



SEWARD & KISSEL LLP

BUSINESS TRANSACTIONS GROUP

2008

YEAR IN REVIEW

To Our Clients and Friends

Despite challenging economic and market conditions, our clients completed a wide variety of middle-market transactions in 2008. With stock markets depressed, public company targets were attractive for buyers not requiring external debt financing. Strategic acquisitions, management buyouts, distressed investments and private investments in public equity (PIPEs) proceeded on favorable terms when parties braved the downturn to pursue opportunities. Investment fund clients bought and sold portfolios of investments forced onto the market by unprecedented liquidity requirements, in addition to engaging in more traditional private and public securities transactions. Consolidation in the investment management industry continued at a rapid pace and provided a significant portion of our 2008 activity. To handle the deal flow, we continued the growth of the Business Transactions Group with the addition of several experienced associates. This Review reflects a sampling of the completed transactions our clients entrusted to us during 2008.

Doing our job to help clients achieve their business objectives has brought the Seward & Kissel Business Transactions Group recognition from several observers of market activity. *The M&A Advisor* named Seward & Kissel the 2008 Middle-Market M&A Law Firm of the Year at its annual M&A Awards Gala. *Institutional Investor* magazine recognized Business Transactions Group partner Craig Sklar as one of the 10 Rising Stars of Private Equity and M&A Law, and Business Transactions Group distressed transactions partner John Ashmead as one of the 10 Rising Stars of Bankruptcy/Restructuring Law and Workouts. *PrivateRaise* and *PlacementTracker* each ranked Seward & Kissel the 3rd most active counsel to investors in the PIPE market by dollar volume of transactions in 2008. We are pleased that our work and the transactions of our satisfied clients were noticed, and we look forward to the deals we will handle in the coming year as our clients respond to business conditions and take advantage of market opportunities.

Seward & Kissel LLP



Mergers & Acquisitions/Joint Ventures

Public and private M&A and joint venture transactions we handled in 2008 included:

- our client Magic Hat Brewing Company and Performing Arts Center, a Vermont-based craft brewer, successfully completed a tender offer to acquire Seattle-based Pyramid Breweries, Inc. (NASDAQ:PMID), the country's fifth largest craft brewer. The transaction was named a Finalist by *M&A Advisor* for Corporate Strategic Acquisition of the Year (Below \$100 million)



- our client Aegean Marine Petroleum Network Inc. (NYSE:ANW) acquired ICS Petroleum, a leading marketer and supplier of marine fuel in Canada and Mexico
- our UK-based client United Business Media plc (LSE:UBM) acquired the international sales and marketing services business of Next Level



United Business Media

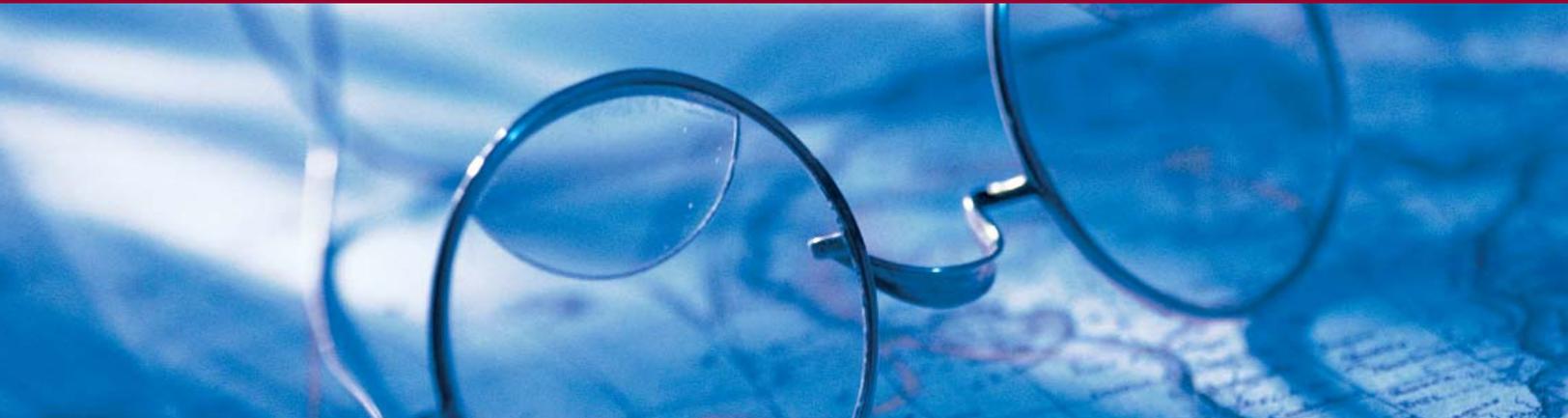
- an investment fund client participated as a roll-over equity investor in the \$177 million buyout of Restoration Hardware (NASDAQ:RSTO) led by Catterton Partners

