



9TH ANNUAL
PRIVATE EQUITY
DEAL FLOW & WINE TASTING EVENT

For over 25 years, Association for Corporate Growth (ACG) Orange County has been the premier association for professionals involved in corporate growth, corporate development and mergers & acquisitions for medium to large companies.

We are pleased to host the 9TH Annual Private Equity 2011 Deal Flow & Wine Tasting Event. This evening offers you the opportunity to meet private equity firms as well as the Who's Who of the M&A community of Southern California.

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Lloyd Miller

Dear ACG Members and Prospective Members,

I am pleased to announce ACG Orange County's 9th Annual Private Equity (PE) Marketplace Deal Flow and Wine Tasting event, which will be held on January 13, 2010, from 5:00 PM to 8:00 PM at The Island Hotel, Newport Beach.

"PE Night" is a **must-attend** event offering unrivaled networking opportunities for business leaders across several industries. It brings together best-of-class local and national equity sources, professional M&A service providers, lenders, corporate members and their guests to network and connect, share intelligence, and advance their businesses.

PE Night offers you the chance to participate and invest in the future of Orange County. This is also the charter of our organization – to create the opportunities and connections necessary for building a vibrant network of business relationships and driving success.

As president of ACG Orange County, I am grateful to those who have strived to make PE Night 2011 a tremendous success. Their support and dedication is deeply appreciated. They include:

- ◆ Our Event, Platinum, and Gold Sponsors, listed on the cover of this supplement, who have made the night possible through their generous funding;
- ◆ The Orange County Business Journal, which has partnered with ACG OC once again to make this supplement an important, year-round resource;
- ◆ The ACG Board of Directors, listed in this supplement;
- ◆ The ACG OC Staff at GSE, Inc. for coordinating all event activities in conjunction with our host, The Island Hotel; and,
- ◆ The ACG Private Equity Night Committee, who through their hard work, have brought this event to life:
 - Gerik Degner, Waveland Capital Group LLC, Committee Chair
 - James Hickey, Tatum, LLC, Co-Chair
 - Mark Looft, ColeTaylor Business Capital
 - Ryan Guthrie, BDO USA, LLP
 - Brandon Howald, PaulHastings, Janofsky & Walker LLP
 - Peter Lambert, Willis M&A Group

Please join us for an evening of remarkable opportunity for Orange County businesses.

Sincerely,

Lloyd Miller

ACG Orange County Chapter President



Gerik Degner



Ryan Guthrie



James Hickey



Brandon Howald



Mark Looft



Peter Lambert



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Optimism Realized for Private Equity and BDO Transaction Advisory in 2010

by Ryan Guthrie, a Director in BDO's Transaction Advisory Services practice

A year ago I contributed an article to this supplement commenting on the optimism in the market. I wrote that the convergence of credit beginning to flow, an improving economy, and the expiration of capital gains rates had the potential to stimulate a marked increase in the volume and quality of deal flow in 2010. I'm glad to report the materialization of my prediction, BDO's clients have profited from both buy and sell-side opportunities, and our Transaction Advisory Services (TAS) practice continues to support an ever expanding range of investment decisions.

Slow out of the gate, M&A activity was modest in the run up to ACG Intergrowth in May, although there certainly was a positive buzz of investor confidence then. From June to December, our clients rode the wave of a re-emerging M&A market. According to Capital IQ, completed transaction volume with enterprise values less than \$250 million increased approximately 50% YTD September 2010 compared to the same period in 2009. We observed a resurgence in the quality of deals as well supporting higher valuations. Buyers continue to pay up for still scarce assets, but this hasn't lightened the demand for quality due diligence, as our clients recognized. At BDO, we supported over \$2 billion in investments and exits in the last twelve months.

2010 has been a solid year for BDO's transactional support practice and has produced the achievement of several important milestones. Working on a wide diversity of transaction



types and securing new private equity clients carried the theme. With dedicated resources in Orange County, San Francisco, Los Angeles, Chicago, Dallas and New York, the BDO TAS practice continues to add significant value to our Private Equity clients' investment decisions and to their overall business - either by way of deal flow, introductions to C-level executives, roundtable events, our annual PE survey, or various thought leadership pieces. Below is a summary of the 2010 accomplishments from the West Region of the practice:

- ◆ Over 50 transaction engagements (approximately 2/3 with Private Equity).
- ◆ Flexibility in transaction size and scope with enterprise values ranging from \$4 million (add-on acquisition) to circa \$1 billion (international strategic acquisition), across a broad industry and geographic range.
- ◆ Strong diversity in transaction types, including: leverage recaps, structured equity, a multiple target roll-up, corporate mergers, corporate carve-outs, mezzanine financings, and sell side due diligence engagements.
- ◆ Over 20 new private equity client relationships established.
- ◆ 33% growth in headcount.

