Generally, offers to sell securities must be registered with the SEC unless they qualify for an exemption. However, under rule 506(c) of Regulation D (17 CFR 230.506(c)), private placements can use general solicitation and advertising to obtain capital from accredited investors, providing an alternate channel of capital formation for private funds.

**INTRODUCTION**

Traditional private placements, usually referred to as 4(a)(2) or Rule 506(b) offerings, do not permit the use of general solicitation or advertising. Created by the Jumpstart our Business Startups Act (JOBS Act), Rule 506(c) allows for issuers to accept an unlimited amount of money from an unlimited number of investors as long as those investors are accredited pursuant to Rule 501(a) of Regulation D (17 CFR 230.501). In order to use Rule 506(c), issuers must take additional steps, including independent verification of an accredited investor’s status. While the JOBS Act was 5 years old on April 5, 2017, its impact is just beginning as it took several years to implement.

Section 4(a)(2) of the Securities Act exempts transactions by an issuer “not involving any public offering.” An issuer relying on Section 4(a)(2) is restricted in its ability to make public communications to attract investors for its offering because public advertising is incompatible with a claim of exemption under Section 4(a)(2). Interestingly, even after the JOBS Act it remains incompatible.
Message from the Chair

Greetings!

In just a few days, our Committee will be gathering in Chicago as part of the Business Law Section’s annual meeting. This will be a meeting of several “firsts” for our Committee.

To start, this is the first meeting at which Pitchbook Data, Inc. will be a sponsor of our Committee. Pitchbook joins long-time Committee sponsor Houlihan Lokey in sponsoring our Committee dinner on Thursday night. We sold out all sixty-five tickets for this meeting’s dinner (being held at a rooftop restaurant next to Wrigley Field to watch the Mets/Cubs game), continuing an upward trajectory for attendance at our stand-alone dinners. Representatives of Pitchbook and Houlihan Lokey will be in attendance both at our main Committee meeting and at the game. Please be sure to thank them for helping to make the dinner happen!

Next, Chicago will mark the first meeting of our Academic Subcommittee. Designed to foster communication among members of the bar, the bench and academia regarding issues of interest to our Committee, the Subcommittee will meet on Thursday, September 14, from 1:30-2:30. At this meeting, the Subcommittee will discuss Venture Capital Control Arrangements and the case of Klaassen v. Allegro Development Corp. Vice Chancellor Laster, the author of the Klaassen opinion, will be present and part of the discussion. Thank you, Vice Chancellor Laster!

This will also be the first meeting at which Mike Halloran will serve as our Business Law Advisor. Business Law Advisors are prominent individuals who have distinguished themselves in fields of the law of interest to Section committees. Mike has served as Counselor to the Chairman and Deputy Chief of Staff at the SEC (2006-2008), head of the Corporate Securities and Finance practice at Pillsbury Winthrop Shaw Pittman, and General Counsel for Bank of America Corporation. Mike was also a member of the Joint Committee on Corporations of the California State Bar and the Committee of the California Assembly which worked on the 1975 revisions to the California General Corporate Law and is the lead editor of Venture Capital & Public Offering Negotiation, a leading text on venture capital fund formation, portfolio private placements and IPOs (1981, updated annually, Wolters Kluwer). Mike will speak to our Committee in Chicago regarding his work on the Vantagepoint/Examen litigation and the internal affairs doctrine.

In addition, this will be the first meeting at which the Private Equity M&A Subcommittee of the Mergers and Acquisitions Committee will function as a Joint Subcommittee of our Committee and the Mergers and Acquisitions Committee. The Subcommittee will meet on Friday, September 15, from 10:30 am to noon. Agenda items include a discussion of Private Equity M&A in the Trump Administration, led by Jeff Hoffmeister, a Managing Director of Morgan Stanley in New York; a discussion of the recent Court of Chancery opinion The Frederick Hsu Living Trust v ODN Holding Corporation, and a panel entitled “Cross-Border and Other Hot Topics in Private Equity M&A.” I encourage you all to attend the Private Equity M&A Joint Subcommittee meeting, and, while there, to introduce yourself to the Chairperson of that Subcommittee, David Albin of Finn Dixon & Herling.

On top of all these “firsts”, we’ll have our usual slate of Subcommittee meetings. We are also sponsoring two CLE’s – one on Thursday, September 14, from 2:30-4:30 entitled “Perspectives on Cutting Edge Issues in Venture Capital and Private Equity” and one on Friday, September 15, from 8:00-10:00 entitled “End of Life Issues for Private Equity and Venture Capital Funds.” In addition, we are co-sponsoring six other CLE’s. The schedule for all of our Committee and Subcommittee meetings and sponsored and co-sponsored CLE’s can be found in this issue of Preferred Returns.

I look forward to seeing many of you in Chicago. In anticipation for Thursday night’s dinner (and with apologies to native Chicagans on the Committee) I leave you with a very important parting thought: “Let’s Go Mets!”

Eric Klinger-Wilensky
Committee Chair
Morris, Nichols, Arsht & Tunnell LLP
Looking Ahead to Chicago

\[ \text{What the Committee Has in Store} \]

\[ \text{Continued on Page 4} \]

**PRIVATE EQUITY AND VENTURE CAPITAL COMMITTEE MEETING**
Thursday Sept. 14 (4:30 PM – 6:00 PM)
Sheraton
Chicago Ballroom VIII, Ballroom Level

Mike Halloran, our Committee’s recently appointed Business Law Advisor, will be speaking to us regarding his work on the Vantagepoint/Examen litigation and the internal affairs doctrine. PitchBook and Houlihan Lokey will also each present to the Committee on issues of interest.

