

OPALESQUE

PRIVATE EQUITY STRATEGIES

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Welcome to the latest issue of Private Equity Strategies. This month is heavily focused on new regulatory changes for M&A and corporate finance brokers. Changes outlined in this two-partner signal a shift happening the SEC you won't want to miss.

Regs Watch offers updates on a full scope of new guidelines, including calls for regulatory changes in the UK and a new video discussing what the current carried interest tax structure means for private equity. This month we also have a Regs Note which covers expiring tax provisions in the US tax code that could impact portfolio companies.

Movers and Shakers looks at new deal activity from Virginia-based Quad-C Management.

Finally, we offer brief updates on recent transactions and people moves in Quick Hits. Our events calendar will look at the events kicking off 2014. Please send any updates or feedback on this publication to me at mccann@opalesque.com - I'd love to hear from you.

Best,
Bailey McCann
Editor
mccann@opalesque.com



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

In This Issue

SEC Allows Some M&A Brokers To Operate Without Registration Part 1..... 2
Specialty firms could see regulatory relief

Dealmaker Q&A: Quad-C Management Makes New Investments, Sales Sees A Strong Pipeline in 2014 3
New investments and add-ons into hot sectors in the US.

Regs Watch: Brief Updates on Changes in Regulation for Private Equity4
Links and brief updates on changes to the regulatory landscape for private equity, including: new guidelines on valuation, international taxes, and fund liabilities.

M&A Brokers See Regulatory Relief Part 2..... 5
Legislation is making its way through Congress along with a separate FINRA proposal

Data Snapshot: IPO Market Heats Up..... 6
New data from E&Y show IPOs likely to keep coming all year long.

Quick Hits 7
Recent transactions, fund news, people moves, and events.

SEC Allows Some M&A Brokers To Operate Without SEC Registration (Part 1)

Bailey McCann
Private Equity Strategies

There may be a glimmer of hope for investment firms when it comes to new financial regulations. In February, the SEC released a [significant no-action letter](#) for M&A brokers, and indeed the investment management industry. The letter effectively permits an M&A Broker who complies with all applicable conditions to receive transaction-based compensation for facilitating mergers, acquisitions, business sales, and business combinations between sellers and buyers of privately-held companies without registering as a broker with the SEC, regardless of the size of the transaction.

The change is notable, as many of these activities were previously covered under a more restrictive, "country business" rule which limited both the activities of an M&A broker as well as the size of the transactions. "This is new because the SEC was unequivocal that being involved in a transaction in this way would make you a broker and require for you to register," explains Faith Colish, Counsel with Carter Ledyard & Milburn LLP, to Opalesque. Carter Ledyard was one of the leading firms involved in the no-action letter. "Previously, there were some allowances under the Country Business no-action letter, but this new M&A Broker letter goes much further."

"This has broadened Country Business which was a no-action letter issued by the SEC in late 2006. Country Business is extremely restrictive. The intermediary is permitted to engage only in limited activities and the companies that are the subject of the transactions the intermediary can participate in are also limited in size, as defined by the SBA. The new no-action letter gives the M&A broker fewer restrictions on the types of services it can perform and also does not limit the size of the company that is the subject of the transaction," adds Ethan L. Silver, Partner, Carter Ledyard.



Also significant, is that the letter appears to be the first in a series of moves happening within financial regulators to deal with brokers oriented toward specific types of transactions (M&A, corporate finance, etc) and make regulation more responsive to those activities. FINRA [recently examined a proposal](#) that looks at corporate finance brokers, and there are credible rumors that the SEC is considering guidance on capital raising for hedge funds this year.

"The JOBS Act has enabled regulators to think outside the box and realize that there are categories of brokers, like M&A, crowdfunding, and angel investors that need a slightly different regulation. This could lead to a better type of regulation for private placement finders - a subset of which is the M&A intermediary," says Colish.

That said, the letter does contain [some limitations](#). Specifically, M&A transactions must involve a privately-held company. This company must also be an operating company that is a going

concern and not a shell company. Once completed, the buyers in the transaction must have control and actively operate the company or the business conducted with the assets of the acquired company. In addition, while the M&A broker can arrange financing, that does not mean they can provide that financing.

It is also important to note that the letter only extends so far as a transaction-by-transaction level, as long as a broker meets all of the conditions of the letter then the exemption will exist for that transaction. The specificity of the scope could have implications for firms whether they are already registered with the SEC or not. Still, Colish says "the letter could provide a pattern for other limited-purpose brokers to advance their goals with regulators." In part two we'll take a closer look at a bill currently working its way through the US congress that may be further supported by the existence of this no-action letter.