In summary, BDO's TAS practice is committed to having the flexibility to meet our clients' needs no matter the transaction circumstance. BDO has the capacity to ensure we continue to meet those needs well into 2011 and beyond. With almost \$1.5 trillion of leveraged equity committed to existing sponsors waiting to be deployed, the fundamentals driving M&A activity haven't changed. We expect to see more deals in the coming year and stand ready to support our current and future clients in their investment success.

Here Comes the Regulation

We should continue to see a flurry of activity in the coming weeks and months in the areas that affect private equity sponsors. The tentacles of the recently enacted Dodd-Frank Act (the "Act") reach deeply into the private equity community. The bill is more than 2,300 pages (not all having to do with regulation of private investment funds) and will require 315 rule-makings to implement. The Act dramatically reshaped the registration, recordkeeping and reporting requirement for some types of investment advisers.

Removal of Private Adviser Exemption

Many advisers currently rely on the so-called private adviser exemption to avoid federal registration. This exemption generally provided cover for advisers who had fewer than 15 clients. A fund counted as a single client for this purpose. The Act's removal of this exemption will require certain advisers who previously did not register with the SEC to register, or to seek shelter from registration in different ways.

Venture Capital Fund Adviser Exemption

The Act provides exemption from registration to advisers that manage solely "venture capital funds." The SEC recently has proposed rules to define a venture capital fund. Much to the chagrin of many private advisers who would like to squeeze within its definition, a venture capital fund was defined somewhat narrowly to require that, among other things, the fund (i) generally provide only operating or business expansion capital (i.e., does not buy out other shareholders); (ii) does not incur leverage; and (iii) offers or provides significant managerial assistance to, or controls, the portfolio companies.

Mid Sized Fund Exception

The Act provides an exemption for advisers that solely manage private fund with assets under management in the U.S. of less than \$150 million. However, these advisers must maintain and provide certain records and reports. The SEC recently issued its proposed guidelines, and the requirements are not as burdensome as many had initially feared. Reporting requirements are focused on (i) basic identifying information about the adviser, its owners and affiliates; (ii) information about other business activities that present significant conflicts of interest; and (iii) the disciplinary history of the adviser and its employees. Note that these reporting guidelines also apply to venture capital fund advisers.

State Registration

Satisfying one of the exemptions from federal registration is not the end of the story. Those who are not required to register federally may be subject to state registration. It currently is too early to tell what role states will play and, given budgetary and other assorted issues, can play in this process. For example, in California the registration process is generally not as efficient as the federal process. California agents customarily read, review and ask detailed questions about submissions.

Tax Issues

The news is not all bad. It appears the "carried interest" legislation is dead for now and, as of the time of this writing, the Bush tax cuts are expected to be temporarily extended. There are many more issues to be resolved and clarified, and these next few months should be interesting before the clock strikes midnight on July 21, 2011.

Gregory J. Hartker

Gregory J. Hartker is a partner in the Orange County office of K&L Gates where he advises on corporate and partnership tax issues involving taxable and tax-deferred mergers and acquisitions, public and private issuances, and partnership and investment fund structuring.



Flexible Leadership for Uncertain Times

At your organization's birth, it probably had a more limited scope than it does today. Focusing on the service or product that buyers wanted was how the company became successful. As companies grow they spend an increasing amount of focus on building and improving infrastructure like IT, HR and other support services.

As it becomes more challenging to maintain high standards in all functions while still focusing on core competencies that drive growth, seeking outside help becomes an attractive option. So when should you outsource services? The answer is not black and white - it continues to evolve.

Today, it's generally accepted that organizations use a mix of internal and external services, even at the highest levels. As the economy has created a sustained era of uncertainty, many companies have turned to a new approach to investing at the highest levels of the organization: flexible leadership capacity. Simply stated, flexible leadership is bringing in operating executives on an as-needed basis to take on targeted management initiatives without incurring permanent overhead.



