



SEWARD & KISSEL LLP

BUSINESS TRANSACTIONS GROUP

2010

YEAR IN REVIEW

To Our Clients and Friends

What a difference a year makes. Deal activity increased in 2010 across virtually all markets, and Seward & Kissel clients asked us to assist them with a large number and variety of transactions.

In particular, we worked throughout the year for multiple clients structuring and negotiating transactions involving the purchase or sale of, or other strategic transactions involving, investment management and broker-dealer businesses. Many of these matters are featured on pages 2 and 3 of the Review that follows. *SNL Financial* ranked Seward & Kissel 4th in its league table of legal advisors working on asset manager industry M&A transactions based on the number of deals we handled in 2010. With our extensive experience handling deals involving investment management firms, we decided in 2010 to take a thought leadership role in this area by launching IM Deals™, a blog that follows transactions and developments relating to M&A, joint ventures, private equity and venture capital investments, financings and seed deals involving businesses in the investment management industry. We are gratified that this move into the digital/social media space and our efforts to provide interesting content for the blog have been rewarded by a sizeable following of subscribers to www.imdealsblog.com.

In addition, we were involved with a steady flow of private equity, venture capital and PIPE investment transactions for investment funds and others, some of which are featured in this Review. These ranged from large buyout deals to modest early-stage private investments in a wide variety of businesses, and a large number of PIPE investments in public companies that included the banking and natural resources sectors. *PlacementTracker* ranked Seward & Kissel the 3rd most active legal counsel to investors in the 2010 PIPE market based on both the number of transactions and the dollar volume of transactions we handled.

Traditional M&A, private equity and joint venture transactions our clients completed in 2010 included our usual heavy volume of shipping, aviation and media industry deals as well as cross-border M&A deals in the heavy construction and education sectors which are also described in this Review. In recognition of our body of work during the year, *The M&A Advisor* again named the Firm a Finalist for its 2010 M&A Law Firm of the Year Award.

Transactions in 2010 helped our clients to advance their business interests and we were pleased to have assisted them. We look forward to more of the same in 2011.

Seward & Kissel LLP



Investment Manager and Broker Dealer Transactions

Mergers and acquisitions, joint ventures, equity investments and other strategic transactions involving investment management businesses and broker dealers continued to be a significant part of our practice in 2010. Some of these transactions included:

- investment bank Evercore Partners (NYSE:EVR) made a 49% strategic equity investment in our client Atalanta Sosnoff Capital, an investment adviser which manages more than \$10 billion of assets for institutional, high net worth and broker advised clients, for a cash purchase price of \$69 million with the potential for an additional \$14.7 million of earnout payments



- our investment adviser client Cura Capital agreed to sell a controlling interest to newly formed investment management firm The Aveon Group L.P. (NYSE: AVO), in connection with Aveon's contemplated initial public offering pursuant to which Aveon is acquiring controlling interests in investment advisors to a diversified group of hedge funds

- Asset Management Finance LLC, an affiliate of Credit Suisse, made a passive minority investment in our investment adviser client Brigade Capital Management, LLC, a New York based credit strategies manager with approximately \$7.9 billion under management

- our client, Canadian asset manager Sprott Inc. (TSX:SII), agreed to acquire the California-based Global Companies, which manage or administer more



than US\$1.8 billion in client assets, from natural resource investor Rick Rule in an all-share deal worth approximately \$170 million in upfront consideration. The consideration for the acquisition, which includes Global Resource Investments, Terra Resource Investment Management and Resource Capital Investment Corp., was 20 million Sprott common shares, with the potential for an additional 8 million Sprott shares to be earned five years from closing, subject to certain earnings targets

- our investment adviser client Pennant Capital Management acquired Broadway Gate Capital

- our investment adviser client Wyper Capital Management, L.P. was sold to Royce & Associates, an affiliate of Legg Mason, Inc. (NYSE:LM), with George U. Wyper joining Royce as a portfolio manager and managing director