Dealmakers Q&A: Quad-C Management Makes New Investments, Sales Sees A Strong Pipeline in 2014

by Bailey McCann,
Private Equity Strategies

Charlottesville, Virginia-based Quad-C Management is making the first quarter of this year count with the announcement of five new investments and the sale of one of its portfolio companies. Quad-C is a middle market private equity firm focused on investing in well-established business services, consumer, general industrial, healthcare, specialty distribution and transportation/logistics companies.

"It has been a very active year for Quad-C. These investments are in-line with our focus areas. 2013 was a bit slower for us, but we've seen an uptick heading into this year," says Steve Burns, Senior Partner at Quad-C. "The financing is really hot right now and we're seeing better quality in the market than there has been."

The five investments constitute four fresh transactions and one add-on. The investments include:

Interwrap: a global manufacturer of coated woven materials and multi-layer laminated substrates for industrial use.

Worldwide Express: a franchisor providing logistics services to small and medium size businesses.

EFC international: which provides specialty fasteners to automotive and industrial end markets.

Network Hardware International: which is a global provider of refurbished and surplus networking equipment, servers and optics as well as network equipment maintenance services.

The add-on investment went to Towncare Dental which is now part of the Dental Care Alliance, another Quad-C company. "DCA has been growing by acquisition and Towncare represents a significant addition there," Burns adds.

Finally, Quad-C has also sold its portfolio company Cloverhill Bakery to Switzerland-based global food business ARYZTA AG. During Quad-C's investment period, Cloverhill has invested approximately \$100 million in growth capital and grown revenue by more than 80%.

Looking ahead, Burns says "it's definitely a sellers market right now, the multiples for companies are better and the quality of companies out there are better." He expects to see a slightly more active dealflow than last year. The company will be focusing on healthcare, industrials, and domestic manufacturing. "We think the US is looking a lot more attractive in terms of energy, freight and manufacturing and there aren't a lot of firms out there with the expertise to find the great companies in that space."

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.

FATCA Deadlines Looming: Offshore Funds and Other FFI's Should Finalize Their Registrations on the FATCA Registration Website by April 25, 2014

FATCA is here and its staying no matter how much countries or companies drag their feet. [New deadlines](#) are fast approaching including the registration deadline to get an identification number for the tax system online. Reporting deadlines will be in July.

Small Business Administration eliminates personal resource test for 504 and 7(a) Loan Programs

[New final rules](#) have been issued for the SBA 504 and 7(a) loan programs. These programs can effect small businesses and portfolio companies.

AIFMD and LLP Tax reform - There are now two ways about it

Laven Partners [has released](#) a new advisory alert for AIFMD and the Tax Reform measures for LLPs. The new tax regime comes into force on April 6, 2014.

Study Finds M&A Activism Will Continue To Grow

A [new study](#) from FTI Consulting shows that activism through M&A is likely to continue to rise, and the trends has the potential to effect how M&A deals are brought about.

Nacchio v. United States, Sheds Light on The Tax Effect of Clawbacks and Forfeitures

A [new ruling](#) from the court on an insider trading case in the US could provide clearer guidance about how the courts and tax authorities view the rules governing clawbacks and forfeitures in the event of misconduct.

For-profit colleges and the student loan industry should take note of CFPB's recent enforcement action

The for-profit college industry which is popular with private equity firms should [take note](#) of recent enforcement actions and court rulings aimed at better protecting students from burdensome student loan debt. The CFPB recently sued ITT Educational Services Inc. over some of its lending practices.

House Of Representatives To Vote On Changing The Definition of Full-Time Work In ACA

In a move supported by the International Franchise Association the House of Representatives will vote on H.R. 2575, the Save American Workers Act designed to change the definition of full-time work from 30 hours to 40 hours under the ACA. If it passes the measure may stop some franchises from cutting workers hours to below full-time to avoid paying health benefits coverage for employees. Supporters are calling the bill pro-jobs.

Quiznos Files Chapter 11

Speaking of Franchises, Quiznos has filed a [pre-packaged](#) Chapter 11 claim in an effort to deal with creditors and dissatisfied franchisees. Sources inside the company say that the filing was always an option even after privately reorganizing in 2011 on similar issues.

Biotech PE Exits Heat Up

A lot of chatter is floating around stock trading circles about the high price of Biotech stocks. Some say the industry has already hit bubble status. While it's hard to say when a bubble really happens until it pops, Biotech exits are so hot even the scientific journal Nature is writing about them now. "While 2014 has started off strongly, "with the NASDAQ Biotech Index up over 8%," Annette Grimaldi sounds a note of caution "to the early good news," noting that "the massive flow of financing activity may strain investor capacity to evaluate and invest in new companies. If early 2014 IPOs struggle to price or trade poorly in the after-market, public investors may be less willing to take a chance on later deals." She also observes that "the continued strength of the broader market is critical to the performance of the biopharma sector."