- an investment fund client teamed up with existing management of digital imaging company Salvador Imaging to acquire the company from its parent Photon Dynamics (NASDAQ:PHTN) in conjunction with Photon Dynamics' \$290 million merger with Israel-based Orbotech Ltd. (NASDAQ:ORBK)



- our client Shipping Pool Investors Inc., an affiliate of ship owner/manager George Economou, acquired a 49% ownership interest in tanker pool operator Heidmar Inc., an affiliate of Morgan Stanley Capital Group
- a group of investor clients acquired from a Chapter 11 bankruptcy debtor the material assets of a nutritional supplements/direct response business
- a French-based investor client acquired a controlling equity interest in Sonoma County winery Longboard Vineyards
- a client entered into a joint venture to operate flour mills in Nigeria





Private Equity and Venture Capital Investments by Fund Clients

Seward & Kissel's private investment fund clients continued to be active for most of 2008 in private equity, venture capital, private debt and similar private transactions, frequently in overseas markets and often involving distressed investments. Some of the interesting matters we handled in 2008 for investment fund clients included:

- a \$225 million sale of a portfolio of Latin American private equity investments
- the acquisition of a controlling equity stake in a portfolio of venture capital investments in private Polish companies
- a private equity investment in Oak Pacific Interactive, a leading Chinese online community platform
- a series B round venture capital investment in Coskata, Inc., a biology-based renewable energy company
- a Series D round venture capital investment in Nanosolar Inc., a global leader in solar power innovation
- the sale of shares of Web.com, a provider of online marketing services for small businesses, back to the company
- a Series D round venture capital investment in PowerGenix Systems, Inc., a manufacturer of non-toxic, high performance rechargeable nickel-zinc batteries
- a venture capital investment in aircraft hangar and services company JetLink USA
- the sale of a portfolio of investments in various mining exploration and mineral supply companies
- the sale of securities in a company that specializes in providing high performance wireless and wire-line broadband communication silicon solutions
- the sale of an equity interest in the buyout vehicle that had previously completed the \$637 million acquisition of Symbion, Inc.
- the sale of shares of Emblaze Ltd., a global IT, software and mobile communications technology company

Investment Manager Deals

Mergers and acquisitions and other strategic transactions among investment management firms made up a substantial portion of our 2008 deal activity, including:

- our registered investment adviser client Morgan Creek Capital Management and another partner negotiated an \$86 million buyout agreement to retire the equity ownership interest of Sanders Morris Harris Group (NASDAQ:SMHG) in Endowment Advisors, L.P., the manager of The Endowment Fund mutual fund
- The logo for Morgan Creek Capital Management, featuring the text "MORGAN CREEK" in a large, serif font above "CAPITAL MANAGEMENT" in a smaller, sans-serif font, all contained within a rectangular border.
- the founding managing members of an asset manager client sold their equity interests in the asset manager to Allied Capital Corporation (NYSE:ALD)
 - our investment fund manager client Claren Road Asset Management sold a minority equity stake to Petershill Fund, a private equity fund that is part of Goldman Sachs' asset management unit
 - several investment managers negotiated their departure from a fund management group to establish their own firm, including the acquisition of one of the group's existing funds
 - our registered investment advisor client Scott's Cove Capital Management was sold to a subsidiary of Kohlberg Capital Corporation
- The logo for Asset Management Finance, consisting of a blue circle with a white outline on the left, and the text "Asset Management Finance" in a blue, sans-serif font to its right.
- over 80% of the outstanding shares of our client Asset Management Finance Corporation, which provides capital to asset managers by investing in limited term revenue interests, were sold to Credit Suisse Group AG in exchange for \$384 million of Credit Suisse stock
 - the founding managing members of an investment management client sold their business to an affiliate of CitiGroup and entered into employment arrangements to join the CitiGroup affiliate
 - one of the two founding principals of a fund management business sold his equity interest to the other founder in order to enable him to launch his own fund
 - an investment manager client negotiated a transaction whereby investment management responsibility for a \$300 million fund was assigned to the largest limited partner in the fund
 - investment manager clients entered into more than 20 seed capital/joint venture-type agreements in connection with the launch of private investment funds, with seed investment amounts generally ranging from \$25 million to \$150 million