Deploying flexible leadership

Flexible leadership sits outside the domain of traditional outsourcing, addressing core initiatives and programs. It deploys extremely experienced executives whose level of expertise enables them to hold interim roles as "seated" executives for companies experiencing executive turnover. This level of skill enables a resource, or a team, to quickly understand and manage a critical initiative for a C-level executive who has too many priorities due to reduced internal staffing.

Competitive pressures haven't reduced simply because our organizations became leaner; executives are under pressure to accomplish more objectives, priorities and initiatives than they can realistically deliver. At the same time, they cannot risk failure and must make time to work with the board, CEO and other top executives on mission-critical issues.

Getting started

When looking for an interim executive, look for operating experience - a "been there; done that," capability. They should have previously been in the same role (CFO, CIO, etc.) as the executive being served so they will be able to offer an objective viewpoint on what resources will be needed. This level of experience should enable the flex leader to quickly see the "big picture" but execute at a highly detailed level.

Like a baseball "utility infielder" who can play a number of different positions, a "flex" leadership provider can take on an entire set of projects, managing inter-dependencies between them to efficiently deploy resources. The interim executive specifies what they need from your organization, making assumptions and inter-dependencies explicit. This makes it easier for them to achieve results with minimal demands on management's time.

Among today's forward-looking organizations, the model of on-demand, high velocity, flexible management capacity is an ever more popular option. These early adopters have achieved some impressive successes with this approach. "Fast follower" companies are starting to emulate them. This new model may well become the next "big idea" for results-oriented companies seeking to minimize fixed costs and maximize flexibility in an increasingly complex business environment.

Tatum

Tatum is the nation's largest executive services firm, providing interim leadership, consulting and executive search services. Our focus is the office of the CFO: the financial, operational and technology foundations that enable solid financial performance. We help manage critical transitions such as rapid growth, performance improvement and changes in ownership. For more information, call 888.Tatum11 or visit www.TatumLLC.com.

Options for Obtaining Venture Capital Exemption to Dodd-Frank Registration Requirements

Managers of investment funds, whether venture capital funds, private equity funds or hedge funds, generally are required to register as "investment advisors" under either the Investment Advisors Act of 1940 or comparable state laws. Given the different and typically more burdensome requirements mandated by the various state regulators, managers have traditionally sought to register with the Securities and Exchange Commission (the "SEC") rather than comparable state authorities, unless they were able to qualify for an exemption from registration. Until recently, the SEC exemptions from registration were very broad and many fund managers were able to qualify for an exemption. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, commonly known as Dodd-Frank, removed the often utilized "private advisor" exemption. Dodd-Frank was part of an effort to regulate a private equity industry that many regulators perceived to be out of control and partially responsible for the 2008 financial crisis. Investment advisors who cannot qualify for an exemption from the new rules must register with the SEC by July 21, 2011.

Many fund managers are concerned that they would now be required to register with the SEC. In the case of a smaller fund with less than \$500 million under management, fund managers often perceive that the registration and compliance requirements are so onerous that the funds may elect to liquidate or consolidate with a larger fund if they are unable to qualify for an exemption.

One of the most promising exemptions available for investment advisors in the private equity/venture fund space is the newly enacted venture capital exemption. On November 19, 2010, the SEC issued a proposed set of rules explaining who and what qualifies under the new exemption.

Who qualifies for the new exemption?

To qualify under the new exemption, the SEC will require that a venture capital fund may invest only in the equity securities of a qualifying portfolio company. In addition to traditional equity securities, the venture capital fund also may invest in cash, cash equivalents, and short-term U.S. Treasury Securities with maturities of sixty days or less. Debt instruments would qualify for investment only in very limited circumstances.

What constitutes a "qualifying portfolio company"?

The SEC has defined a "qualifying portfolio company" as one that engages in the production of goods and services, and is not publicly traded or affiliated with a publicly traded company. However, an investment advisor would not lose its exemption if a previously qualifying portfolio company subsequently completed an initial public offering. Moreover, this rule disqualifies portfolio companies with debt in excess of fifteen percent of the fund's investment in the portfolio company. This disqualification effectively excludes traditional leveraged buyout funds from the "venture capital" exemption.

