OPALESQUE
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In This Issue

Editors Letter

Welcome to the October issue of Private Equity Strategies, and happy fall! This month we are heavily focused on Microcap and emerging companies. A variety of new data-points are emerging, and all of them point to Microcap as a hotspot for IPOs and deal flow. Microcap Monitor returns with David Bukzin, a Partner at Marcum where he works with private equity and microcap companies on a variety of accounting issues. He discusses dealflow trends and accounting changes on the horizon.

Following this theme we'll crunch the numbers with a piece Perritt Capital Partners has submitted on active Microcap versus private equity.

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

In our Movers and Shakers section we highlight Bregal-Sagemount's recent investment in civic startup Accela. Civic startups have recently attracted the attention of VC's and are a rapidly growing sector.

In Tools of the Trade, Deborah Prutzman, of the Regulatory Fundamentals Group has contributed a piece on what the SEC looks for when it examines a private equity or venture capital 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,
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Microcap Monitor:
Microcap Activity on The Rise

Bailey McCann
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“We’re seeing more Microcap transactional business than we’ve seen in five years,” David Bukzin, Partner at Marcum tells Private Equity Strategies, in a conversation about Microcap companies. “We’re seeing that activity across all types of transactions, IPOs, SPACs.” Bukzin works with a number of Microcap companies and private equity firms as an accountant for Marcum.

“The markets have gotten to a level where the recovery is starting to trickle down to the smaller companies. Microcap companies are the last to see the upside and the first to feel any backslide.” In our last Microcap Monitor in June, we highlighted DelMar Pharmaceuticals, a company that is working on clinical trials for an orphan disease efractory glioblastoma multiforme (GBM), the most common type of aggressive brain cancer. At that time, life sciences companies as a group were popular with investors and they still are. According to Bukzin, life sciences and technology companies continue to dominate investor interest.

“The Microcap IPO market is coming back,” he says. “These IPOs are companies with under $500 million in market value, and are in these sectors. We’re even hearing rumblings that people are exploring China again. They are looking at what companies want to go public now that a lot of them have gone dark.”

He notes that recent changes in regulation like those to Sarbanes-Oxley have improved the options for Microcap companies. The JOBS Act is also playing a limited role in terms of marketing. “Some of the companies going public now are taking advantage of the JOBS Act, but it really has had little to no effect when it comes to gaining access to capital. What has helped are the changes to Sarbanes-Oxley. Regulations overall, are a balancing act. I think SARBOX was actually helpful in many ways. But the way they’re

writing some of these crowdfunding rules, they can open you up to fraud.”

SPAC’s come back

Special-purpose acquisition companies, or SPACs, are starting to become more frequent Bukzin says. Typically SPACs are a type of structure reserved for economies that are booming, but even with anemic growth, they too are coming back along with IPOs. SPAC issuances rely on IPOs to raise capital, and a few successful transactions have emboldened others to jump in.

According to research done by attorneys at Appleby, for Legal Week, “the largest such deal was the $905 million Platform Acquisitions IPO, a special purpose acquisition vehicle incorporated in the BVI and reuniting founders Martin Franklin and Nicolas Berggruen, who were previously behind the 2012 IPO of Burger King using a similar special purpose acquisition company (SPAC) model.”

Bukzin notes that the type of investor for a SPAC transaction is different from a typical IPO investor, “the IPO is more subject to market conditions, in a SPAC the equity has already been raised. With the IPO, you have to get through the SEC before you deal with the market to raise your capital. The SPAC is more institutional in nature, with an IPO you’ll see more retail investors.”

Accounting Changes

Bukzin recently gave a presentation at the JMJ Financial Summit in Las Vegas, Nevada where he highlighted some accounting changes on the horizon that could impact Microcap companies.

The Public Company Accounting Oversight Board is set to have a public roundtable next year that could change the auditors' opinion from pass/fail to something more qualitative. The proposal would add more communication to the auditors report about issues that came up during the audit leading to the opinion.