Private Investments in Public Equity (PIPEs) and Alternative Transactions

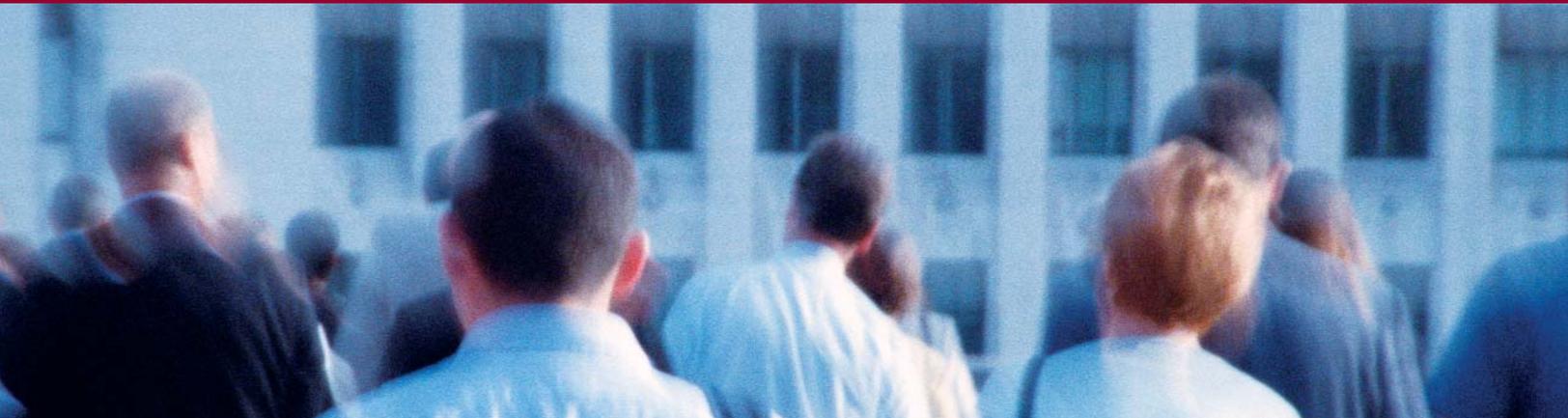
PrivateRaise and *PlacementTracker* each ranked Seward & Kissel the 3rd most active legal counsel to investors in the PIPE market in 2008 based on dollar volume. Collectively, over \$8 billion of capital was invested in PIPE transactions in which S&K clients participated. Some of those PIPEs and other alternative transactions we handled included:

- investor clients of S&K participated in the following PIPE offerings: National City Corporation's (NYSE: NCC) \$7 billion convertible preferred stock and common stock offering; Thornburg Mortgage, Inc.'s (NYSE: TMA) \$1.15 billion senior secured debt and warrant offering; Infinity Bio-Energy Ltd.'s (AIM:IBL.L) \$17 million common stock offering; Driftwood Ventures, Inc.'s (n/k/a Zoo Entertainment, Inc.) (OTCBB:DFTW) \$9 million senior secured convertible debt and warrant offering; Etruscan Resources Inc.'s (TSX:EET) \$5 million senior unsecured convertible debt and warrant offering; EnergyConnect Group, Inc.'s (f/k/a Microfield Group, Inc.) (OTCBB:MICG) \$3.512 million common stock and warrant offering; Hydralogic Systems Inc.'s (TSX V:HLS) \$2 million senior secured debt and warrant offering; eMagin Corporation's (OTCBB:EMAN) \$1.65 million common stock and warrant offering; and BioSpecifics Technologies Corp.'s (NGM:BSTC) \$1.5 million common stock offering
- our shipping client TOP Ships Inc. completed a \$51 million common stock PIPE offering
- our registered investment company client Fairholme Funds, Inc. exchanged \$108 million of AmeriCredit Corp. (NYSE:ACF) 8.50% Senior Secured Notes Due 2015 for 15.1 million shares of AmeriCredit Corp. common stock and also purchased approximately \$123 million of asset-backed notes issued by AmeriCredit Automobile Receivables Trust 2008-2
- a private fund client restructured its investment in Workstream Inc., a company that provides software and services for human capital management, by exchanging warrants for senior secured notes



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Recognition for the Group

- Seward & Kissel was named 2008 Middle-Market M&A Law Firm of the Year by *M&A Advisor* at its 7th annual Awards Gala held at the Hudson Theatre in New York. Business Transactions Group partners Jim Abbott and Craig Sklar accepted the award trophy on behalf of the Firm from the event's co-hosts, Brian Sullivan and Jenna Lee of Fox Business Channel (see photo at right). The Middle-Market M&A Awards honor deal-teams, deal-makers and firms whose activities set the standard for the industry, with winners selected by an independent body of M&A industry experts. For the 2008 Awards, 220 finalists were selected from almost 400 nominations, with one winner in each of 37 categories



Business Transactions Group partner Craig Sklar was named one of the "10 Rising Stars of Private Equity and M&A Law" by *Institutional Investor News* in a September 2008 article profiling ten law firm partners the publication expects "to shape the private equity and M&A field in the years to come"

**Institutional
Investor NEWS**



- Partner Jim Abbott continued to be regularly featured as an authority on developments in the deal markets, being quoted or mentioned in numerous 2008 articles appearing in *The Wall Street Journal*, *The Daily Deal*, *Investment Dealers Digest*, *Mergers & Acquisitions Report*, *Lipper Hedgeworld*, *The New York Law Journal*, *AmLaw Daily*, *SNL Financial* and *Women's Wear Daily*
- Business Transactions Group partner John Ashmead, who leads many of our clients' distressed transactions, was selected by *Institutional Investor News* as one of the "10 Rising Stars of Bankruptcy/Restructuring Law & Workouts"



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.

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