Dial In: Toll-free dial-in number (U.S. and Canada): (866) 646-6488
International dial-in number: (707) 287-9583
Conference code: 2458399301

**VENTURE CAPITAL FINANCE SUBCOMMITTEE MEETING**
Thursday Sept. 14 (9:00 AM – 10:00 AM)
Sheraton
Chicago Ballroom VIII, Ballroom Level

The Venture Capital Financing Subcommittee will be presenting on venture debt with Randy Churchill of Square1 Bank and Tim Barnes of Hercules Capital dialing in as virtual panelists for the presentation.

Dial In: Toll-free dial-in number (U.S. and Canada): (866) 646-6488
International dial-in number: (707) 287-9583
Conference code: 2458399301

**ANGEL VENTURE CAPITAL SUBCOMMITTEE MEETING**
Thursday Sept. 14 (10:00 AM – 11:00 AM)
Sheraton
Chicago Ballroom VIII, Ballroom Level

The Angel Venture Capital Subcommittee will host a panel discussion on Venture Investing in Cannabis Companies. This panel will present a 360 degree look into angel venture capital investing in cannabis companies, and include a VC-backed company’s general counsel, a regulatory expert and a venture capitalist active in the space.

Dial In: Toll-free dial-in number (U.S. and Canada): (866) 646-6488
International dial-in number: (707) 287-9583
Conference code: 2458399301

**INTERNATIONAL VC & PE SUBCOMMITTEE MEETING**
Thursday Sept. 14 (11:00 AM – 12:00 PM)
Sheraton
Chicago Ballroom VIII, Ballroom Level

Our international subcommittee will have presentations on international topics of interest from our international members.

Dial In: Toll-free dial-in number (U.S. and Canada): (866) 646-6488
International dial-in number: (707) 287-9583
Conference code: 2458399301
### ACADEMIC SUBCOMMITTEE
**Meeting Date and Time:** Thursday Sept. 14 (1:30 PM – 2:30 PM)
**Location:** Sheraton Chicago Ballroom VII, Ballroom Level

At our debut meeting of our Academic Subcommittee we will discuss Venture Capital Control Arrangements and the case of *Klaassen v. Allegro Development Corp.* The Subcommittee is pleased that Vice Chancellor Laster, the author of the *Klaassen* opinion, will be present and part of the discussion.

**Dial In:**
- **Toll-free dial-in number (U.S. and Canada):** (866) 646-6488
- **International dial-in number:** (707) 287-9583
- **Conference code:** 2458399301

### PRIVATE EQUITY M&A JOINT SUBCOMMITTEE MEETING
**Meeting Date and Time:** Friday Sept. 15 (10:30 AM – 12:00 PM)
**Location:** Sheraton Chicago Ballroom VII, Ballroom Level

The meeting will start with “The Experts Speaks” segment with Jeff Hoffmeister, (a Managing Director of Morgan Stanley) discussing “Private Equity M&A in the Trump Administration.” Following which Chair David Albin (Finn Dixon & Herling LLP) and former M&A Committee Chair, Mark Morton (Potter Anderson) will present the Recent Developments segment focusing on *The Frederick Hsu Living Trust v ODN Holding Corporation, et. al.* The program will conclude with our Nuts and Bolts Segment, where a panel organized by the Subcommittee’s Vice Chair, Mireille Fontaine (BCF) will discuss “Cross-Border and Other Hot Topics in Private Equity M&A.” The panel will be chaired by Jake Bullen (Cassels Brock) and will consist of Kimberley Smith (Katten), Bryan Bylica (McGuire Woods), Phillip D. Brunsteatter (Pfingsten Partners), Jeffrey Kolke (Monroe Capital) and Michael Norton (Houlihan Capital).

**Dial In:**
- **Toll-free dial-in number (U.S. and Canada):** (866) 646-6488
- **International dial-in number:** (707) 287-9583
- **Conference code:** 6304783957

### FUNDS SUBCOMMITTEE MEETING
**Meeting Date and Time:** Friday Sept. 15 (2:30 PM – 3:30 PM)
**Location:** Sheraton Gold Coast, Lobby Level

The fund formation subcommittee will discuss Investment Structures for Luxembourg Investment Funds Investing in US Real Estate, both from a Luxembourg and US legal perspective.

**Dial In:**
- **Toll-free dial-in number (U.S. and Canada):** (866) 646-6488
- **International dial-in number:** (707) 287-9583
- **Conference code:** 6304783957

### JURISPRUDENCE SUBCOMMITTEE MEETING
**Meeting Date and Time:** Friday Sept. 15 (3:30 PM – 4:30 PM)
**Location:** Sheraton Gold Coast, Lobby Level

Co-Chairs, Thomas Mullen from Potter Anderson and Lisa Stark from K&L Gates, will moderate a panel discussing cases which highlight legal traps for PEVC practitioners. Decisions addressing the obligations of directors in connection with preferred stock redemption rights, the valuation of preferred stock in appraisal actions, rights offerings, the ratification of defective corporate acts and the oppression of minority stockholders will be discussed at the meeting. Speakers will include Tyler O’Connell from Morris James, Lisa J. Hedrick from Hirschler Fleischer, Aaron Atkinson from Fasken, and Helen Reeves from Dentons.