The Financial Accounting Standards Board (FASB) is also considering some regulatory relief on reporting for development stage companies. Those changes would affect mostly pharmaceutical, biotechnology, and technology companies. Based upon current rules it is difficult for companies to emerge from development stage to an established operating company because current guidance requires meeting the same reporting guidelines as an established operation. The FASB is looking at ways to make these reporting requirements easier for development stage companies.

These rules and a more liquid market environment are bolstering Microcap activity. "We're seeing clients who are now able to get capital in the last six months, where they haven't been able to for the past five years," Bukzin says. "There's an arbitrage in Microcap because of the lack of liquidity, which creates a lower valuation and private equity firms can take advantage of that."

Research submitted by Perritt Capital Management following this article goes into those issues in detail. Watch this space.

Alternative To An Alternative: Active Microcap vs. Private Equity

Contributed By: Perritt Capital Management

The current market environment is creating potential opportunities for investors seeking alternative options. These investors can benefit from a discussion comparing active microcap investing and private equity. The topic is a timely one, especially as it pertains to longer-term investment approaches.

Investors look to microcap investments for possible alpha generation tem- pered with risk management, much like other market sectors. However, they approach the sector with a higher tolerance for some of the unique factors inherent in the microcap space: lower liquidity, longer investment horizons, minimal analyst coverage, 'lumpy' return streams, and a higher risk/reward ratio than has been typical for larger-cap equity strategies.

The returns and underlying investments of microcap securities provide many similarities to private equity. However, the access, liquidity, trans- parency, low fee structure, and flexibility of the active microcap fund structure may provide a significant advantage for many investors. In a February 12, 2013 article by Bloomberg reporter David Carey, "Buyout- Boom Shakeout Is Seen Leaving One in Four to Starve," the private equity market's current difficulties are explained:

> *[Private equity] Firms that attracted an unprecedented $702 billion from investors from 2006 to 2008 must replenish their coffers for future deals and avoid a reduction in fee income when the investment periods on those older funds run out, typically after five years. As many as 708 firms face such deadlines through 2015, according to London-based researcher Preqin Ltd.*
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> *The combination of underperformance and funding needs has set the stage for a purge as investors pull the plug on the weakest firms. Only the scope of a shake-out is a matter of debate. "The shakeout will be rather massive," said Antoine Drean, chairman of Triago SA, a Paris-based firm that helps private-equity firms raise money. Drean estimates that as many as a quarter of private-equity managers will see their funding pulled by 2018.*

Seeking Opportunities Where They Exist

Today, many investors are looking for ways to decrease their allocations to private equity, due in large part to languishing fund performance, uncommitted capital, and long periods of lock ups that prevent them from accessing opportunities present currently in the market. While they may find their investment monies already committed in private equity to be unavailable for deployment, they are actively seeking new investment options that could provide what they feel is the exposure and upside valuation resident in active microcap.

"Liquidity dominates size as a return predictor," Roger Ibbotson stated in his keynote speech at the first annual Innovative Alternative Investment Strategies conference, held in July 2010 in Chicago. "Public equity markets have gradations of liquidity with different liquidity premiums."

Ibbotson studied 3,500 U.S. stocks by quartile and rebalanced annually from 1972 to 2009. He defined liquidity as total annual trading volume divided by total shares outstanding. One takeaway from his presentation at the conference, which focused on alternative investments, was that investors don't have to go all the way down the liquidity spectrum to private equity to find additional return.[1]

In his co-authored and widely-regarded white paper, Liquidity as an Investment Style, (Zhiwu Chen, Roger Ibbotson, Wendy Hu) last updated in August 2012, Ibbotson notes, "However, it is true that the liquidity effect is the strongest among micro-cap stocks and then declines from micro to small to mid to large-cap stocks ." The paper goes on to conclude that liquidity may be managed "low in cost" by employing a low portfolio turnover strategy.

Investors are finding that active microcap allows for greater flexibility, transparency and liquidity as well as lower fee structures than private equity investments. What follows is a look at some of the opportunities and challenges present when considering the investment alternatives of private equity and active microcap.