M&A Brokers See Regulatory Relief (Part 2)

Bailey McCann
Private Equity Strategies

In the first part of this series we covered a recent No-Action Letter issued by the SEC, which relaxed some of the rules around transaction size and fees that can be collected on a transaction. There is also a coordinated effort to make this relief binding by changing the federal laws around M&A brokers.

The Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act (S. 1923 and H.R. 2274) would effectively simplify and cut costs around federal securities regulation of business brokerage services in privately negotiated business mergers, acquisitions, and sales of small and mid-sized businesses. Brokers would see relief on registration requirements and would also have clearer guidelines on how and when they can charge fees for service.

The current law offers a one-size-fits-all approach and in practice this means that the big transactions, handled by Wall Street's brand name brokers are the only ones that really meet all of the criteria. For small businesses and their M&A advisors rules are less clear. Transaction sizes are smaller, services are different and little guidance is available on what to do when your deal falls into this bucket. Buyers and sellers also feel an additional burden with steep transaction fees resulting from compliance requirements that make them act like the biggest firms in order to close a small deal.

"I think with the No-Action Letter, and conversations the SEC has had at its annual Small Business Forum, they understand that some relief is necessary but letters are not legally binding so that creates a layer of uncertainty unless you change the law," explains Shane Hansen, Partner at Warner Norcross & Judd. Hansen has been working on what is now federal legislation since the early 2000s. "We first tried to go through the rulemaking process. And you can see that the letter borrows sections directly from the legislation, there are still some differences given legislative realities but we're looking at functionally the same thing."

Those legislative realities amount to slight differences in the transaction size allowances. But Hansen notes that having the No-Action Letter out there gives the bill added support because it shows that the law is already in-line with the SEC's enforcement position.

Looking over the history of the bill's path through Congress is almost like watching National Geographic footage of an extinct species in the wild. It has bipartisan sponsors in both chambers and saw a unanimous vote for passage in the House. The bill is working its way through the Senate, which is slower but sponsors include heavyweights like Manchin, Chambliss, and Coburn. "We've seen a big slowdown getting the bill through the Senate, but what other bill has passed the House with a unanimous vote in recent memory?" Hansen says. "We're hopeful that means something in the Senate and that the bill will move forward."

Coordinating efforts are also underway at the state government level. "We understand that changing the federal law isn't the only part to this. Every state is different in terms of how it handles M&A brokerage, transactions, and registration. We're also trying to implement uniform rules for states. We've already seen some positive efforts, I think state governments understand the issues here and want to find a way through, but it's a learning process," he adds.

FINRA for its part has opened a public comment period on a similar rulemaking proposal focused on corporate finance brokers, which we mentioned in Part 1. If the FINRA proposal is successful a new category of brokers would be created known as "Limited Corporate Financing Brokers." Registration would be required, but compliance milestones would be sized appropriately for what M&A Brokers and Corporate Finance Brokers actually do. The relief would be aimed at firms that focus solely on these areas – including boutique investment banks, and wouldn't necessarily apply to say the M&A arm of a huge brokerage firm. If adopted, it would also permit investment banking boutiques to represent and advise both public and privately held companies and funds. The comment period is open until April 28.

According to Hansen, the rule changes are part of a broader shift at SEC. "I think since the JOBS Act mandated that the SEC start taking a look at some of these things like crowdfunding, and other niche operations you've seen real movement toward providing guidance. We didn't see that necessarily before when you had these issues come up at forums year after year" Hansen estimates that \$10 trillion in privately held businesses will be sold or closed as baby boomers retire, that kind of figure and the role of business brokers in those transactions should get the attention of the SEC even if they're still up in the air about crowdfunding.

"It's certainly a process that we will be involved in for some time to come," Hansen says. "These successes give us the opportunity to keep building."

Data Snapshot: Global IPO Market Heats UP

Bailey McCann
Private Equity Strategies

New research from Ernst & Young shows that the global market for IPOs is heating up after a mixed 2013. There was a total of 239 deals reaching some \$44.3 billion in the first quarter of this year. That's 47% higher since the same time last year and overall capital raised was up 82%. January was stronger than normal, with 101 IPOs raising \$18.5 billion, the largest amount of capital raised in the first month for over a decade. In all this quarter is the strongest showing for IPOs since 2011.

Globally, private equity and venture capital were the drivers for this trend with the US and EMEA reporting 72% and 26% of sponsor-backed IPOs, respectively. Deal sizes are ticking up as well, a trend noted by Quad-C in our Dealmakers Q&A. Average deal sizes are 24% higher than the same time last year and six deals have already come in at a price tag over \$1 billion. Sources say that larger firms are willing to move down to smaller sized transactions than they normally would in an effort to find new ways of deploying capital. Report data shows that given the high level of activity in the sector, investment opportunities and exits are also seeing amplified interest from players looking for any opportunity.