**Dial In:**
- **Toll-free dial-in number (U.S. and Canada):** (866) 646-6488
- **International dial-in number:** (707) 287-9583
- **Conference code:** 6304783957

---

**Introducing Mike Halloran**

**Business Law Advisor**

We are very pleased that Mike Halloran has recently been appointed the Business Law Advisor both to our Committee and to the Middle Market and Small Business Committee. Mike’s impressive experience speaks for itself. His accomplishments have included serving as Counselor to the Chairman and Deputy Chief of Staff at the SEC (2006-2008), head of the Corporate Securities and Finance practice at Pillsbury Winthrop Shaw Pittman, and General Counsel for Bank of America Corporation. As a member of the Joint Committee on Corporations of the California State Bar and the Committee of the California Assembly Mike worked on the 1975 revisions to the California General Corporate Law and is the lead editor of *Venture Capital & Public Offering Negotiation*, a leading text on venture capital fund formation, portfolio private placements and IPOs (1981, updated annually, Wolters Kluwer).
We have two fantastic CLE panels planned:

### Perspectives on Cutting Edge Issues in Venture Capital and Private Equity

**Thursday September 14 (2:30 PM – 4:30 PM)**  
**Sheraton - Superior, Meeting Room Level**

Four academics will present recent work on venture capital and private equity. The work discusses VC founder tenure, VC incentive payment schemes, fiduciary scrutiny of rights offerings in Delaware law, and the relationship of transaction strategies and returns in private equity buyouts. Practitioners will comment.

**Co-Sponsoring Committees:** Corporate Laws, Federal Regulations of Securities, Institutional Investors  
**Program Chair and Moderator:** C. William Bratton; Nicholas F. Gallicchio Professor of Law and Co-Director, Institute for Law & Economics; University of Pennsylvania Law School

### End of Life Issues for Private Equity and Venture Capital Funds

**Friday September 15 (8:00 AM – 10:00 AM)**  
**Sheraton - Michigan, Meeting Room Level**

This program will cover issues faced by private funds as they approach the end of their life spans, including term extensions, secondary sales, restructurings, and conflicts of interest.

**Co-Sponsoring Committees:** LLCs, Partnerships and Unincorporated Entities  
**Chair and Moderator:** Joshua Watson, Member, Morse Barnes-Brown Pendleton, Boston, MA

In addition, we are proud to be co-sponsoring the following CLE Programs:

<table>
<thead>
<tr>
<th>Program Title</th>
<th>Date and Time</th>
<th>Room/Level</th>
<th>Co-Sponsoring Committees</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Choice of Entity: Planning Without a Crystal Ball</strong></td>
<td>Thursday September 14 (10:30 AM – 12:30 PM)</td>
<td>Sheraton Ballroom II, Ballroom Level</td>
<td>LLCs, Partnerships and Unincorporated Entities, Private Equity and Venture Capital, Taxation</td>
</tr>
<tr>
<td><strong>Managing and Minimizing Antitrust and Other Deal Risks – Issues, Trends and Developments in the US &amp; Canada</strong></td>
<td>Thursday September 14 (2:30 PM – 4:30 PM)</td>
<td>Gleacher Center Room 208, Second Floor</td>
<td>Business and Corporate Litigation, Business Law, Corporate Counsel, Private Equity and Venture Capital</td>
</tr>
<tr>
<td><strong>Antitrust Class Action Ethics from a Real-World Perspective for Business Lawyers and In-House Counsel</strong></td>
<td>Friday September 15 (10:30 AM – 12:00 PM)</td>
<td>Gleacher Center Room 200, Second Floor</td>
<td>Business and Corporate Litigation, Corporate Compliance, International Business Law, Private Equity and Venture Capital</td>
</tr>
<tr>
<td><strong>The Business and Legal Case for LGBT Inclusion in the Workplace: What is Required and What Clients Demand</strong></td>
<td>Saturday September 16 (8:30 AM – 10:00 AM)</td>
<td>Sheraton – Superior, Meeting Room Level</td>
<td>Corporate Counsel, Middle Markets &amp; Small Business, Private Equity and Venture Capital, Project Finance and Development, Securitization and Structured Finance</td>
</tr>
</tbody>
</table>
### Schedule of Events