Private Equity's Growing Challenge-Liquidity

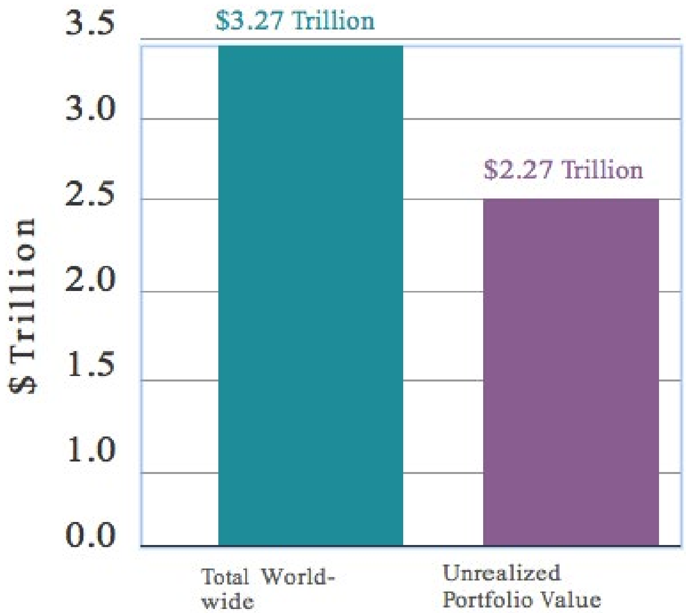
Long touted as a way for investors to participate in the opportunistic retooling of businesses, private equity has been mired in a protracted slump since 2008. This issue is largely centered on liquidity, or, more accurately, the lack thereof. One of the biggest challenges private equity managers face is when and how to exit the strategies set up in the vintage years of these funds-typically 10-12 years prior.

Valuation issues, lack of buyers, financing challenges, and related financial uncertainties have coalesced into a perfect storm of illiquidity that has given rise to the dreaded 'zombie' fund scenario, where managers find themselves unable to execute attractive exits from previously attractive private equity holdings. They remain running funds well beyond their anticipated lifespan, locking away investors' capital from redeployment and generating fees that arguably offer little value to the investors trapped within the fund. The private equity advisory firm, Triago, reported to PE Manager on April 9 of this year that an estimated $14.5B in capital commitments is expected to reach the end of its investment period in 2013, referring to this situation as a "fuse burning on a dry powder keg ."

Northern Trust, in its Spring 2010 Point of View Managing Liquidity in the Private Equity Market elaborated on the is- sue. "Private equity investors accept that the timing of both the funding of their investments, as well as the distributions of any returns, is difficult to forecast and largely out of their control. Yet even the most knowledgeable investors still seek better ways to understand the likely behavior of their holdings of these long-term obligations." In the article, Northern Trust's Vice President of Private Equity, Raj Vora, points out one of the unattractive features surrounding private equity investments: "The timing of these 'exit strategies' depends on a range of factors, such as the vagaries of the markets for public offerings and acquisitions.[2]

Of the roughly 10,000 private-equity funds raised in the decade spanning 2002-2012, at least 200 now qualify as zombie funds. Even more alarming: the amount of assets in zombie funds could reach $500 billion over the next several years, according to the advisory firm Triago, as reported in the Wall Street Journal in June, 2012.

69% OF PRIVATE EQUITY FIRMS' ASSETS IN UNSOLD COMPANIES



Source: Pension & Investments April 1, 2013 article.

> "What will happen to them? Who will buy them? When will they get sold? What will happen to the returns of the industry when they do get sold. "
>
> Michael G. Fisch, president and CEO of American Securities LLC

Pensions & Investments provided a recent update on this pressing issue in an April 1, 2013 article, "69% of Private Equity Firms' Assets in Unsold Companies." Of the more than $3.27 trillion in total worldwide private equity assets under management as of Sept. 30, $2.27 trillion is "unrealized portfolio value" or unsold portfolio companies, according to data prepared for Pensions & Investments by Preqin.

Active Microcap as a Proxy for Private Equity

Let's return to the discussion of microcap companies and their potential to deliver value. Both active microcap managers and private equity managers are attracted to microcap companies for many of the same reasons: there are high-potential companies resident in the sector with what they believe is strong cash generation, typically low leverage, established on highly functional business and operational processes, and a niche focus that allows for concentrated strategic growth if the environment provides for it.

