Partners Notes

Proskauer Rose Ranked Nation's Most Active PIPEs Placement Agent Counsel For 1st Half Of 2009

The international law firm Proskauer Rose LLP was ranked the most active placement agent counsel in the U.S. Private Investments in Public Equity (PIPEs) market for the first half of 2009.

The ranking, by independent investment research publisher Sagient Research Systems, reported that Proskauer led the nation by closing 12 PIPEs and/or Registered Direct Offerings (RDOs) valued at a total of more than $280 million. This was more than double the amount advised by the next ranked placement agent counsel.

Proskauer also ranked second in PrivateRaise's second quarter league tables for PIPEs placements, with ten deals totaling $190.22 million.

Sagient's PlacementTracker is recognized as the leading provider of research, data and analytics covering the PIPE market.

PrivateRaise is the leading source for comprehensive analysis of PIPEs and RDOs

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In a move that signals the continued expansion of its private investment fund formation and related transactional practices, Proskauer Rose is proud to announce that Caroline Chabrerie has joined the firm as a partner in Paris. She arrives with Christophe Baert, who joins as a senior associate.

Ms. Chabrerie and Mr. Baert join Proskauer from SJ Berwin. Ms. Chabrerie focuses her practice on private investment fund formation, venture and growth capital transactions, secondary transactions and capital markets as well as executive profit-sharing plans, spin-outs from investment funds and management, and stock exchange law. Mr. Baert's practice is primarily centered on fund formation and capital investment transactions in addition to secondary deals and structuring of management companies.

The addition of Ms. Chabrerie and Mr. Baert to Proskauer's Paris office is the latest development in the firm's ever-expanding representation of the private equity community. In 2008, the firm represented sponsors in closing more than 125 funds with over $30 billion in committed capital and closed more than 450 investments in all types of funds, representing well over $19 billion. In addition, the firm advised clients in numerous fund restructurings in the last year and negotiated and closed well over 100 secondary transactions, ranging from the sale of a single partnership interest to bulk portfolio purchases and sales with aggregate transaction values in excess of $1 billion.

Akin Gump Expands Investment Funds Practice To Abu Dhabi

Akin Gump Strauss Hauer & Feld LLP announced today that partner Robert M. Griffin has relocated to Abu Dhabi to head the firm's Middle East investment funds practice. Mr. Griffin was most recently based in the firm's London office.

Mr. Griffin has 10 years of experience advising fund managers on the formation and operation of international private investment funds, including both hedge funds and private equity funds.

Mr. Griffin noted, "Abu Dhabi is becoming a center for fund managers seeking to expand their activities internationally and in the Middle East in particular. Working closely with colleagues around the world, we are adding to our substantial international capability to provide advice to clients across all types of funds."

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Power-generation company Dynegy, Inc. has announced the sale of nine of its power plants to LS Power. In a transformative transaction, Houston-based Dynegy will receive more than $1 billion in cash and 245 million of its Class B shares from its 40 percent shareholder, LS Power. LS Power will receive $235 million principal amount of 7.5 percent senior unsecured notes due 2015. In addition, Dynegy will sell to LS Power 4,788 megawatts of peaking and combined-cycle generation assets, as well as Dynegy's remaining interest in the Sandy Creek project under construction in Texas. The deal would eliminate Dynegy's two-class share structure and increase its liquidity.

Kevin Blodgett, general counsel, and Kent Stephenson, deputy GC, were assisted on the deal by an Akin Gump Strauss Hauer & Feld LLP team led by partners Michael E. Dillard and Richard Gittleman.

Lowenstein Sandler Wins NJ Business & Industry Association Outstanding Employer Award

Lowenstein Sandler was named an Outstanding New Jersey Employer for 2009 by the New Jersey Business & Industry Association (NJBIA).

The honor is one of nine NJBIA "Awards for Excellence," which recognize a select group among the organization's 22,000 member companies for their outstanding achievements in expanding their business, protecting the environment, providing outstanding workplaces, and improving their communities.

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Lowenstein Sandler represented its client Actus Lend Lease in connection with the closing of the first phase of the expected three-phase Privatization of Army Lodging (PAL) project. This transaction, which closed On August 14, 2009, marks the first-ever privatization of hotels on U.S. Army bases and covers the privatization of 3,200 existing hotel rooms in 62 lodging facilities across 10 installations in eight states. During the first 24 months after taking over operation of the hotels from the Army, Actus will commence a construction and renovation program that will lead to a majority of the project's hotel rooms becoming branded under one of a select group of brands operated by the InterContinental Hotels Group (IHG).