#### Business Law Section’s annual meeting | Chicago Fall 2017

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Location / Dial-in Code</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Thursday September 14, 2017</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Venture Capital Financing Subcommittee Meeting</td>
<td>9:00 AM – 10:00 AM</td>
<td>Chicago Ballroom VIII, Ballroom Level Dial-in code: 2458399301</td>
<td>Venture Capital Financing Subcommittee Meeting</td>
</tr>
<tr>
<td>Angel Venture Capital Subcommittee Meeting</td>
<td>10:00 AM – 11:00 AM</td>
<td>Chicago Ballroom VIII, Ballroom Level Dial-in code: 2458399301</td>
<td>Angel Venture Capital Subcommittee Meeting</td>
</tr>
<tr>
<td>CLE Program: Choice of Entity: Planning Without a Crystal Ball</td>
<td>10:30 AM – 12:30 PM</td>
<td>Sheraton Ballroom II, Ballroom Level</td>
<td>CLE Program: Choice of Entity: Planning Without a Crystal Ball</td>
</tr>
<tr>
<td>International Subcommittee Meeting</td>
<td>11:00 AM – 12:00 PM</td>
<td>Chicago Ballroom VIII, Ballroom Level Dial-in code: 2458399301</td>
<td>International Subcommittee Meeting</td>
</tr>
<tr>
<td>Committee Leadership Meeting</td>
<td>12:00 PM – 12:30 PM</td>
<td>Chicago Ballroom VIII, Ballroom Level</td>
<td>Committee Leadership Meeting</td>
</tr>
<tr>
<td>Academic Subcommittee Meeting</td>
<td>1:30 PM – 2:30 PM</td>
<td>Chicago Ballroom VIII, Ballroom Level Dial-in code: 2458399301</td>
<td>Academic Subcommittee Meeting</td>
</tr>
<tr>
<td>CLE Program: Perspectives on Cutting Edge Issues in Venture Capital &amp; Private Equity</td>
<td>2:30 PM – 4:30 PM</td>
<td>Superior, Meeting Room Level</td>
<td>CLE Program: Perspectives on Cutting Edge Issues in Venture Capital &amp; Private Equity</td>
</tr>
<tr>
<td>CLE Program: Managing and Minimizing Antitrust and Other Deal Risks – Issues, Trends and Developments</td>
<td>2:30 PM – 4:30 PM</td>
<td>Gleacher Center Room 208, Second Floor</td>
<td>CLE Program: Managing and Minimizing Antitrust and Other Deal Risks – Issues, Trends and Developments</td>
</tr>
<tr>
<td>Private Equity and Venture Capital Committee Meeting</td>
<td>4:30 PM – 6:00 PM</td>
<td>Chicago Ballroom VIII, Ballroom Level Dial-in code: 2458399301</td>
<td>Private Equity and Venture Capital Committee Meeting</td>
</tr>
<tr>
<td>Private Equity and Venture Capital Committee Dinner <strong>SOLD OUT</strong></td>
<td>6:15 PM – 10:00 PM</td>
<td>Wrigley Rooftop Event</td>
<td>Private Equity and Venture Capital Committee Dinner <strong>SOLD OUT</strong></td>
</tr>
</tbody>
</table>

**Note:** A bus will arrive at the hotel at 5:45 pm and depart for the venue at 6:15 PM sharp. Please bring your photo ID.

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Location / Dial-in Code</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Friday September 15, 2017</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CLE Program: End of Life Issues for Private Equity and Venture Capital Funds</td>
<td>8:00 AM – 10:00 AM</td>
<td>Michigan, Meeting Room Level</td>
<td>CLE Program: End of Life Issues for Private Equity and Venture Capital Funds</td>
</tr>
<tr>
<td>Contractual Governance of Business Entities Joint Task Force Meeting</td>
<td>9:30 AM – 10:30 AM</td>
<td>Arkansas, Meeting Room Level Dial-in code: 6234776971</td>
<td>Contractual Governance of Business Entities Joint Task Force Meeting</td>
</tr>
<tr>
<td>Private Equity M&amp;A Joint Subcommittee Meeting</td>
<td>10:30 AM – 12:00 PM</td>
<td>Chicago Ballroom VII, Ballroom Level Dial-in code: 1786332268</td>
<td>Private Equity M&amp;A Joint Subcommittee Meeting</td>
</tr>
<tr>
<td>CLE Program: Antitrust Class Action Ethics from a Real-World Perspective</td>
<td>10:30 AM – 12:00 PM</td>
<td>Gleacher Center Room 200, Second Floor</td>
<td>CLE Program: Antitrust Class Action Ethics from a Real-World Perspective</td>
</tr>
<tr>
<td>CLE Program: Smarter, Faster, Cheaper Corporate Legal Services</td>
<td>10:30 AM – 12:30 AM</td>
<td>Sheraton – Superior, Meeting Room Level</td>
<td>CLE Program: Smarter, Faster, Cheaper Corporate Legal Services</td>
</tr>
<tr>
<td>Funds Subcommittee Meeting</td>
<td>2:30 PM – 3:30 PM</td>
<td>Gold Coast, Lobby Level Dial-in code: 6304783957</td>
<td>Funds Subcommittee Meeting</td>
</tr>
<tr>
<td>Jurisprudence Subcommittee Meeting</td>
<td>3:30 PM – 4:30 PM</td>
<td>Gold Coast, Lobby Level Dial-in code: 6304783957</td>
<td>Jurisprudence Subcommittee Meeting</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Location / Dial-in Code</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Saturday September 16, 2017</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CLE Program: The Business and Legal Case for LGBT Inclusion in the Workplace</td>
<td>8:30 AM – 10:00 AM</td>
<td>Sheraton – Superior, Meeting Room Level</td>
<td>CLE Program: The Business and Legal Case for LGBT Inclusion in the Workplace</td>
</tr>
</tbody>
</table>
What is Hiding in Your Convertible Note?

It is common for early stage, high growth companies to raise early funding using a convertible note rather than selling equity. Convertible notes are cheaper and quicker than an equity round; very important qualities at a time when funds are scarce and time is money. Additionally, convertible notes may benefit the company as they typically lack control provisions often found in equity rounds. Equally, convertible notes may also benefit an early stage investor as the investor gains access to equity terms on conversion. Since these equity terms are negotiated by a later stage investor, who oftentimes has more to gain/lose, these terms are often preferential to those that would be negotiated today.