Because active microcap and private equity managers both seek these types of company profiles, their respective performance tends to track and therefore has provided a similar return stream to investors. It is important to note, however, a critical distinction between the two: Active microcap managers with the requisite skills have generated these results for investors with greater liquidity and transparency than private equity managers, and often have done so without relying on companies that are highly leveraged.

The correlation comparison for active microcap and private equity is an important factor for investors to consider. While both asset classes historically have exhibited a high positive correlation to each other, they have shown relatively low correlation to the broader equity markets, and active microcap has achieved its results with a lower fee structure than was typical for private equity investments. The table on the following page illustrates this active microcap correlation comparison with private equity returns.

CORRELATION WITH PRIVATE EQUITY RETURNS (QUARTERLY, JANUARY 1, 1991 TO MARCH 31, 2013)[3]

Cambridge Associates Private Equity Index	1.00
Passive Large Cap (Russell 1000)	0.65
Passive Micro/Small Cap (Russell Microcap/2000)	0.63
Active Microcap	0.73

Source: Acuitas, Cambridge Associates, Russell, eVestment Alliance.
Active microcaps is defined as a group of investment managers which focus solely on micro-cap investing, as constructed by Acuitas Investm
Note: Russell Microcap is used from its inception (2001 and on). Russell 2000 is used prior to the availability of the Microcap index.

Steven N. Kaplan, author of Reassessing Private Equity (ChicagoBooth.edu), offers a relevant observation on the illiquid nature of private equity investments when considering the relative value of such investment tactics:

> *One of the controversies surrounding private equity is whether investors are getting a good return on their investment, particularly when compared with investing in the overall stock market. Private equity firms are not required to disclose their funds' re- turns and they invest only in companies that are not publicly traded, making it hard- er to get an accurate picture of their performance. The tremendous success of venture capital funds in the 1990s attracted a huge amount of capital in the early 2000s that subsequently contributed to lower returns. This boom and bust cycle has been a recur- ring feature of private equity-returns tends to fall with more capital, but go back up again when less money is invested in private equity.*

The following table shows a comparison of performance of private investments to public markets, so investors can judge for themselves the decision to take on the risks (e.g., illiquidity) associated with private investments.

U.S. PRIVATE EQUITY FUND INDEX SUMMARY:
END-TO-END POOLED RETURN DATA AS OF MARCH 31, 2013
(NET TO LIMITED PARTNERS) %

INDEX	1-YR	3-YR	5-YR	10-YR	15-YR	20-YR	25-YR
Cambridge Associates Private Equity Index	12.84	15.08	7.46	15.67	12.08	15.31	14.38
Passive Large Cap (Russell 1000)	14.43	12.93	6.15	8.97	4.60	8.69	10.06
Passive Micro/Small Cap (Russell Microcap (2000)	16.93	12.80	6.68	9.99	6.10	8.88	9.52
Active Microcap	16.25	15.89	10.26	13.66	11.82	14.38	14.72

Active Microcap: The Glass Half Full

In seeking desirable opportunities within the microcap equity asset class, some investors found active microcap provided them with the ability to main- tain a level of flexibility and accessibility in investment capital not matched by a private equity structure.

For example, microcap companies are required to produce regulatory fil- ings and reporting; microcap management teams often consist of company founders with substantial personal investments in their firms and eager to discuss their business with potential institutional investors; and the smaller firm's business focus tends to be on niche or single product lines, minimizing the tendency for over-diversification that can dampen a company's overall returns.

While both private equity and active microcap have been able to exploit the investment advantages presented by microcap companies, the latter has done so with greater investment flexibility and at reduced fee cost. Some of the exploitable factors are shown in the table which follows.

Active Microcap: Illiquidity Premium With Less Illiquidity

- **Data:** Research analysts, who are keyed on the mid and large-cap sectors where information is plentiful and investment banking opportunities exist, fail to adequately cover the small firms, and therefore often miss the microcap opportunities managers focused on the sector discover and exploit.

