Securities Lawyers

Recent regulations unearthing the legal backgrounds of those who sell private securities could lead to nervousness and layoffs among hedge fund and private equity executives, according to securities lawyers.

AIFMD & Private Equity Managers An implementation checklist

An alternatives consultant provides his breakdown of key issues for AllAboutAlpha.com.

Chinese Private Equity Appeals For Policy Support

Chinese PE firms are calling for a resumption of mainland IPOs according to FinanceAsia.

How Dodd-Frank Makes M&A More Difficult

American Banker breaks down how the new regulatory regime in the US will create new hurdles for M&A.

Private Equity Activity In Contract Research Organizations: Recent Deals And Key Issues For Consideration

While the contract research industry has become increasingly attractive to private equity investors seeking growth opportunities and stable cash flow, investors and acquirers should not lose sight of the importance of conducting effective due diligence with regard to potential or planned transactions.

A New Regulatory Angle For PE Investors - Companies Bill 2012

DealCurry breaks out a new update to existing investment laws in India, that may be beneficial to private equity firms.

The Fatal Flaw in IPO Underwriter Selection

In his new white paper, "The Fatal Flaw in Underwriter Selection by Venture Capital-backed Companies," Tim Keating, President of Keating Investments, says the overreliance on an oligopoly of bulge bracket firms as IPO bookrunners has contributed to a sharp increase in the percentage of unsuccessful IPOs, and has a negative impact on the returns for venture capital investors.

Read the full paper here.

Post-Morsi, Small and Mid-Size Companies Offer PE Opportunities in MENA

Companies in the $25-250m range account for more than 90 percent of all companies. They have low debt and are "ignored by commercial banks," creating "an opportunity for private equity to inject capital," says GrowthGate Capital partner Karim Souaid, in a Financial Times opinion piece published the day Egypt's president, Mohamed Morsi, was deposed.

Dealmakers Q&A: Waud Capital Merges Portfolio Companies Early On

By: Bailey McCann
Private Equity Strategies

Waud Capital Partners focuses on middle-market growth equity investments, buyouts, industry consolidations and recapitalizations. Since its founding in 1993, the firm has completed more than 150 investments across industries, and has approximately $1bn of capital under management.

The firm recently announced the merger of two of its portfolio companies - Adreima and Optimum Outcomes, marking the first time Waud has merged two of its own portfolio companies. The merger is also notable as it took place early on in the investment lifecycle, which means that Waud will continue to be involved with the new entity well into the future.

"We always thought that there was a possibility both companies could be merged, but it was never a specific plan," explains David Neighbours, Partner at Waud Capital Partners, in an interview with Private Equity Strategies. "We found there was a great opportunity to combine services, and share customers between the two businesses in a way that would be beneficial for both companies and their customers."

Adreima, is a national provider of clinically integrated revenue cycle services. Optimum Outcomes, is a national provider of patient-focused account resolution services. Both companies have a roughly similar target audience of 5-6,000 hospitals in the US. The companies focus on the revenue cycle of hospitals, providing services around eligibility and registration staffing; clinical audit and denial prevention; and receivables management and self-pay/bad debt account resolution.

Both companies have been serving their respective clients for a number of years, Adreima was founded in 1990, and Optimum has been in business for 25 years.

Waud itself is a generalist firm in terms of the portfolio companies it looks at, however, Neighbors notes that they have a significant health care group and will continue to pursue this industry. The firm typically invests $20-100m, as a controlling interest. From there, Waud looks at how it can best grow portfolio companies, in this case that growth came from being acutely aware of how two separate portfolio companies work together in the same industry.

"Over time, merging the two companies really started to become a natural thing to do as they both evolved and started working together," Neighbours says. "This will allow us to expand services to customers, and entrench those services, making it harder for hospitals to switch vendors."

"We are acutely aware that each touch point of a patient's healthcare experience has the ability to influence that patient's perception of the provider. With the full spectrum of services now offered by the combined company, we are even better positioned to ensure and facilitate a positive patient experience, from initial registration all the way through final account resolution," says Robb Cass, President of Optimum Outcomes.