To entice early stage investors to invest via convertible note, the note usually contains a discount rate and a valuation cap. The discount rate and valuation cap are mechanisms that allow for the convertible notes to convert into equity at a discount to the price per share paid by the next equity investor. One protects against upside risk and one against down. Specifically, the note holder will receive the better of: (i) applying the discount rate to the price per share (protecting against a round raised below the valuation cap); or (ii) the price per share based on the valuation cap (protecting against a round at a high valuation). As many know, these terms are often the most negotiated and the most focused on by the company. All in all, these terms seek to mitigate the risk of an extremely risky bet on an early stage company by offering a discount against the price per share paid by later investors.

While these notes seem founder friendly, there is a hidden pitfall that founders should be aware of - the liquidation preference multiplier. In standard equity raises in the startup technology space, a one times per share liquidation preference is given to the preferred shareholders. This means that the first distribution of funds is to the holder of the liquidation preference. Unless worded carefully, embedded in a convertible note is a liquidation preference that results in a payout to the noteholder that greatly exceeds one times; a term a founder would never hand out to a standard equity investor. This liquidation preference multiplier comes at a direct expense to the founders, but because it is not spelled out in a note, it is often overlooked.

In order to fully grasp this concept, and understand why there is a liquidation preference multiplier hidden in your convertible note, it is important to see the mechanics of this through a hypothetical.

**HYPOTHETICAL**

- Seed round is raised for $100,000 in a convertible note with a valuation cap of $1,000,000.
- Series A is being raised with a $5,000,000 pre-money valuation, with the new investors paying $5.00 per share.
- Series A has a 1x participating liquidation preference (standard) which would mean the Series A investor's per share liquidation preference is $5.00 per share.
- The note's $1,000,000 valuation cap mean that these notes convert at $1.00 per share.
- The note holders would receive 100,000 shares ($100,000/$1.00).

As most convertible notes require, the notes would convert into the same series of stock as the Series A investors. Under the circumstances outlined in the hypothetical, in the event of a liquidation event, the note holders would receive a liquidation preference of $500,000 (100,000 shares x $5.00 per share). This is the equivalent of a 5x liquidation preference! So while this is not written in the note itself, the discount of the valuation cap creates a major discrepancy in per share price and thus creates a very large liquidation preference to the convertible note holders. Note that in most scenarios, the investor would also receive pro-rata distributions of their respective ownership percentage alongside the founders.

This is not something that most founders would be willing to do if they were aware of this prior to issuing a note, nor is this something a venture capitalist would ordinarily ask for; VCs like to be aligned with the founders they invest in and would not want to risk earning the reputation of treating their portfolio companies unfairly. A typical founder would not give this type of preference to an investor in an equity round and there is no reason to give this out to convertible note investors either.

>> Continued on Page 8
Fortunately, there are ways of handling this mechanical issue so you can still enjoy the perks of a convertible note (cheap, quick, delayed valuation and preferred terms) while also protecting your share of the pie.

The first option requires minimal work in the convertible note stage, but more extensive work at the conversion stage. Option one is to offer conversion into a shadow series of stock. In other words, the note holder will convert into a preferred series of stock that has identical to the series of preferred stock issued to the Series A investor, with the exception of the liquidation preference. The liquidation preference of the shadow series will be the conversion price, not the price the Series A investors paid per share. This language is a simple addition to the convertible note, however does add a bit of complexity in the Series A drafting as two classes of preferred stock will need to be created. Additionally, this option will add some complexity to your cap table.

The second option is for the conversion to be divided between preferred stock and common stock. Applying this option to the above hypothetical, the holder would still receive the 100,000 shares that the calculation shows. However, when applying this option, 20,000 shares would be granted in preferred stock ($100,000/$5.00 per share) and the remaining 80,000 shares would be in common stock. The note holder would still receive the liquidation preference of $100,000 (20,000 shares of preferred stock x $5.00 per share). This is a favorable route in the event that you raise money on multiple different convertible notes with different valuation caps. If the company raise more than one round of convertible notes, with multiple caps, and chooses to draft the notes using the first option, the company will have multiple series of preferred stock, which makes for a very complex cap table.

Regardless of which route you decide in dealing with the liquidation preference problem, I highly suggest doing this prior to issuing your convertible notes. It is no fun to go back to an investor and ask them to give away some of their benefits they obtained in their investment documents. It is likely that they are unaware of this benefit, but once you make it known to them, they will not want to give it up.

How is this so? Rule 506, prior to amendment, conditioned the availability of the safe harbor under Section 4(a)(2) on the issuer, or any person acting on its behalf, not offering or selling securities through any form of general solicitation. Section 201(a)(1) of the JOBS Act directed the Commission to amend Rule 506 (and not Section 4(a)(2)) to provide that the prohibition against general solicitation contained in Rule 502(c) shall not apply to offers and sales of securities made pursuant to Rule 506, as so amended, provided that all purchasers of the securities are accredited investors and the issuer takes reasonable steps to verify their status as accredited investors.

Interestingly, the JOBS Act mandate affects only Rule 506, and not Section 4(a)(2) offerings in general, which means that now, an issuer relying on Section 4(a)(2) outside of the Rule 506(c) exemption will be restricted in its ability to make public communications to solicit investors for its offering because public advertising will continue to be incompatible with a claim of exemption under Section 4(a)(2). Issuers, including private fund issuers, who may choose to use Rule 506(c) will still be deemed to be issuing “covered securities” for purposes of Section 18(b)(4)(E) of the Securities Act, by virtue of Section 201(a)(1) of the JOBS Act as such permit the use of Form D in states to allow for Blue Sky preemption.

