



KIRKLAND & ELLIS LLP

Private Equity Newsletter

Senate Finance Committee Convenes Panel to Discuss Private Equity Taxation; Kirkland Partner Jack Levin to Participate

PENpoints

The panel is expected to review the capital gains treatment of carried interest income.

The Wall Street Journal reported yesterday that Senate Finance Committee aides will meet with “tax experts and officials from the Treasury Department and Internal Revenue Service” to discuss “taxation of private equity and carried interest” at a closed-door meeting on Monday, May 7, 2007.¹ Kirkland senior partner Jack S. Levin has been invited and agreed to participate in this meeting.

Issues expected to be discussed at the meeting include capital gains treatment of carried interest income, whether income should be recognized upon the receipt of a carried interest and other tax issues affecting private equity and hedge funds.

The current tax treatment of private equity carried interests is well settled. The general partner of a private equity fund typically makes a substantial capital commitment to the fund and receives a capital interest and profits interest, or “carried interest,” in the fund. The carried interest represents an interest (usually 20%) in the profits of the fund after return of capital to the investors. Private equity professionals, like investors in private equity funds, take substan-

tial risk and must wait substantial periods before realizing on carried interests (if they do so at all).

Tax law generally treats the receipt of a carried interest as a nontaxable event; that is, the general partner is not taxed upon the receipt of the carried interest so long as it is a true “profits interest” (i.e., it has no liquidation value upon receipt). Tax law also generally treats a carried interest as a right to receive a share of the underlying partnership income or gain, so that if the partnership earns capital gain, the carried interest share of such gain retains its character as capital gain. If the partnership earns interest, dividend or fee income, the carried interest share of such income retains its character as interest, dividend or fee income.

Kirkland is pleased that Mr. Levin will have the opportunity to present his views at this meeting. Please contact your regular Kirkland contact for further information on the taxation of private equity interests.

¹ http://online.wsj.com/article/SB117798879683387788.html?mod=home_whats_news_us (subscription required).

Revised Hart-Scott-Rodino Act Thresholds

The Federal Trade Commission recently announced revisions to the Hart-Scott-Rodino (“HSR”) filing thresholds. The HSR Act requires annual adjustment of the jurisdictional thresholds based on the change in the U.S. gross national product.

Thresholds

Effective February 21, 2007, a Notification and Report Form must be filed when, as a result of

an acquisition, the buyer will hold voting securities or assets valued in excess of \$59.8 million, if the transaction involves parties with net annual sales or total assets valued at more than \$12.0 million and \$119.6 million, respectively. If the value of the transaction exceeds \$239.2 million, the size of the parties is irrelevant and a Notification and Report Form must be submitted. The original and adjusted jurisdictional thresholds are summarized below.

	Original Threshold	Adjusted Threshold
Size of Transaction	\$50 million \$200 million	\$59.8 million \$239.2 million
Size of Person	\$10 million \$100 million	\$12.0 million \$119.6 million

Filing fees have not changed and apply to the new thresholds as follows:

Transaction Value	Filing Fee
> \$59.8 million and < \$119.6 million	\$45,000
> \$119.6 million and < \$597.9 million	\$125,000
> \$597.9 million	\$280,000

Should you have any questions about the matters addressed in this Kirkland PEN article, please contact the following Kirkland authors or your regular Kirkland contact.

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**Illinois Venture Capital Association/
National Venture Capital Association
Luncheon**

Chicago, IL

May 9, 2007

Kirkland partner Jack Levin will give the keynote address at a luncheon hosted by the Illinois Venture Capital Association and the National Venture Capital Association.

**27th Annual Ray Garrett Jr. Corporate
and Securities Law Institute**

Chicago, IL

May 3-4, 2007

Kirkland partner Keith Crow will chair a session entitled "Selling to Private Equity" at the 27th Annual Ray Garrett Jr. Corporate and Securities Law Institute.

**Kirkland's 14th Annual Technology and
the Law Seminar**

**Chicago, IL; Los Angeles, CA; New York,
NY; San Francisco, CA**

May 11, 2007

The program is designed for lawyers and executives responsible for exploiting or protecting their company's intellectual property and technology assets. For more information, contact Katherine Peters at +1 (312) 861-2934 or kjpeters@kirkland.com.

**Kirkland Hong Kong Office Opening
Reception**

Hong Kong

May 16, 2007

Kirkland will celebrate the recent opening of its Hong Kong office with a cocktail reception at Azure in Hotel LKF in Hong Kong. For more information, contact Elke Lo at +852-3761-3300 or ello@kirkland.com.

PEAC Financial Learning Event

Chicago, IL

May 22, 2007

Kirkland attorneys Justin Ishbia and Corey Fox will discuss "Introduction to Acquisition Agreements" at this seminar hosted by the Private Equity Association of Chicago and sponsored by Kirkland & Ellis and Ernst & Young.

**2007 Asian Private Equity & Venture Forum
Chicago, IL**

June 4-6, 2007

Kirkland partner David Patrick Eich will take part in a panel discussion regarding private equity issues in Asia at this Kirkland-sponsored program.

**KICP for Clients and Other Friends of the
Firm: Fundamentals of Capital Markets
Transactions**

Chicago, IL

June 12, 2007

Kirkland partners will guide participants through the fundamentals of capital markets transactions. For more information, contact Courtney Hudson at +1 (312) 649-3837 or chudson@kirkland.com.

Kirkland & Ellis LLP's Private Equity Practice

Kirkland & Ellis LLP's private equity and venture capital attorneys handle leveraged buyouts, early-stage venture capital investments, later-stage growth capital transactions, recapitalizations and going-private transactions. We also have significant experience in the formation of private equity and venture capital funds. Kirkland represents more than 200 private equity firms in every major market around the world. Kirkland was named the 2006 "USA Law Firm of the Year" by Chambers & Partners for providing superior service in all practice areas.

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