The combined company will maintain the Adreima name and will be headquartered in suburban Chicago. The new business will have 1,100 dedicated employees, including 200 specialized physicians, nurses and coders, serving 600 hospitals and providers across 36 states. Robert Willhelm, the current CEO of Adreima will be CEO of this iteration, and Robb Cass, current President of Optimum Outcomes, will lead the patient-focused account resolution division.

The new organization will continue to operate from seven regional locations (Phoenix, Raleigh, Jacksonville, Fort Lauderdale, Los Angeles, Birmingham and Bloomfield, New Jersey). The company's bad debt division will continue to operate as Optimum Outcomes.

"This is the first time we've ever merged two companies we have invested in so we plan to spend the balance of 2013 focusing on integration. In 2014 we will look at ways to continue growth, potentially through new acquisition opportunities, this is still a long term investment for us," Neighbours says.

Waud had a controlling interest in both companies before the merger, and will maintain a controlling interest in the merged entity. Debt financing for the merger was provided by BMO, Regions Bank, Capital One Bank and Bregal Sagemount.

SBICs See Continued Support From Congress

By: Bailey McCann
Private Equity Strategies

As a public-private partnership administered by the U.S. Small Business Administration (SBA), the Small Business Investment Company (SBIC) program has provided more than $58bn in funding to more than 100,000 small businesses in the U.S. SBICs have also become an attractive investment vehicle for today's private equity and alternative capital providers. Now, Congress is calling on trade groups and industry professionals to suggest ways that the program can be improved.

At the end of July, the House Small Business Subcommittee on Investigations, Oversight, and Regulations, held a hearing to gather suggestions on the program, which currently has bipartisan and bicameral support. Steven Brown, Managing Partner of Trinity Capital Fund II of Phoenix, Arizona, testified before the Subcommittee that recent SBIC reforms have attracted more private sector investment and allowed SBICs to operate closer to the speed of business to back thousands of successful entrepreneurs. "Trinity Capital is an example of how an SBIC Fund can provide critical capital to businesses that will now continue to grow long after the SBIC has exited the investment."

The Small Business Investor Alliance (SBIA) also testified in the hearing and offered a number of suggestions including maintaining high licensing standards, modernizing SBA information technology systems; addressing drafting errors in Dodd-Frank; and modernizing the program's Standard Operating Procedures.

"The areas that need to be improved the committee largely agreed with, there is broad consensus that small businesses are struggling to access capital," says SBIA President Brett Palmer in an interview with Private Equity Strategies. "We're looking to raise the limits businesses can take out, that's been introduced in both houses, and has been marked up in the Senate, so we hope that will move forward when Congress reconvenes."

The program itself is capped at $3bn per year, at the hearing SBIA pushed for that cap to be increased to $4bn. "There is market demand to scale up the program and we want to keep that going," he says.

SBIA is also working with business development companies (BDCs) and congress to get regulatory and legislative relief for raising and providing capital to the lower middle market. This segment of the business landscape has been hardest hit by tightening liquidity in the capital markets.

Palmer notes that there may also be a growing opportunity set for larger BDCs and private equity firms in the lower middle market as demand for all types of credit and capital continues to rise. "As community banks get squeezed out through regulation, there is, really a great opportunity for private equity in lower middle market because the demand isn't going to go down."

Regulation changes

SBICs also need to keep an eye on regulation Palmer says. Failure to engage earlier on has resulted in provisions in Dodd-Frank and at the Consumer Financial Protection Bureau that are less than ideal for small businesses. "If people don't engage and learn Washington they can get hurt in ways they never expected," he says.

Indeed some new changes are on the horizon for September 1, of this year. The Small Business Administration (SBA) has changed how procedures to prepay pooled debentures will work. Until now, SBICs have had the option of prepaying pooled debentures either by ACH debit with funds collected from the SBIC's designated bank account, or by wire transfer directly to the Bank of New York Mellon. Under the new terms notice of prepayment must be given five days in advance. Additionally, principal payments may no longer be made through ACH debit, only semi-annual interest payments can be handled by ACH.

Further changes may be on tap when Congress resumes later this year. Wisconsin Senator Tammy Baldwin is working on a measure that would expand the cap to $4bn and may also include additional provisions to encourage startups. The Senator says the measure would be paid for already through fees paid into the SBA.