506(C) SIMILARITY AND DIFFERENCE FROM 506(B)

Rule 506(b) allows you to sell exempt from registration securities to thirty-five (35) unaccredited investors and an unlimited number of accredited investors, but your offer of securities must be confidential and the thirty-five (35) unaccredited investors must still meet suitability requirements of sophistication. Additionally, the accredited investors in a Rule 506(b) offering are generally self-accredited.

Unlike Rule 506(b), Rule 506(c) allows for public solicitation and public advertising. As an issuer, you don’t have to worry about keeping your offering memorandums confidential, and you can advertise online, in person, at seminars and in newspapers. While these public solicitation freedoms are exciting for issuers, they are not free from restrictions. Rather, these extra freedoms are met with extra countervailing obligations regarding confirmation of accredited investor status.

WHILE THESE PUBLIC SOLICITATION FREEDOMS ARE EXCITING FOR ISSUERS, THEY ARE NOT FREE FROM RESTRICTIONS.
THE BURDEN OF 506(C)—ACCREDITATION VERIFICATION

The requirements for accreditation under 506(b) are the same by definition, but Rule 506(c) requires much stricter confirmation of accredited investor status. As we know under Rule 501(a) of Regulation D, an investor can be accredited two ways, asset based or income based, as described in Figure 2.

Under Rule 506(c), Issuers can use two methods of independent verification of accredited investor status of its investors. Issuers can use the **Safe Harbor Method** or the **Principles-Based Method**.

Under the **Principles-Based Method**, an objective standard is applied. The issuer takes into consideration: 1) the nature of the purchaser and the type of accredited investor that the purchaser claims to be; 2) the amount and type of information that the issuer has about the purchaser; and, (3) the nature of the offering, such as the manner in which the purchaser was solicited to participate in the offering, and the terms of the offering, such as a minimum investment amount. While this method leaves more choice to the issuer, it can be somewhat more ambiguous, which is generally viewed as riskier than using the Safe Harbor Method. Remember that the burden will be on the issuer if challenged to show that it fulfilled the verification requirements using the principal based method appropriately and there is little prior history to judge conduct. The **Safe Harbor Method** lays out examples of methods that satisfy the verification requirement. While more specific, these examples are also non-exclusive and non-mandatory. Rule 506(c)(2)(ii) (the Safe Harbor Method provisions) emphasizes that these methods are only “examples of the types of non-exclusive and non-mandatory methods that satisfy the verification requirement.” The main safe harbor methods are examples for income based investors, asset based investors, and public solicitation.

Under Rule 506(c)(2)(i) (B) purchasers can use documentation dated within the prior three months and issuers can obtain a written representation from the investor that all liabilities necessary to make a determination of net worth have been disclosed. Documentation can include: bank statements, brokerage statements, securities holdings statements, certificates of deposit, tax assessments, and independent third party appraisal reports.

Under Rule 506(c)(2) (ii)(C), the SEC gives examples of written confirmation to show accreditation. Potential investors can show a consumer report from at least one of the nationwide consumer reporting agencies or obtain a written confirmation from a person who has taken reasonable steps to verify investor accreditation.

---

**FIGURE 1:**

<table>
<thead>
<tr>
<th>Rule 506(b)</th>
<th>Rule 506(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Solicitation</strong></td>
<td><strong>Solicitation</strong></td>
</tr>
<tr>
<td>Private placement offering—must be private and confidential; offering should be made to persons with which the issuer has a prior substantive existing relationship</td>
<td>Can be public; advertising and public solicitation can be used; no prior relationship needed</td>
</tr>
<tr>
<td><strong>Investors</strong></td>
<td><strong>Investors</strong></td>
</tr>
<tr>
<td>Can offer to 35 unaccredited investors (but must still meet suitability requirements) and an unlimited number of accredited investors</td>
<td>Can offer to an unlimited number of investors (and the offers can be to unaccredited investors), but only verified accredited investors can invest. No unaccredited investors</td>
</tr>
<tr>
<td><strong>Accreditation</strong></td>
<td><strong>Accreditation</strong></td>
</tr>
<tr>
<td>Self-Accredited</td>
<td>Accredited by a Third Party</td>
</tr>
<tr>
<td><strong>SEC Filings</strong></td>
<td><strong>SEC Filings</strong></td>
</tr>
<tr>
<td>File a Form D with the SEC through EDGAR within 15 days of the first sale of securities</td>
<td>File a Form D with the SEC through EDGAR within 15 days of the first sale of securities</td>
</tr>
<tr>
<td><strong>Blue Sky Laws</strong></td>
<td><strong>Blue Sky Laws</strong></td>
</tr>
<tr>
<td>You may use each states’ laws which is not recommended generally, you file a Form D in each state and pay the filing fee (exceptions include New York and Florida)</td>
<td>You may use each states’ laws which is not recommended generally, you file a Form D in each state and pay the filing fee (exceptions include New York and Florida)</td>
</tr>
<tr>
<td><strong>Disclosure</strong></td>
<td><strong>Disclosure</strong></td>
</tr>
<tr>
<td>Full fair and adequate disclosure of all material facts; your registration exemptions do not affect your duty to disclose</td>
<td>Full fair and adequate disclosure of all material facts; your registration exemptions do not affect your duty to disclose</td>
</tr>
<tr>
<td><strong>Money/Investments</strong></td>
<td><strong>Money/Investments</strong></td>
</tr>
<tr>
<td>Unlimited</td>
<td>Unlimited</td>
</tr>
</tbody>
</table>