Not all IPOs are created equal however, markets made that abundantly clear with the \$KING IPO. Despite that, developed markets are putting up the strongest showing in terms of the number of successful IPOs and IPO activity in general. South America and Asia are coming in behind them with slightly weaker numbers.

"Although economic fundamentals are less compelling in Asia, where the unwinding of US tapering is causing repatriation of investments and the slowdown in Chinese manufacturing held Asian equity indices back. IPO performance was nevertheless strong," the report says. "Asia-Pacific accounted for 47% by global deal number and 41% of global deal value. Seven of the quarter's 20 largest IPOs were on Asian exchanges."

The sectors leading this trend are energy, technology and real estate. Sources tell us that a number of funds that have been involved in traditional venture capital are expanding slightly to get into maturing companies or come in as part of a syndicate deal. Some of these firms were involved in past titans of the internet like Facebook and eBay before they went public and are looking for a way to find those opportunities again. Others have noted that smaller initial investments due to it being cheaper overall to bring a product to market have made technology more attractive again.

Report data also shows that cross border listings are marking a comeback. "The US continues to attract IPOs from around the world as companies seek to ride the momentum of the US capital markets. There were 11 foreign listings raising US\$1.9b in 2014 Q1, which accounted for 16% of US IPO numbers and 16% by deal value. We expect to see a higher number of cross-border IPOs in the remainder of 2014 from China, Europe and the rest of the world," authors write.

"The fact that investors are willing to back disruptive innovative businesses with high risk/reward profiles is a definite sign of how strong the US IPO market is right now," says Jackie Kelly of Ernst & Young. "We think disruptive companies in healthcare, technology and energy sectors will continue to drive deal activity through 2014."

Maria Pinelli one of the authors of the report thinks the trend could have legs that last longer than just this year - indeed European advisors are even actively pushing companies to list. "We expect Q2'14 and the second half of 2014 will extend the sharp growth trajectory established in Q1'14. Geopolitical shocks aside, with sound economic fundamentals and strong global liquidity fuelling new listings, the global pipeline is looking extremely healthy. We believe that IPO activity will come from a broad range of geographic markets and from multiple sectors," she says.

Growth Cap Deals Also On The Rise -

-GrowthCap, which launched just two months ago in January, has seen strong demand for its services from private company CEOs. The GrowthCap team has evaluated over \$800 million worth of transactions since launch, and this month alone will be adding \$25M to \$35M of live deals to its platform.

-GrowthCap launched a new feature to allow ultra high net worth individuals to invest in its highly curated growth private equity investment opportunities.

Quick Hits

Brazos Private Equity Partners, a Dallas buyout shop, will not be raising a new fund and will begin to wind down its existing portfolio according to an exclusive in peHUB.

El Pollo Loco which is owned by private equity firms Trimaran Capital Partners in New York and Los Angeles-based Freeman Spogli & Co. is reported to be considering an IPO in the US.

Activist investors, and private equity firms with retail business interests are said to be lining up for retailer Aeropostale. The news came during the busy holiday shopping season, and could signal renewed interest in retailers.

Premium retailer Jaeger has received a £7.5m boost to its coffers from private equity owners Better Capital to open more stores, refurbish existing branches and bolster its online business.

Levine Leichtman Capital Partners closed on \$1.65 billion of capital commitments for its latest structured equity and credit fund, Levine Leichtman Capital Partners Fund V, exceeding its target of \$1.5 billion, according to a news release.

PeopleAdmin announces that it has been acquired by Vista Equity Partners, a private equity firm with over \$7 billion in committed capital.

TPG is said to be in talks to invest in Greek yogurt company Chobani. TPG is said to be the lead bidder although the structure has yet to be finalized.

Dallas-based Velocis' private equity real estate fund and its investors have bought Town Center Colleyville for an undisclosed sum.

Educational security platform Clever has raised \$10.3 million (£6.1 million) in investment from investors including Sequoia Capital. The company is based in San Francisco.

Georgian Co-investment Fund (GCF), a private equity fund supported by ex-Prime Minister Bidzina Ivanishvili plans to carry out Panorama Tbilisi, a multi-functional complex project, covering Sololaki Hill, Sololaki Gardens, Freedom Square and Erekle II Street. The project would make a considerable mark on Georgian infrastructure.

Events

SBIA Western Private Equity Conference

April 17, 2014 | Los Angeles, California

Hosted By: SBIA

Investing in Food and Nutrition Companies

April 10, 2014 | New York

Hosted By: Capital Roundtable

SBICs: Best Practices

May 15, 2014- New York, NY

Hosted By: Capital Roundtable

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PUBLISHER

Matthias Knab
knab@opalesque.com

EDITOR

Bailey McCann
mccann@opalesque.com

ADVERTISING DIRECTOR

Greg Despoelberch
gdespo@opalesque.com

www.opalesque.com