In addition to the above requirements, the fund must provide significant managerial assistance to or otherwise control each of the qualifying portfolio companies. The portfolio company must also use the fund's investment to provide operating capital or business expansion. The SEC also has limited the ability of such funds to provide redemption and similar rights to investors. Finally, the fund must represent itself as a "venture capital fund" and must not have registered previously under the Investment Company Act of 1940 or fall within the definition of a business development company under that act.

The SEC's release proposes that investment advisors that in turn advise only venture capital funds will be exempt from registration with the SEC. However, the venture capital exemption generally will not apply for those investment advisors that advise private funds other than venture capital funds or those that advise single investor managed accounts. This definition thus excludes "funds to funds" from the "venture capital" exemption. However, investment advisors of current funds may still qualify under the new exemption under limited grandfathering provisions. The SEC also currently is examining the application of the new exemption to non-U.S. investment advisors. As the SEC receives comments from industry leaders regarding the new exemption, it may alter this exemption before it issues its final release at the end of December or early January.

The venture capital exemption potentially provides an opportunity for funds, especially those with less than \$500 million under management, to avoid registering under the new Dodd-Frank rules. Many Orange County based technology and non-technology funds can avail themselves of this exemption if they are properly advised regarding these complex rules and regulations.



Private Equity Activity on the Move

by Lloyd Miller, ACG Orange County Chapter President

We've all been hearing that the private equity market has been heating up, and now the cold hard facts corroborate the anecdotes.

Since Q1 2009, multiples for strategic deals have continued to trend upwards. While financial/LBO multiples have been volatile, they are still higher than in Q1 2009. Additionally, deal volume has been steadily increasing since the bottom in Q1 2009, with 2,229 deals announced in Q3 2010 versus 1,785 in Q3 2009, for a total increase of 25%. Private equity activity has also increased by 25%, with 484 deals announced in Q3 2010 versus 387 in Q3 2009.

In the same time period, debt multiples for companies below \$50M EBITDA continued to decline. The multiple on larger companies, however, has begun to tick upwards. Below we provide more details for the consumer product industry, aerospace and defense, and the healthcare sector.

Consumer Products

Within the consumer products industry, M&A is on the rebound and will continue to rise through the end of 2010. In 2011, we can expect valuations rising as the economy stabilizes, but persistent unease over employment and shaky consumer confidence is a moderating force. Companies with strong balance sheets are continuing to make strategic acquisitions to increase their geographic reach and product portfolios in anticipation of a full economic recovery. Valuation uptick and/or generating fees/returns drives many private equity exits, as others focus on putting money to work. Within this

industry, value is now the name of the game.

Aerospace and Defense

Within the aerospace and defense industry, the market is experiencing increasing rates of M&A activity as 2010 draws to a close. Competing pressures for 2011 include M&A versus stock repurchase versus balance sheet optics. Coming off global economic conditions that plagued the industry from 2008 through 2010, commercial aerospace is primed for a multi-year cyclical uptrend. Led by an improving economy and renaissance of products, the supply chain is expected to experience multi-year growth. This defense market, however, needs strategic global re-positioning via M&A in 2011, with program delays and cancellations impacting the landscape.

Healthcare

Activity in the healthcare sector has been relatively stable in comparison to other industries. Healthcare M&A activity is returning to pre-recession levels, after experiencing a slight decline in activity during the recession. The median multiple for transactions announced increased from 6.2X in Q3 2009 to 3.1 in Q3 2010. 204 healthcare deals were announced in Q3 2010 versus 170 in Q3 2009, a 20% increase. Financial buyer activity in the sector experienced a more significant increase of 32.4% over the same period.

As you can tell, this dynamic industry is once again moving in a positive direction with momentum in most sectors.

ACG Orange County

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Private Equity Night

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We invite you to join us for networking, socializing and wine tasting at ACG Orange County's premier event

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JANUARY 13TH, 2011
5:00^{PM} TO 8:30^{PM}

ISLAND HOTEL NEWPORT BEACH
690 NEWPORT CENTER DRIVE, NEWPORT BEACH, CA 92660

COST
\$80 MEMBERS; \$195 NON-MEMBERS (BEFORE JANUARY 10)
\$115 MEMBERS; \$250 NON-MEMBERS (AFTER JANUARY 10)

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We are expecting over 400 attendees from the M&A Community such as:

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