■ our client KGS-Alpha Capital Markets LP, an institutional fixed income broker dealer, raised approximately \$100 million of initial funding from an investor group led by private equity firm Arsenal Capital Partners in connection with launching the firm. Later in the year, a second round of financing was negotiated by an investor group led by Health of Ontario Pension Plan that brought total equity capital raised by KGS to over \$150 million



■ our client, the management team of Concept Capital, an institutional broker and total solutions provider for global investment managers, spun out the Concept Capital business from Sanders Morris Harris Group Inc. (NASDAQ:SMH), a wealth and asset management company that manages approximately \$12.1 billion in client assets, to become an independent broker-dealer of which SMH will be a minority equity holder



■ our client Clayton DeGiacinto spun out from Tower Research Capital to launch his own financial advisory firm, Axonic Capital, which manages a long/short credit fund

■ our clients, private investment funds holding a substantial minority equity position in W.P. Stewart & Co., Ltd. (BSX:WPS; NASDAQ:WPSLF), an asset management company with approximately \$1.6 billion of assets under management, participated in the scheme of arrangement whereby Bermuda-based W.P. Stewart reorganized to become a Delaware corporation

■ our North Carolina based investment adviser client, Piedmont Investment Advisors, LLC, acquired Virginia based investment adviser Shenandoah Asset Management, LLC



■ our client Sorin Capital Management, LLC, an alternative investment firm, entered into a strategic advisory relationship with HFF Securities L.P., a wholly owned subsidiary of HFF, Inc. (NYSE:HF), a leading provider of commercial real estate and capital markets services

■ our client, the portfolio manager of an alternative investment and hedge fund management business operated by a subsidiary of a major insurance company, took ownership of the related management entities in a spin-off transaction



In July 2010, Seward & Kissel launched IM Deals™, a blog that follows transactions and developments relating to M&A, joint ventures, private equity and venture capital investments, financings and seed deals involving firms in the investment management industry. Visit IM Deals™ and subscribe at www.imdealsblog.com

Other Mergers & Acquisitions/Buyouts/Joint Ventures

Our middle-market M&A, buyout and joint venture transactional work was again recognized by *The M&A Advisor*, which named Seward & Kissel a finalist for its 2010 M&A Law Firm of the Year Award. Some of our clients' 2010 transactions included:

- the founding stockholder of our client, Judlau Contracting, Inc., a New York-based heavy construction company that acts as a contractor for major public works projects, sold 50.1% of Judlau to Obrascón Huarte Lain S.A. (Madrid SE:OHL.MC), a Spanish-based international construction company, for a purchase price of \$72.5 million plus an additional contingent payment based on the financial performance of Judlau over a four-year period



- the EE Times Group division of our client United Business Media (LSE:UBM) acquired DesignCon, a trade conference serving the electronic design and semiconductor industry

- our client Cogmed, a Swedish-based computerized cognitive training business, was sold to Pearson (NYSE:PSO)

- our client, Concept Capital Fund Services, LLC, acquired a well known provider of risk management and performance analytics services to institutional investors, for consideration consisting of an equity interest in CCFS



- UBM Global Trade, Inc., a subsidiary of United Business Media (LSE:UBM), acquired select assets of CenTradeX, a provider of market intelligence tools, on behalf of its PIERS Global Trade Intelligence business



United Business Media

- an investment fund client disposed of its majority equity and debt investment in Independent Brewers United, one of the largest craft brewers in the U.S. with its Magic Hat and Pyramid beers, in connection with the sale of the business to North American Breweries, a portfolio company of private equity sponsor KPS Capital Partners and the U.S. brewer of the Labatt and Genesee beer brands



- JOC Exchange, a subsidiary of our client UBM Global Trade, Inc., acquired a business developing an Internet-based electronic marketplace for the trading of container slots on ships