**FIGURE 2:**

<table>
<thead>
<tr>
<th>ASSET BASED: $1 MILLION NET WORTH</th>
<th>INCOME BASED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cannot include value of the home you are living in</td>
<td>Single income ≥ $200,000</td>
</tr>
<tr>
<td>- Can include all other assets and property</td>
<td>- Past 2 years and the current year of annual gross income</td>
</tr>
<tr>
<td>If with spouse, their combined net worth</td>
<td>Married couple income ≥ $300,000</td>
</tr>
<tr>
<td>- Past 2 years and current year of annual gross income</td>
<td></td>
</tr>
<tr>
<td>Entities including trusts have special rules</td>
<td></td>
</tr>
<tr>
<td>All owners of an entity must be accredited or have a $5 million net worth</td>
<td></td>
</tr>
</tbody>
</table>
within past 3 months. This confirmation can be obtained from:
- A registered broker-dealer;
- A registered investment adviser;
- A licensed attorney in good standing;
- A certified public accountant in good standing;

SPECIFIC ISSUES FOR PRIVATE FUNDS

Private funds, such as hedge funds, venture capital funds and private equity funds, typically rely on Section 3(c)(1) and Section 3(c)(7) of the Investment Company Act — Section 3(c)(1) of the JOBS Act directed the Commission to eliminate the prohibition against general solicitation for Rule 506(c) offerings, but the JOBS Act made no specific reference to private funds. Critically, Section 201(b) of the JOBS Act provided that “[o]ffers and sales exempt under [the revised version of Rule 506] shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.” The SEC has brought enforcement actions against private fund advisers that have materially misrepresented the nature of a fund or pooled investment vehicle. As was stated by the Commission when it adopted Rule 206-4(b), “[t]he rule clarifies that an adviser's duty to refrain from fraudulent conduct under the federal securities laws extends to the relationship with ultimate investors and that the Commission may bring enforcement actions under the Advisers Act against investment advisers who defraud investors or prospective investors in those pooled investment vehicles.”

The content of solicitations for private funds is limited by Rule 506(c), which restricts the content of private fund sales literature, including sales literature, presentations, websites and other materials distributed to prospective investors or to current investors. The SEC reminded investment advisers and private funds that they are subject to Rule 206(4)-8 under the Advisers Act. Rule 206(4)-8 provides that it shall constitute a fraudulent, deceptive or manipulative act, practice or course of business within the meaning of Section 206(4) of the Advisers Act for any investment adviser to a pooled investment vehicle to “(1) [m]ake any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; or (2) otherwise engage in any act, practice or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.”

The Commission further observed that although Section 201(b) did not explicitly reference the meaning of “public offering” under the Investment Company Act, it clearly stated that “[o]ffers and sales exempt under Rule 506, as revised pursuant to Section 201(a)(j) shall not be deemed public offerings under the federal securities laws as a result of general advertising or general solicitation.” The Investment Company Act is of course a federal securities law, and thus the effect of Section 201(b) is to permit offers and sales of securities under Rule 506(c) by private funds relying on the exclusions from the definition of “investment company” under Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act.

While 506(c) offerings may be sold to an unlimited number of verified accredited investors, when the investment vehicle is a pooled offering such as a hedge fund or other private fund, it is important to remember the applicability of the Investment Company Act. In order to avoid being required to register as an Investment Company, under Section 3(c)(1) of the Investment Company Act, a limit of no more than 100 persons holding beneficial ownership in the interests in the fund must be strictly adhered to. When totaling the number of investors, Rule 3c-5 under the Investment Company Act allows for certain investors in the fund i.e. a “knowledgeable employee” to invest without being counted toward the 100 beneficial owner limit. While it is important to be aware of the knowledgeable employee exception, it is not the focus of this article, but should be considered as appropriate, when planning future offerings.
Limited Partner Co-Investments in the Lower Middle Market

Private equity professionals continue to see significant demands amongst limited partners ("LPs") for co-investment opportunities alongside funds in which LPs are invested. There is anecdotal evidence as well as limited market data that indicates that LPs see increased levels of performance when investing alongside the private equity sponsors ("Sponsors"). The last widely reported survey of such investments, conducted in August 2015 ("Preqin Survey"), indicated that co-investments are actually outperforming fund commitments, with forty-six percent (46%) of LPs outperforming the fund by a margin of over five percent (5%). So it is no surprise LPs desire co-investment commitments in their governing fund agreements. In fact, the Preqin Survey found that thirty percent (30%) of the Sponsors included co-investment rights in 81%-100% of their most recent limited partnership agreements. Sponsors have also been incentivized to offer co-investment opportunities. According to the 2015 Pepper Hamilton-MergerMarket survey, Joining Forces: The co-investment climate in private equity ("Joining Forces Survey"), of the partners, directors and principals interviewed, a majority confirmed that they proactively offer co-investment opportunities. Joining Forces Survey also confirmed that a majority of co-investors are existing fund LPs, which makes sense given Sponsor rationale for offering co-investments—investor recognition, better chance of successful fundraising, building stronger relationships with LPs, gaining access to additional deployable capital, benefits to the portfolio company from LPs unique abilities, and better risk management.