- **Investment Universe:** Approximately $183 billion in micro-cap stocks are available for the investing public, an amount that is less than 50% of the market value of Apple, Inc.

- **Interest Gap:** The size of the investment appetite, both buyers and sellers, is much more limited, as many cannot engage in the micro and small sectors due to liquidity and size constraints and investment mandates.

- **Price Movement:** The typical stock return profile in this underserved sector has been lackluster unless there was a compelling development or event that triggered performance and discovery, keeping a large majority of the sector's potential 'under-the-radar'.

- **Investments With Less Leverage:** Unlike private equity, which often has embedded investment assump tions based upon a debt-laden company, active microcap investment company balance sheets generally have had more than adequate cash and have not been burdened with excessive debt obligations.

Private Equity: The Glass Half Empty

Returning to the pressing issue of private equity's zombie funds, we observe the protracted investor dissatisfaction with their il- liquidity, and the growing concern that we have not seen the bottom of this particular glass. An industry mainstay, Pensions & Investments, pointed out the growing problem in January 2012:

> *And these funds are multiplying. Already, a number of venture capital funds raised in 1999 and 2000, especially those formed to invest in internet-related companies, can be classified as zombie funds. And in three to five years, industry insiders expect more private equity funds that were raised just before the 2008 credit crisis to join the ranks of the living dead.*[4]

In the Pensions & Investments article from April 1, 2013, "69% of Private Equity Firms' Assets in Unsold Companies," Michael G. Fisch, president and CEO of American Securities LLC, a private equity firm in New York, posed some of the questions weighing heavily on investors and managers minds alike: "What will happen to them? Who will buy them? When will they get sold? What will happen to the returns of the industry when they do get sold ?"

Investors already invested in or contemplating future private equity investments may be facing more of these same issues down the road, with limited recourse either to access their committed capital or to avoid additional capital calls on their locked-up investments.

David I. Fann, president and CEO of TorreyCove Capital Partners LLC, a private equity consulting firm, stated on pionline.com that investors are loath to pursue litigious or other similar hostile takeover options to exit these zombie funds. "The practical reality is that there are no good alternatives and it is hard for anyone to herd together multiple limited partners to take an adverse stance against a general partner of a fund," he said.[5]

An Alternative Worth Considering: Active Microcap

The returns and underlying investments of microcap securities provide many similarities to private equity. However, the access, liquidity, trans- parency, low fee structure, and flexibility of the active microcap fund structure may provide a significant advantage for many investors. As ac- tive managers in the microcap space since 1987 through multiple market cycles, we believe these attractive alternative investment opportunities currently exist in active microcap.

Few would argue that the past five years have posed challenges unprec- edented in the equity markets, both do-mestic and global. Active microcap managers with the skill set and expertise to capitalize on this value may be able to provide returns with the added benefit of liquidity and transpar- ency to investors dissatisfied by years of illiquidity and lack of choice.

References:

[1] Financial Advisor, Ibbotson Finds Liquidity Rules, Evan Simonoff, September 2, 2010

[2] Raj Vora, Vice President of Private Equity, Northern Trust, Managing Liquidity in the Private Equity Market, Northern Trust's Point of View, Spring 2010

[3] Aquitas Investments: Active Microcap: A Liquid, Transparent Private Equity Alternative, August 2012

[4] www.pionline.com, Jan 2012

[5] www.pionline.com, Jan 2012

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

A 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.

Recent Statements by SEC Staff Generate Controversy over Whether Advisers to Private Equity Funds Must Register as Broker-Dealers

According to attorneys from Dechert, David W. Blass, Chief Counsel of the SEC Division of Trading and Markets, warned an American Bar Association (ABA) committee that private equity funds should consider whether the adviser and its internal sales staff might be subject to broker-dealer registration requirements.

The Impact of the Alternative Investment Fund Managers Directive on Private Equity Transactions - Key Issues and Practical Thoughts

The AIFMD in Europe is poised to have a profound impact on M&A activity and private equity funds in general.

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.