In connection with the PAL project, Lowenstein's attorneys negotiated a 50-year ground lease and municipal services and utility agreements with the Army, a long-term portfolio hotel management agreement with IHG, and construction loans and lock box/intercreditor agreements with three different institutional lenders.

The Lowenstein team was led by Edward J. (Ted) Hunter, who chairs the firm's Real Estate Practice Group. He also represented Actus Lend Lease in connection with the privatization of military family and unaccompanied personnel housing on Fort Hood, Fort Campbell, Fort Drum and Fort Knox.

Joel Goldberg and Rose DiMartino Nominated For Ignites 2009 Fund Titan Awards

On September 1, it was announced that Willkie Farr & Gallagher partners Joel Goldberg and Rose DiMartino were nominated among a short list of candidates to receive "Ignites" 2009 Fund Titan Awards. Mr. Goldberg is nominated for the Fund Titan: Lifetime Achievement Award and Ms. DiMartino is nominated for the Fund Titan: Outside Counsel Award. Willkie is the only firm or company to have two nominees included on this short and distinguished ballot. Fund Titan Awards recognize legal and compliance professionals who leave a significant imprint on the mutual fund industry. The 2009 nominees are acknowledged particularly for having been directly involved in helping mutual funds manage the historic and abrupt changes that have battered the industry since last September. The nominations recognize exceptional expertise in handling money market fund issues, mergers, industry layoffs and the significant challenges to compliance.

With more than 50,000 subscribers, including all of the top money management firms, Ignites is a leading source for news and information about the mutual fund industry.

A former Director of the Securities and Exchange Commission's Division of Investment Management, Mr. Goldberg has more than 25 years of experience advising mutual funds, as well as mutual fund management teams and independent directors. An expert on the Investment Company Act of 1940, Ms. DiMartino counsels investment companies and their advisers in all aspects of their organization and operation. Both are partners in the firm's Asset Management Department in the New York office.

One-Third of Execs Expect Rise In Fraud And Misconduct, KPMG Survey Finds

Amid a continuing economic downturn, renewed government regulatory enforcement and with trillions of dollars of government money infused into the U.S. economy, nearly one-third of corporate executives expect fraud or misconduct to rise in their organizations, according to a survey by the audit, tax and advisory firm KPMG LLP.

In addition, two-thirds of the respondents said combating fraud and misconduct may require more improvements in corporate internal control environments, the survey found.

As many as 32 percent of the executives surveyed said they expected fraud or misconduct to rise in their organizations in one of three categories: financial reporting, asset misappropriation, or as another illegal or unethical act. In addition, inadequate controls (66 percent) and management override of controls (47 percent) were viewed as the top enablers of fraud and misconduct, the survey found. Meanwhile, 71 percent of respondents said the potential loss of public trust was their top concern if fraud or misconduct were revealed in their organizations.

Girgenti said the KPMG study found that 65 percent of executives perceive fraudulent and illegal acts to be significant risks in their industries.

Executives' expectations regarding changes in the incidence by type of fraud:

- Eight percent of respondents said fraudulent financial reporting would increase, while 66 percent said it would stay the same;
- One-quarter expected asset misappropriation to rise, and 60 percent said it would stay the same;
- 20 percent of those surveyed said they expected other illegal or unethical acts to rise, while 60 percent said they would remain the same.

Girgenti said a volatile mix of issues dominates the market as tough economic times have pushed companies to do more with less, cutting payrolls, pushing employees to maintain output, and causing workers to feel driven to do "whatever it takes" to achieve earnings goals. Meanwhile, government enforcement has hit a fever pitch to uncover wrongdoing in the market.

The executives surveyed said improvements were needed around communication and training (67 percent), technology-driven techniques, e.g., auditing and monitoring (65 percent), and fraud risk assessments (60 percent).

About 27 percent of respondents reported that their organizations did not fully understand how to conduct investigations, and at what point the board of directors should be alerted to potential concerns. In addition, 33 percent said they lacked protocols on how to remedy control breakdowns.