Top 10 Considerations When Selling Your Company to a PE Firm

By: John M. Pollack, David E. Rosewater, Michael E. Swartz and Pavel A. Shaitanoff
Schulte, Roth & Zabel

For a board of directors of a public company, perhaps no decision is as important (and litigious) as the sale of the company in a change-of-control transaction. The good news is that Delaware courts have a long history of being deferential to directors, and that while heightened "Revlon" duties (that is, the duty to obtain for shareholders the highest value reasonably attainable) may apply, courts recognize that "there is no single blueprint" for selling your company.

But therein lies the rub. There is no one-size-fits-all approach that necessarily works. And when the buyer is a private equity (PE) firm, additional issues may arise. What matters most is good process, exercise of good judgment, making an informed decision and maintaining a good record of that. Below are ten important considerations to keep in mind—they won't prevent your company (or you, in your capacity as a director) from being sued (over 93% of deals over $100 million result in litigation, so you should expect to get sued), but they will help you in your exercise of your fiduciary duties and your ability to demonstrate the same to a Delaware court.

1. Retain Highly Qualified Advisors. Delaware courts understand that a board needs to rely, in certain situations, on the professional judgment of experienced outside advisors. This should go without saying, but for such an important decision as a potential sale of the company, the board should engage financial and legal advisors that are sufficiently qualified for these types of transactions. The company's pre-existing advisors may fit that bill or the board may need to look elsewhere.

2. There Are No Shortcuts to Good Process. A board must act in an informed manner and be sufficiently involved in the sales process. It is important for the record to show that the board met periodically throughout the process, was appropriately advised by outside advisors and exercised informed judgment on the important decisions when it mattered. Prior to commencing a sales process, let your financial advisor take the time to inform (or update) you as to their view of the value of the company and its shares. Similarly, let your outside counsel advise (or remind) you as to your fiduciary obligations (particularly in connection with a sales process and potential change-of-control transaction). This will help get things started on the right foot—process- and record-wise.

3. Be Mindful of Conflicts of Interests. It does not matter how careful you are in your sales process, if your banker, lead director or chief executive officer has an undisclosed material conflict of interest with the winning bidder that is discovered by the plaintiff's law firm after the fact. You should inquire about potential conflicts of interest, and your counsel should guide you on how to vet these conflicts early on in the sales process and help you navigate them if they arise (e.g., staple financing).

4. Management Participation is Critical, but Oversight is Needed. Most likely, you cannot sell your company without active participation by senior management. However, their interaction with potential bidders runs the risk of them acting in their own interests or the bidders' interest (to curry favor). You will want to (i) instruct your management team as to how to properly interact with the bidders during the sales process and (ii) direct your financial and/or legal advisor(s) to chaperone the management presentations to make sure that discussions with bidders are consistent with the foregoing.

5. Make Sure Management Keeps an Eye on the Business. A sales process is going to distract management. They cannot be in two places at once, and responding to bidders' needs can be time consuming. However, management must continue to execute the board-approved business plan (except as otherwise directed by the board), because getting to a signing, let alone a closing, of a sale transaction takes time, and by no means is a certainty. And, it helps, when negotiating with bidders, that remaining as a stand-alone company is a viable option.

6. Your Largest Stockholder is Important But Cannot Dictate Terms. While the objectives of the company's largest stockholder may be in line with the best interests of the company's stockholders generally, the board must make decisions for the benefit of the stockholders taken as a whole. In certain situations, particularly where the largest stockholder (e.g., a PE fund) is pressing for a sale due to its own liquidity issues, that may mean the board refusing to conduct a sales process or, if such a process has been commenced, refusing to accept the highest offer on the table (because the board has determined, after consultation with its financial advisors, that the highest offer on the table still does not adequately value the company).

7. When Going "Open-Kimono," Be Clean About it. Target boards are best served (by their management and advisors) having prior warning about any key issues that bidders are likely to raise, so that they can make the business decision to be upfront about such issues. If a bidder submits a bid without having been informed as to a material issue, you can bet they are going to seek a haircut to that bid once they find out about the negative diligence information. Disclosing negative information in the diligence process is an art and not a science, and if it is likely to materially affect a bidder's valuation of the company, the board (or a committee or lead director) should be involved in deciding when and how to disclose it.