FSC to Ease Regulations on Private Equity Funds

Business Korea reports that the FSC may start going a little easier on private equity funds when it comes to regulations by making it easier for individuals to invest in them.

Private Equity Must Be Wary of Unfunded Pension Plans Following Sun Capital Decision

A new tax alert from Weiser Mazar looks at some of the implications of the Sun Capital Decision for public pension plans.

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

SBIA Recommends Regulations Governing BDCs Be Modernized in Letter to SEC

The Small Business Investor Alliance (SBIA), has secured 24 signatories to the letter it submitted to the Securities & Exchange Commission requesting that current regulations imposed on Business Development Companies (BDCs) be modernized.

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.

Tea Partier Ted Cruz Forgot About His Caribbean Private Equity Firm

Who among us hasn't forgotten about a fund or a firm here or there when totting up our financial disclosures? Happens all the time, right? Now infamous Texas Senator Ted Cruz, known for his position as a debt hawk, and fresh off shutting down the government, forgot to disclose a $75,000 promissory note from Caribbean private equity firm he used to invest in. The note, according to amended financial disclosures recently filed with the Federal Elections Commission, was given to him when he cashed out shortly before his wife took a job in the Bush Administration. Oops?

PE Fund Sterling Partners Backing For-Profit Law School InfiLaw

Low score on your LSATs? Unable to get into Harvard Law on your beer pong score? InfiLaw is here to help. The firm backed by PE fund Sterling Partners can get you that J.D. - for a fee. InfniLaw says the for-profit law schools reach students who haven't quite hit that those magic GPA/LSAT numbers, but are just as good, goshdarnit. For about $40,000/yr students can buy their way in. In a lovely twist of irony, the schools have already been sued by students for misleading marketing. They are seeking tuition refunds.

Movers & Shakers Update: Bregal Sagemount Gets Into Emerging Civic Startup Niche

By: Bailey McCann
Private Equity Strategies

In our last issue,we looked at the continued growth of Health IT through recent transactions completed by Bregal-Sagemount, a growth-focused private equity fund. That firm is now getting into another, emerging niche - civic startups. The firm announced a $40 million investment in Accela Inc. a provider of civic engagement solutions for state and local governments.

The Accela Civic Platform provides governments ways to better interact with local citizens. The platform provides cloud and mobile technologies that facilitate productivity for government workers and allow citizens to engage with their agencies 24/7. Agencies can deploy complete capabilities to streamline and manage core processes and to improve community services related to land management, licensing, asset management, and public health and safety.

Accela's solutions support a portfolio of over 500 customers from enterprise agencies in jurisdictions such as New York City; San Francisco; Washington, D.C.; Melbourne, Australia; and the Emirate of Abu Dhabi to smaller jurisdictions including Nogales, Arizona; Roseville, California; and Westminster, Colorado. Last week, the company launched a new open-data repository that will be free to governments and civic developers that need a place to store their data. The API for those data will be available to developers who wish to create civic software applications.

The repository, CivicData.com was announced during the Code for America Summit in San Francisco, California. "The platform is absolutely free, regardless of how much you store. For our customers we have automation in place with our other Accela solutions, but you don't have to be a customer to put data on the platform. I lead a Code for America Brigade for example, and its all volunteer, so this gives us a place to put our data for free," Kris Trujillo, one of the platform programmers at Accela.

The platform will provide developers with multi-jurisdictional data for software creation, which could solve a repeatability problem common to civic software development. Historically, local governments and agencies have created custom solutions in-house baed on their unique needs, and often outdated computer systems. (Sometimes mainframes!) This level of customization prevents ready adoption by other governments or agencies with similar problems.

Code for America is a non-profit that pairs developers with communities to work on civic engagement issues, but a steady stream of for-profit developers are also working with governments. Civic startups are springing up all over the country with the help of accelerators like the Points of Light Civic Accelerator, which recently invested in 15 for-profit and non-profit civic startups. In some cases cities are getting in on the act seeding small companies or holding app contests, all going to support this rapidly growing ecosystem.

