



Private Equity Newsletter

Justice Department Reportedly Initiates Antitrust Inquiries to Private Equity Firms

PENpoints

If you receive any contact (formal or informal) from any governmental authority regarding antitrust matters, it is important to involve antitrust counsel immediately.

On October 10, 2006, *The Wall Street Journal* reported that the U.S. Department of Justice, Antitrust Division office in New York sent letters of inquiry to certain private equity firms regarding bidding practices in corporate auctions. Articles in various news outlets have reported that the focus of the inquiry is on whether private equity firms may have suppressed competition for target companies in violation of the U.S. antitrust laws.

According to an October 11 report in the *Journal*, the Justice Department letter asks questions about the private equity firms' bidding history, bidding partners and timing and nature of pricing changes in auctions. The Justice Department has not commented on the investigation, which is customary.

The common practices of joint bidding, consortium deals and post-signing syndication of equity risk are generally permissible, depending on such factors as the parties' motives and communications. The reported inquiry serves as a reminder that antitrust laws may apply in the context of corporate acquisitions (including these activities). As always, care should be

taken throughout the entire acquisition process (including contacts with competing bidders) to ensure antitrust compliance, from the first review of a potential target company through closing. Members of the Kirkland Antitrust Group have made antitrust compliance presentations to many of our clients and friends and remain available to do so upon request.

If you receive any contact (formal or informal) from the Justice Department, any state attorney general or any other governmental authority regarding antitrust matters, it is important to involve antitrust counsel immediately.

Kirkland's private equity lawyers work closely with our antitrust partners to provide seamless advice and counsel on all our transactions. The Kirkland Antitrust Group is an integrated team of experienced antitrust practitioners in Chicago, London, Los Angeles, Munich, New York, San Francisco and Washington, D.C.

If you have any questions about the matters addressed in this Kirkland PEN, please contact your regular Kirkland & Ellis LLP contact.

**48th NASBIC Annual Meeting
Palm Beach, FL
October 15 - 17, 2006**

Kirkland & Ellis partner Margaret A. Gibson will be a panelist at the 48th Annual Meeting of the National Association of Small Business Investment Companies, which will bring together nearly 300 private equity professionals from across the country. She will discuss "Fund Raising Part II: The GP-LP Relationship."

**IVCA's Sixth Annual CFO Summit
Chicago, IL
October 19, 2006**

Kirkland is a sponsor of the Illinois Venture Capital Association's Sixth Annual CFO Summit. Kirkland partner Bruce Ettelson will discuss "Current Fund Trends," and Kirkland partner Chris Kallos will be a panelist on "Insurance Strategies to Mitigate Risks in Today's Market."

**NYSBA
International Law and Practice Section
Shanghai, China
October 20, 2006**

Kirkland will be a sponsor of the Fall Meeting of the New York State Bar Association's International Law and Practice Section. The theme for the Fall Meeting is "China: Engine of Growth for the 21st Century." Kirkland partners Thomas O. Verhoeven and David Patrick Eich will be presenting on a panel entitled "Private Equity and Hedge Fund Developments in China and U.S."

**2006 Midwest ACG Capital Connection
Chicago, IL
October 24, 2006**

Kirkland is pleased to support the Association for Corporate Growth's Midwest ACG Capital Connection. The conference will take place at McCormick Place and will feature Dan Quayle as the keynote speaker. Midwest ACG Capital Connection is a leading gathering of middle-market M&A professionals, including executives from leading private equity sponsors, pre-eminent investment banks and intermediaries, senior and mezzanine lenders, legal counsel and other service providers.

**Tax Strategies for Corporate Acquisitions,
Dispositions, Spin-Offs, Joint Ventures,
Financings, Reorganizations &
Restructurings 2006**

**Chicago, IL
November 15 - 17, 2006**

Kirkland partners Jack S. Levin, Todd F. Maynes and Jeffrey T. Sheffield will present at the PLI program, "Tax Strategies for Corporate Acquisitions, Dispositions, Spin-Offs, Joint Ventures, Financings, Reorganizations & Restructurings 2006." The program will focus on the tax issues presented by the entire spectrum of modern major corporate transactions. Kirkland partner Donald E. Rocap presented at the program in New York in September.

**IVCA Annual Awards Dinner
Chicago, IL
December 4, 2006**

Kirkland is proud to be the Presenting Sponsor of the Illinois Venture Capital Association's Annual Awards Dinner, which will honor some of the most influential individuals and outstanding supporters of the private equity industry in Illinois. Nearly 500 IVCA members and non-members are expected to attend. The 2006 Honorees will be Paul J. Finnegan and Samuel M. Mencoff, both of Madison Dearborn Partners, who will receive the Stanley C. Golder Medal; Keith B. Bank of KB Partners, who will be presented with the Fellows Medal; and Donald W. Phillips of WP Global Partners, who will receive the Richard J. Daley Medal. Kirkland partner Jack S. Levin received the Fellows Medal in 2002 for his contributions to the private equity industry and to the IVCA.

Kirkland & Ellis LLP's Private Equity Practice

Kirkland & Ellis LLP's private equity and venture capital attorneys handle leveraged buy-outs, early-stage venture capital investments, later-stage growth capital transactions, recapitalizations and going private transactions. In addition, we have significant experience in the formation of private equity and venture capital funds. Kirkland represents more than 200 private equity firms from all industries in every major market around the world.

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