- a client established an acquisition financing loan facility for its Canadian subsidiary in connection with the acquisition of a Canadian-based software company



Transportation Industry Deals

Seward & Kissel's leading position with shipping industry clients in connection with all types of M&A, joint venture, capital markets and lending transactions and the Firm's expertise in aviation finance led to substantial activity in the transportation sector during 2010, particularly in the area of joint ventures to invest in vessels and aircraft, including:

- our client Euroseas Ltd. (NASDAQ:ESEA) entered into a joint venture with companies managed by Eton Park Capital Management, L.P. and affiliates of Rhône Capital III, L.P. to form Euromar, LLC, which will acquire, operate and dispose of shipping vessels



- a Greek ship owner/manager client entered into a \$300 million joint venture with private equity investors to acquire, operate and sell container vessels

- a private investment fund client entered into a series of joint ventures with a U.S. aviation management company to acquire and part-out older commercial jet aircraft in the U.S.

- a banking client entered into a joint venture with private investors to make investments in marine containers on finance lease

- a private investment fund client entered into a series of joint ventures with an Irish aviation management company to acquire and part-out older commercial jet aircraft outside the U.S.

- a Greek ship owner/manager client entered into a \$350 million joint venture with private equity investors to acquire, operate and sell vessels

- our U.S.-based ship owner client entered into a \$200 million joint venture with a private equity investor to acquire, operate and sell dry bulk carriers

- client Omega Navigation Enterprises, Inc. (NASDAQ: ONAV) sold a 20% interest in its subsidiary that in turn holds a 50% joint venture stake in Megacore Shipping Ltd., a joint venture with Glencore International, A.G. that acquires, owns and operates double hull chemical tankers



- a private equity fund client entered into a joint venture with a vessel operator for the acquisition, chartering and management of two drybulk carriers

- a private equity fund client acquired a controlling interest in a Norwegian vessel-owning limited partnership

- a private investment fund client entered into a joint venture with an unaffiliated U.K. aviation investment company to acquire, finance and lease a commercial passenger aircraft to a European flag carrier



Private Equity and Venture Capital Investments by Fund Clients

Seward & Kissel's private investment fund clients continued in 2010 to make private equity, venture capital, private debt and similar private company investments. Some of the interesting private transactions we handled for investment fund clients included:

- an equity investment in the leveraged buyout led by Star Avenue Capital in J Brand, a rapidly growing premium denim company
- a venture capital investment in Heat Biologics, Inc., a clinical-stage immunotherapy company
- a Series F preferred stock investment in Pacific Biosciences, a developer of single molecule, real-time (SMRT™) technology for biological analysis
- the exchange of debt in Estrella Overseas Limited, an oilfield services company with operations in South America, for special warrants consisting of common stock and warrants issued concurrently with a \$40 million private placement transaction
- a venture capital investment in Population Diagnostics, Inc., a biomedical company that develops and manufactures personalized medicine diagnostic and therapeutic products
- the formation of a special purpose vehicle to acquire securities in a NYSE-listed company with a market capitalization in excess of \$2 billion
- the private sale of three million shares of common stock of Energy Recovery Inc. (NASDAQ:ERII)
- a bridge loan investment in Safelight Security Advisors, Inc., a security education company
- an equity investment in the leveraged buyout of a nutritional supplements business
- the acquisition of a substantial minority interest in Intersect Inc., a private company specializing in interactive design and web application development
- the formation of a special purpose vehicle to own a company that will purchase fracture stimulation equipment and build a domestic and international pressure pumping company

Private Investments in Public Equity (PIPEs)

PlacementTracker ranked Seward & Kissel the 3rd most active legal counsel to investors in the PIPE market in 2010 based on the number of transactions and the dollar volume of transactions we handled. Some of our PIPE transactions for investment fund clients included:

- a \$2.7 billion equity investment in real estate investment trust General Growth Properties, Inc. (NYSE:GGP) made upon effectiveness of GGP's bankruptcy reorganization plan
- an investment in the \$200 million convertible preferred stock offering by Oriental Financial Group, Inc. (NYSE:OFG)
- a \$2.3 million investment in senior secured convertible notes and warrants in SkyPostal Networks, Inc. (SKPN.OB)
- an investment in the C\$4 million offering of Units consisting of common stock and warrants in Hy-Drive Technologies Ltd. (CDNX:HGS.V)
- the purchase of Units consisting of common stock and warrants in Everton Resources Inc. (CDNX:EVR.V)
- an investment in the \$35.75 million offering of Series B Convertible Preferred Stock in Comstock Mining Inc. (OTCBB:LODE.OB)
- an investment in the \$22 million offering of common stock and warrants in OCZ Technology Group, Inc. (NASDAQCM:OCZ)
- the purchase of Units consisting of common stock and warrants in Dynacor Gold Mines Inc. (Toronto:DNG.TO)
- a \$1.5 million investment in senior secured notes and warrants in Z Trim Holdings, Inc. (OTCBB:ZTHO.OB)
- an investment in the \$2 million offering of Units consisting of common stock and warrants in Adriana Resources Inc. (CDNX:ADI.V)
- an investment in the \$5 million offering of common stock and warrants in Aradigm Corporation (OtherOTC:ARDM)
- acting as lead investor in the exchange by the noteholders of Workstream, Inc. (OTCBB:WSTM.OB) of approximately \$22 million in senior secured notes for common shares, the purchase of additional common shares in the Company and the purchase of a new senior secured note in connection with the Company's restructuring
- a \$4 million convertible loan and warrants investment in Vuzix Corporation (CDNX: VZX.V)
- the purchase of common stock in MGT Capital Investments, Inc. (AMEX:MGT)





Contact Us

For more information about Seward & Kissel's Business Transactions Group or the contents of this Review, contact your relationship attorney, Jim Abbott or Craig Sklar.

SEWARD & KISSEL LLP

James E. Abbott
212-574-1226
abbottj@sewkis.com

John R. Ashmead
212-574-1366
ashmead@sewkis.com

Jeffrey M. Berman
212-574-1232
bermanj@sewkis.com

Derick W. Betts, Jr.
212-574-1662
betts@sewkis.com

Ronald P. Cima
212-574-1471
cima@sewkis.com

Greg B. Cioffi
212-574-1439
cioffi@sewkis.com

Paul T. Clark
202-737-8833
clark@sewkis.com

James C. Cofer
212-574-1688
cofer@sewkis.com

James H. Hancock
212-574-1460
hancock@sewkis.com

Craig Hickernell
212-574-1399
hickernell@sewkis.com

Edward S. Horton
212-574-1265
horton@sewkis.com

Robert E. Lustrin
212-574-1420
lustrin@sewkis.com

Paul M. Miller
202-737-8833
millerp@sewkis.com

Peter E. Pront
212-574-1221
pront@sewkis.com

Lawrence Rutkowski
212-574-1206
rutkowski@sewkis.com

Craig A. Sklar
212-574-1386
sklar@sewkis.com

Michael S. Timpone
212-574-1342
timpone@sewkis.com

Gary J. Wolfe
212-574-1223
wolfe@sewkis.com

One Battery Park Plaza
New York, NY 10004
Tel: 212-574-1200
Fax: 212-480-8421

www.sewkis.com

1200 G Street, NW
Washington, DC 20005
Tel: 202-737-8833
Fax: 202-737-5184

This publication contains attorney advertising. Prior results do not guarantee a similar outcome.

SEWARD & KISSEL LLP

One Battery Park Plaza
New York, NY 10004
212-574-1200
212-480-8421 (fax)

1200 G Street, NW
Washington, DC 20005
202-737-8833
202-737-5184 (fax)

www.sewkis.com