"With this additional capital, we believe the company can grow even faster and be the natural choice for all government agencies," said Daniel Kim, partner, Bregal Sagemount. Daniel Kim and Blair Greenberg of Bregal Sagemount will sit on Accela's board of directors. A portion of the $40 million was also provided by existing Accela investors.

When the SEC Examines a PE or VC Firm, What Is It Looking For?

By: Deborah Prutzman
Regulatory Fundamentals Group

The answer, at least in part, was supplied by Bill Delmage, Assistant Regional Director of the SEC's New York Regional Office, in the keynote speech delivered recently at the Private Equity and Venture Capital Conference hosted by the New York State Society of CPAs.

Reflecting the experience of the New York Office during the recent round of examinations, Delmage highlighted the following areas:

1. Carefully consider whether board of directors fees need to be credited back to the fund.

2. Make sure you allocate fees correctly between the funds and among co-investment vehicles. In some cases staff has found the main fund is carrying the vehicles. Generally with respect to these co-investment vehicles the SEC is focusing on fees and allocations. For example, legal fees relating to a specific issue unique to one client should only be allocated to that client (unless, of course, investors have received disclosures stating that another approach is being taken.)

3. The SEC is closely looking at travel and entertainment expenses. Again, costs related to a specific client should be allocated to that client. A particularly close look will occur to make sure that trips that combine business and personal events are appropriately allocated with clients charged only for the business component. Some firms have decided to voluntarily engage in a look-back exercise to determine whether their policies are clearly understood and appropriately applied throughout the organization.

4. The SEC is closely looking at consultants used by a firm and the role they play. Again, allocation of their fees is an area of focus, as is the extent to which they are brought within a firm's overall compliance infrastructure. With respect to fee allocations, the SEC generally believes that over time allocations should vary to reflect changes in activities across funds and their portfolio companies. For example, if a substantial amount of time is spent one month sourcing deals for one fund and helping on the due diligence for those deals, is it appropriate to allocate the time across other funds? A related issue is whether consultants have access to information flows such that they should be brought within the personal trading program. The SEC also seems to be trying to get a deeper understanding of the role consultants play generally and how a firm determines whether they have a firm email, whether they can work with other firms and the like. The SEC is also trying to understand when and why consultants are allowed to co-invest in a transaction and how a firm becomes comfortable that this is in the best interest of its clients. The SEC understands that a consultant may be charged as a fund expense, whereas an employee may be a management company expense.

5. In short, this may be a time to make sure that people across your organization have a clear understanding of how expenses are to be allocated, and that fees are actually allocated in an appropriate manner.

6. Insider trading is another area of focus. There is a particular concern when a firm that considers itself a PE firm is also engaged in another line of business—such as credit, CLOs, bank loans and debt. In these areas especially, personnel may frequently have access to non-public information needed to underwrite the loan transaction. The same situation may arise if board materials are shared. The SEC will ask how information flows work across the firm, where deals are sourced and whether information barriers exist between different product lines. They will want to understand how information is monitored, who has access and how quickly watch or restricted lists are changed to reflect new circumstances.

7. Conflicts of interest, particularly when they favor some investors over others, are also a current focus. The SEC has seen such favored treatment in deal allocation, fees and access to individuals. They will also carefully consider whether a staff member's outside business and personal trading activities give rise to conflicts. A relationship with a company that is doing a deal with the fund may cause a closer look. They want to see procedures for allocations among funds, if more than one fund might invest at the same time. Vendor selection will be reviewed to see if there is the possibility of special benefits for the management firm. For example, with respect to placement agents, the SEC will be interested in why this agent was selected and how the on-going relationship, if any, will work. Transactions with affiliated entities will, of course, be looked at closely.

8. With respect to valuation, the SEC is looking for a clear approach, consistently applied unless the reason to deviate can be explained.

The message remains the same as it has always been from the SEC lately. Now is a good time to reevaluate existing practices.

SBIA Holds Annual Summit, Chooses New Officers and Board Members

By: Bailey McCann
Private Equity Strategies

Last week, Small Business Investor Alliance (SBIA), the leading association for lower middle market private equity funds and investors, held it's National Summit for Middle Market Funds in Palm Beach, Florida. At the summit, the organization chose its officers and board of directors for the next year.

