



Private Equity Alert

Special Edition June 26, 2009

Weil News

- Chambers recommended 9 of our private equity partners in its National rankings in the 2009 Chambers USA Guide to Leading Business Lawyers, including David Duffell, Doug Warner, Glenn West and James Westra in the category of Private Equity Buyouts, Shukie Grossman, Jonathon Soler, Jeffrey Tabak and Barry Wolf in the category of Private Equity Fund Formation and Joe Basile in the category of Hedge Funds
- Chambers also recommended 4 of our private equity partners in its Massachusetts rankings in the 2009 Chambers USA Guide to Leading Business Lawyers, including Marilyn French, Steve Peck and Kevin Sullivan in the category of Private Equity Buyouts and David Kreisler in the category of Private Equity Fund Formation
- Weil Gotshal advised General Motors in connection with the proposed sale by Delphi Corporation of certain of its businesses to General Motors and Platinum Equity
- Weil Gotshal advised CCMP Capital in connection with its proposed \$202 million acquisition of Eddie Bauer
- Weil Gotshal advised OMERS Private Equity in connection with its proposed acquisition of railroad track and maintenance equipment manufacturer Nordco

Deadline Extended for Certain Taxpayers to Report Foreign Financial Accounts

On June 24, 2009, the Internal Revenue Service (“IRS”) issued guidance providing certain taxpayers with an extension of time to file a Report of Foreign Bank and Financial Accounts (an “FBAR”) for 2008. For a discussion of the circumstances in which a taxpayer may be required to file an FBAR, please [click here](#) for our prior *Personal Planning Bulletin*.

The recent guidance was issued by the IRS as part of an update to its Frequently Asked Questions regarding the FBAR, available at <http://www.irs.gov/pub/irs-news/faqs.pdf>. Question number 43 now provides that US persons who timely report all 2008 income with respect to foreign financial accounts but who have learned only recently of their FBAR filing obligations and have insufficient time to gather the information necessary to complete their FBARs will not be subject to FBAR penalties for 2008 as long as their 2008 reports are filed by September 23, 2009.

The IRS has instructed taxpayers who meet these requirements and who file their FBARs for 2008 after June 30, 2009 to include with their 2008 FBARs (1) a statement explaining why the report is being filed late and (2) a copy of the taxpayer’s 2008 tax return, unless the return is not due until after September 23, 2009. We believe that a 2008 tax return that is not due until after September 23, 2009 because it was put on extension should fall within this category.

The IRS guidance has not clarified the significant uncertainty that has arisen over the last two weeks (due, in part, to certain statements reportedly made by government officials) regarding whether an offshore private equity fund or an offshore hedge fund interest could be viewed as a “financial account” that could trigger an FBAR filing requirement. Although we believe there are good arguments against treating an offshore private equity fund or, to a lesser extent, an offshore hedge fund as a “financial account” for FBAR purposes, in light of the uncertainty, a US person that has a financial interest in, or signature (or other) authority over, such funds should consider making precautionary FBAR filings in respect of such interests by June 30, 2009 (or by September 23, 2009 in accordance with the extension requirements outlined above) to avoid the possible imposition of significant penalties for the failure to file. We remain hopeful that further guidance will be issued by the IRS that will make clear that offshore private equity and certain hedge funds should not be viewed as “financial accounts” for purposes of the FBAR filing requirements and will update you on further developments.

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Private Equity Alert is published by the Private Equity Group of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, +1-212-310-8000. The Private Equity Group's practice includes the formation of private equity funds and the execution of domestic and cross-border acquisition and investment transactions. Our fund formation practice includes the representation of private equity fund sponsors in organizing a wide variety of private equity funds, including buyout, venture capital, distressed debt and real estate opportunity funds, and the representation of large institutional investors making investments in those funds. Our transaction execution practice includes the representation of private equity fund sponsors and their portfolio companies in a broad range of transactions, including leveraged buyouts, merger and acquisition transactions, strategic investments, recapitalizations, minority equity investments, distressed investments, venture capital investments and restructurings.

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