

## IRS Tightens Rules for Executive Compensation Tax Deduction After Private Company Goes Public

### PENpoints

*A private company that may become public and subject to executive compensation tax deduction limitations should exercise caution when granting RSUs.*

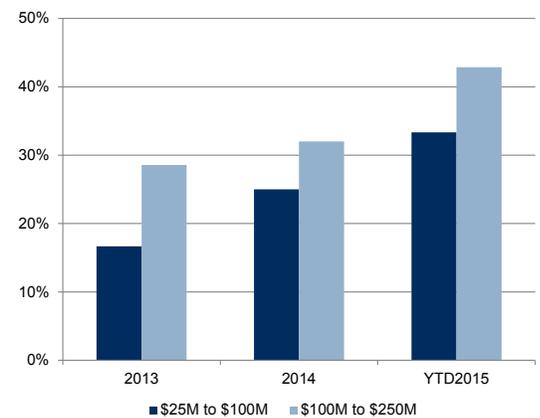
Internal Revenue Code §162(m) limits a public company's tax deduction for remuneration to its top executives (including cash payments of salary and bonus, stock option exercises, SARs, restricted stock, restricted stock units, etc.) to \$1 million per executive per year, but contains a narrow exemption for certain types of executive compensation plans adopted by a private company for approximately four years after it goes public (the "transition exemption").

New IRS regulations narrow the scope of this post-public-offering transition exemption, but only for restricted stock units ("RSUs"), often referred to as phantom stock (i.e., an award that tracks the value of the company's stock, but does not result in a transfer of property to the executive until settled by a cash payment or transfer of company stock to the executive, generally on or shortly after the RSU vesting date).

A private-equity-financed portfolio company contemplating a public offering should therefore consider adopting (before its public offering) an alternative form of equity-based compensation (e.g., restricted stock instead of RSUs), which remains subject to more taxpayer-friendly transition exemption rules.

### PENstats

#### Rep & Warranty Insurance Increasingly Used in Smaller Deals



This chart shows the percentage of deals with enterprise values between \$25M and \$250M featuring rep & warranty insurance. The chart was generated from data in CTRAN, Kirkland's proprietary database of nearly 1,200 private-target M&A transactions closed since 2008 in which Kirkland represented a transaction party.

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## PENbriefs

# U.S. Supreme Court Sets High Bar for Securities Fraud Claims Based on Statements of Belief or Opinion

The U.S. Supreme Court recently handed down a decision setting a high bar for plaintiffs alleging securities fraud based on statements of opinion or belief made in registration statements in connection with the public offering of stock. To learn more, see our recent [Alert](#).

## PENnotes

## 2015 Private Equity & Venture Capital Conference Chicago, IL April 15, 2015

The Kellogg School of Management is proud to present its annual Private Equity and Venture Capital Conference. This year's conference will explore the challenges of building value at both the fund and portfolio company level. Kirkland partners John O'Neil and Daniel Lavon-Krein will participate in the "General Partner Succession Planning" panel at this event. Click [here](#) for more information.

## PLI Delaware Law Developments 2015: What All Business Lawyers Need to Know New York, NY June 4, 2015

The top Delaware corporate law experts from the Delaware judiciary, leading law firms and corporations, and academia will examine the latest case law and practical trends and share their real-world experiences, insights and advice on the issues of greatest concern to the corporate/securities legal community. Kirkland partner Yosef Riemer will discuss key issues in appraisal cases. Click [here](#) for more information.

## Structuring and Negotiating LBOs San Francisco, CA September 10, 2015 New York, NY September 24, 2015 Chicago, IL October 1, 2015

This biennial event, chaired by Kirkland partner Jack Levin, focuses on the legal, tax, structuring and practical negotiating aspects of buyouts and other complex private equity deal-doing. More information to follow.

## 35th Annual Ray Garrett Jr. Corporate and Securities Law Institute Chicago, IL April 30 - May 1, 2015

The Ray Garrett Jr. Corporate and Securities Law Institute is the pre-eminent securities law conference in the Midwest. It is the only Midwest conference that brings together senior officials from the U.S. Securities and Exchange Commission and leading securities practitioners. Kirkland partners Robert Hayward, Scott Falk, and Keith Crow are members of the Executive Committee. Robert Hayward will also chair a session on Cybersecurity and Data Breach. Click [here](#) for more information.

## Deal Dynamics Chicago, IL June 23, 2015

Kirkland & Ellis and Major, Lindsey & Africa are hosting a breakfast CLE discussion for general counsel and M&A and securities counsel from the greater-Chicagoland area to highlight certain challenges and opportunities in the acquisition and integration of private targets by public companies. Kirkland partner Kevin Morris will act as moderator for this panel discussion. More information to follow.

## PLI Hot Topics in Mergers & Acquisitions 2015 Chicago, IL September 16, 2015 New York, NY October 2, 2015

An expert faculty of lawyers, general counsel, regulators and investment bankers will explore the state of M&A and trends for the year ahead. Kirkland partners Scott Falk and Sarkis Jebejian are co-chairs of the event. Click [here](#) for more information.

# Private Equity Practice at Kirkland & Ellis

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 Houston  
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 Munich  
 New York  
 Palo Alto  
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 Shanghai  
 Washington, D.C.

Kirkland & Ellis' nearly 400 private equity attorneys have handled leveraged buyouts, growth equity transactions, recapitalizations, going-private transactions and the formation of private equity, venture capital and hedge funds on behalf of more than 400 private equity firms around the world.

Kirkland has been widely recognized for its preeminent private equity practice. The Firm was named "Private Equity Group of the Year" in 2012, 2013 and 2014 by *Law360* and was commended as being the most active private equity law firm of the last decade in *The PitchBook Decade Report*. Kirkland & Ellis was named "Law Firm of the Year" in Mergers and Acquisitions Law by U.S. News Media Group and Best Lawyers in their 2014 "Best Law Firms" rankings. The Firm was named "Best M&A Firm" at *World Finance's* 2014 Legal Awards, "North American Law Firm of the Year: Fund Formation" and "North American Law Firm of the Year: Transactions" at Private Equity International's 2014 Private Equity International Awards and "Private Equity Deal of the Year" at the 2014 IFLR Americas Awards.

In 2012, 2013 and 2014, Chambers and Partners ranked Kirkland as a Tier 1 law firm for Investment Funds in the United States, United Kingdom, Asia-Pacific and globally. The Firm was ranked as the #1 law firm for both Global and U.S. Buyouts by deal volume in Mergermarket's *League Tables of Legal Advisors to Global M&A for Full Year 2011, 2012, 2013 and 2014*, and has consistently received top rankings among law firms in Private Equity by The Legal 500, the Practical Law Company and IFLR, among others.

*The Lawyer* magazine has recognized Kirkland as one of its "Transatlantic Elite" every year since 2008, having noted that the Firm is "leading the transatlantic market for the provision of top-end transactional services ... on the basis of a stellar client base, regular roles on top deals, market-leading finances and the cream of the legal market talent."

## KIRKLANDPEN

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