Charles McCusker, managing partner of Patriot Capital, was named Chairman of the Board. Carolyn Galiette, senior managing director of Ironwood Capital, joined the officers as Treasurer. Faraz Abbasi, a partner at Centerfield Capital Partners, was named Middle Market Committee Chair; Tom Aronson, principal of Monroe Capital Partners, was named BDC Committee Chair. Arjun Gupta, Founder of TeleSoft Partners, as Venture Capital Committee Chair; Steve Hobman, partner of NewSpring Mezzanine Capital, as SBIC Committee Chair; and Tim Rafalovich, vice president of Wells Fargo Bank, as Limited Partner Chair.

The SBIA also named the following new regional presidents: Curtis Hartman, senior managing director of Main Street Capital Corporation, as Southern Regional President; Thomas Affolter, an Investment Professional at Victory Park, as Midwest Regional President; Walter Beinecke, a partner at Brooks Venture Partners, as Northeast Regional President; and Jeffrey Holland, partner at Seacoast Capital, as Western Regional President.

Doug England with The Riverside Company, and Trevoir Gregg with RLJ Equity Partners, Tom Danis with RCP Advisors, and Michael Painter with Plexus Capital have also joined the board.

Private Equity Strategies first spoke with Monroe Capital Partners in 2012 for our inaugural issue, since then the company has grown its assets to $1.5 billion - a 100% increase in the last year. The firm is expected to complete $450 million in new financings over the next 75 days. We spoke with Riverside Company for the Dealmakers Q&A in our March issue.

At the same summit, the SBIA announced that Ashbrook Simon-Hartley (Ashbrook), a portfolio company of SBIA member firm Blue Sage Capital, and a provider of water and waste-water treatment solutions, has won its Portfolio Company of the Year Award. Ashbrook is based in an economically disadvantaged area of Houston, where it hires local employees. Ashbrook has additional offices and service hubs in the United States, the United Kingdom and Chile. From the time of Blue Sage's investment in Ashbrook in 2005, to its exit in 2012, the company grew its workforce by 48%, from 160 to 237 employees.

Quick Hits

The family owners of Dr Martens are on the verge of a £300 million windfall as part of a deal to sell the boot brand to Permira.

Guy Hands is set to launch a £1bn float of Infinis, a British wind power company, on Monday, October 21, 2013 in a comeback signal to prospective new investors.

Chukong Technologies, a Beijing-based mobile gaming company, has raised $50 million in Series D funding. New Horizon Capital led the round.

Swift Biosciences, an Ann Arbor, Mich.-based developer of generic analysis tools, has raised $7 million in Series B funding. Fletcher Spaght Ventures led the round, joined by Renaissance Venture Capital Fund.

Pamlico Capital has closed Pamlico Capital III, L.P., with total commitments of $650 million. The fund had an initial target of $500 million. It is Pamlico's first fund as a fully independent firm.

Blackberry and Lenovo entered into a confidentiality agreement, presumably to look at buying the troubled smartphone maker as it looks for its next move.

Global asset manager KKR Co. has bought a 642 million ringgit ($200 million) stake in Malaysian helicopter company Weststar Aviation Services Sdn Bhd, both companies announced the transaction last week.

Venture capital-backed specialty biotechnology company Egalet Corp., plans to raise up to $69 million in an IPO, according to a regulatory filing made public Wednesday.

Private equity-backed Azure Midstream Energy LP will take over full ownership of a gas-production joint venture targeting reserves in East Texas and North Louisiana shale formations in a deal worth $931 million, giving it a bigger slice of a booming U.S. midstream energy market, according to Law360

Events

Investor-Driven Shareholder Activism: Disruptive, Constructive and Still Profitable

Oct 23, 2013, Zurich
Hosted By: 100 Women in Hedge Funds

Guest registration and authorisation is required under: eduzur@100womeninhedgefunds.org

Learn More: Here

Women's Alternative Investment Summit

Nov 7-8 New York, NY
Hosted By: Falk Marques Group

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