



Private Equity Alert

Special Edition
October 30, 2009

Weil News

- Weil Gotshal advised Blackstone Group and Lion Capital in connection with the proposed sale of Orangina Schweppes Group to Suntory Holdings
- Weil Gotshal advised American Securities in connection with its \$673 million going private acquisition of GenTek
- Weil Gotshal advised Harbinger Capital Partners in connection with its \$268 million going private acquisition of SkyTerra Communications
- Weil Gotshal advised Simmons Company (a portfolio company of THL Partners) in connection with its sale to Ares Management and Ontario Teachers Pension Plan
- Weil Gotshal advised Lee Equity Partners in connection with its acquisition of the Physicians Desk Reference business from Thomson Reuters
- Weil Gotshal advised Berkshire Partners in connection with its investment in grocery retailer Grocery Outlet Inc.
- Weil Gotshal advised GMT Communications Partners in connection with its acquisition of the Nordic operations of Reed Business Information
- Weil Gotshal advised Quantum Energy Partners in connection with the formation of a new \$2.5 billion private equity fund dedicated to the energy industry

House Committee Clears Hurdle in Requiring Registration of Private Fund Managers

By Richard Ellenbogen (richard.ellenbogen@weil.com)

On October 27, 2009, the U.S. House of Representatives Committee on Financial Services, in a 67-1 vote, approved H.R. 3818, a bill sponsored by Rep. Paul Kanjorski (D-PA), which would require most private fund managers to register as investment advisers with the Securities and Exchange Commission (the "SEC") under the Investment Advisers Act of 1940 (the "Advisers Act").

The bill would eliminate the *de minimis* client exemption in Section 203(b)(3) of the Advisers Act for any investment adviser to a private fund (any investment vehicle relying on Section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940, including hedge funds, private equity funds and many CLOs, CDOs and other securitization vehicles). After some debate, the Committee agreed that managers of private funds managing less than \$150 million would be exempt from SEC registration, although they would still be subject to annual reporting requirements. The Committee also agreed to exempt SBIC funds because they are already regulated by the Small Business Administration. As the result of extensive lobbying by the National Venture Capital Association, the Committee agreed to exempt managers of venture capital funds, a term which would be defined by the SEC through rulemaking.

The bill would create special recordkeeping and reporting requirements and new disclosure requirements for private funds subject to SEC rulemaking. The required records and reports would include (i) the amount of assets under management; (ii) the use of leverage (including off-balance sheet leverage); (iii) counterparty credit risk exposures; (iv) trading and investment positions; (v) trading practices; and (vi) additional information determined by the SEC in consultation with the Board of Governors of the Federal Reserve System. The fund manager would be required to disclose to investors, prospective investors, counterparties and creditors such reports, records and other documents as determined by the SEC.

H.R. 3818 is one of a series of bills before the Committee on Financial Services, chaired by Rep. Barney Frank (D-MA), dealing with the proposed overhaul of financial regulation. In the Senate, S.344 introduced by Senators Charles Grassley (R-IA) and Carl Levin (D-MI) on January 29, 2009 was referred to the Senate Committee on Banking, Housing and Urban Affairs. That Committee has not yet cleared the bill or similar legislation. While S.344 would also require registration of most private fund managers, it would further require that private funds with \$50 million or more in assets register with, file an information form with, maintain books and records as required by, and cooperate with any request for information or examination by, the SEC.

It is anticipated that any final legislation will provide for a transition period enabling private fund managers sufficient time to register and implement the necessary operational, compliance and reporting policies and procedures and recordkeeping requirements. It would also enable the SEC to prepare for the additional responsibilities associated with the increased number of registered advisers.

We will keep you apprised of further developments in this area.

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