8. Be Careful About Leaks. Deciding whether to run a sales process, or conducting one, generates confidential, potentially price-sensitive information. The board must be particularly careful about leaks. Not only could they give rise to insider trading, but they could derail or unnecessarily complicate the sales process and distract employees from doing their jobs.

9. Maintain a Good Record. Not only should the board strive for good process, the board and its advisors need to develop a good record of such process. That objective can be undermined by casual emails and incomplete notes of meetings or conversations. Directors should not assume that private emails or personal notes will remain confidential. In fact, they are often subject to discovery in merger-related litigation and can be taken out of context by plaintiff's lawyers, undermining the appearance of good process. Treat each document you create (including drafts), even if it is marked internal or confidential, as if it will be read by a plaintiff's lawyer. Make sure that each document accurately and clearly reflects the events that took place.

10. Know Your Buyer. The spectrum of potential bidders may include PE firms and strategic buyers. Not only do these bidders present different risks in terms of sharing competitive information (including antitrust risk in certain cases), they can and often do present different risk of deal certainty. Strategics are much more likely to agree to target-friendly terms: they likely won't need a financing condition (or "back-door" financing condition) and can agree to a full specific performance remedy (where they are required to close so long as the closing conditions are satisfied), as compared to a PE firm that at least is going to demand a limited specific performance condition (so that it doesn't have to close if it can't get its debt financing) and that it only be obligated to pay a reverse termination fee in the event of a financing failure or willful breach. On the other hand, the PE bidder may present little or no antitrust risk and may be able to sign and close the transaction much faster than the strategic (for a number of reasons). What's important from the board's perspective is understanding these differences at a high level and appreciating that, in certain situations, all bids may not be equal. Depending on the facts, the board may reasonably determine that the $95 bid from a PE firm is better than the $100 bid from a strategic, or vice versa.

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Quick Hits

Jones Day has snagged Berwin Leighton Paisner global private equity head Raymond McKeeve to join its private equity practice in London.

ING edged closer to completing its year-and-a-half-old Asian divestment plan after private equity firm MBK Partners agreed to buy its South Korean insurance unit for 1.84 trillion won (HK$12.82 billion) in cash.

According to CalPensions, CalPERS is not investing enough money through minority-owned firms, two trade associations and several money managers say, and some want a legislative audit of "unfair" decisions, particularly for lucrative private equity funds.

American Capital Ltd sold Pan Am Holdings Inc and its subsidiaries including Pan Am International Flight Academy Inc to ANA Holdings Inc parent company of Japanese carrier All Nippon Airways Co Ltd.

Globecomm Systems Inc., a satellite communication device manufacturer, has agreed to be acquired by a Manhattan private equity firm for $340 million in cash.

Nancy-Ann DeParle architect of Obamacare is headed to private equity firm Consonance Capital Partners.

Onex Corp. and a private equity affiliate are selling their combined 60 per cent stake in TMS International Corp. for $410-million. Onex announced Monday that company is being acquired by an affiliate of the Pritzker Organization LLC.

Private-equity firm Providence Equity Partners is increasing its stake in cable operator Hathway Cable & Datacom Ltd with an $18.5m investment

The private-equity that owns talent and marketing agency IMG has begun soliciting bids from potential suitors for the firm.

Events

Alternative Assets Summit

October 1-3, Las Vegas, NV
Hosted By: Alt-Assets.com Victor Park
Use code OPALESQUE15 for a 15% discount!

Super Return Asia 2013

Hosted by: SuperReturn

September 16-19, 2013 Hong Kong

About the Editor: Bailey McCann is a reporter and analyst based in the US, with experience covering government, policy and regulatory issues in addition to her coverage of alternative investments. Prior to her work with Opalesque, she provided research and media intelligence for members of Congressional and White House offices, government contractors, and Fortune 500 companies. She has also reported on, and done policy analysis of state and local government issues. She may be reached directly at mccann@opalesque.com

OPALESQUE

PRIVATE EQUITY STRATEGIES

PUBLISHER
Matthias Knab
knab@opalesque.com

EDITOR
Bailey McCann
mccann@opalesque.com

ADVERTISING DIRECTOR
Greg Despoelberch
gdespo@opalesque.com

www.opalesque.com