LIMITED AVAILABLE MARKET DATA

Due to the proprietary and unreported nature of a co-investment transactions, there are few, if any, deal studies noted above). This lack of information is compounded by the general notion that deal professionals in this space widely advise their clients: there is no one-size-fits-all co-investment model. A co-investment is usually determined on a deal-by-deal basis, driven by (i) the number of LPs co-investing, (ii) the size of the investment, (iii) the balance of leverage between the Sponsor and LP, and (iv) of the

1 Anshu is a partner at Koley Jessen, P.C., an Omaha based law firm. Anshu has a broad, multidisciplinary practice that includes counseling strategic corporate and private equity sponsors (and their portfolio companies) in domestic and international M&As, joint ventures, divestitures, and general corporate matters. Anshu can be reached at anshu.pasricha@koleyjessen.com.

Robert is an associate in the mergers & acquisitions and private equity practice groups at Koley Jessen, P.C.


3 Pepper Hamilton - 2015 Joining Forces: The co-investment climate in private equity, aggregated interview responses of 50 private equity partners, directors and principals from across the United States, managing funds between $250MM – $999MM.
Private Equity M&A Subcommittee

First, a warm welcome to all the members of the Business Law Section’s Private Equity and Venture Capital Committee who are now receiving this for the first time in Preferred Returns. For those of you who do not know, the Private Equity M&A Subcommittee is now a subcommittee of both the Mergers and Acquisitions Committee and the Private Equity and Venture Capital Committee. I look forward to the participation in our Subcommittee of members of the PE/VC Committee who are interested in private equity mergers and acquisitions, and I hope to see new faces in the room in Chicago on September 15.

For those of you who weren’t with us in New Orleans in April, we continued our Nuts and Bolts Series with a program entitled “The Application of Delaware Governance Principles to Private Equity Deals.” I was joined by the former Chief Justice of the Delaware Supreme Court, the Honorable Myron T. Steele, now of Potter Anderson Corroon LLP in Wilmington, Delaware, and Melissa DiVincenzo of Morris, Nichols, Arsh & Tunnell LLP, also of Wilmington, Delaware, in a discussion that focused on how various Delaware corporate governance issues come into play in the sale of a private equity portfolio corporation. We continued our “The Experts Speak” series with Martin Rubio of Duff & Phelps Securities, LLC, joining me for a discussion on “How to Get the Most Value From Your Investment Banker Prior to the Solicitation of Offers.” Finally, we concluded with our Recent Developments segment in which Lisa Hedrick of Hirschler Fleischer in Richmond, Virginia discussed In re Metrologic Instruments, Inc. Shareholders Litigation and George M. Taylor III of Burr & Forman LLP of Birmingham, Alabama discussed SRS v Gilead.

In addition to the normal Private Equity M&A Subcommittee Meeting, the New Orleans meetings also included a CLE Program that I chaired, and that I know many subcommittee members were able to attend, entitled “The Nuts and Bolts of Private Equity M&A – What Makes PE Deals Different.” I was joined on the panel by Sophie Lamonde of Stikeman Elliott LLP in Montréal, Québec, Russell Light and Neal Reenan of Kirkland & Ellis (Russell in the New York office and Neal in the Chicago office) and Martin Rubio of Duff and Phelps Securities out of Houston. For those who missed the program, I’m sure the program is available through the Section and it should prove to be a useful listen for those of your colleagues who practice in the field but don’t attend our meetings.

Our subcommittee will meet in Chicago on Friday, September 15 from 10:30 a.m. to 12:00 noon. For those of you on the PEVC Committee, that seems to be our regular time. In keeping with our tradition, we intend to pack as many presentations and as much information into our 90 minutes as we possibly can. We will start with our usual “The Experts Speaks” segment with Jeff Hoffmesiter, a Managing Director of Morgan Stanley in New York, discussing “Private Equity M&A in the Trump Administration.” I will then be joined by our former M&A Committee Chair, Mark Morton of Potter Anderson in Wilmington, Delaware, for our Recent Developments segment focusing on The Frederick Hsu Living Trust v ODN Holding Corporation, et. al., an April decision by Delaware Vice Chancellor Laster. Finally, our program will conclude with our Nuts and Bolts Segment, which will consist of a panel put together by our Subcommittee’s Vice Chair, Mireille Fontaine of BCF in Montréal, Québec, discussing “Cross-Border and Other Hot Topics in Private Equity M&A.” The panel will be chaired by Jake Bullen of Cassels Brock of Toronto, Ontario. Jake will be joined on the panel by Kimberly Smith of Katten, Bryan Bylica of McGuire Woods, Phillip D. Bronstetter of Pfingsten Partners, Jeffrey Kolke of Monroe Capital and Michael Norton of Houlihan Capital, all out of Chicago.

Especially with the reorganization discussed above, I can not emphasize enough how important it is that you provide me with YOUR feedback as to the meetings and the Subcommittee, either by talking to me in Chicago or reaching out to me afterwards. There is only so much I can tell from body language in the room while I’m running the meeting as to what is more interesting to our membership and what is of less interest. We are always looking for ideas for future programs, presentations and projects, as well as volunteers for all of them.

Finally, as I’ve said before, if you don’t know me and you are at the Chicago meetings, please come by and introduce yourself. I’d like to meet as many of you as possible.

I look forward to seeing many of you in Chicago in September.

David Albin
Chair, Finn Dixon & Herling LLP
dalbin@fdh.com
various advantages of co-investment model, which is most applicable in any given investment scenario. Of the publicly available information in the market place, the Joining Forces Survey was a significant step forward in providing useful insight into the investment trends and general terms of a private equity co-investment. Notwithstanding that survey, there is still limited available data that legal counsel and private equity practitioners can use when negotiating a co-investment in a defined private equity market (i.e., lower middle market, middle market and upper middle market). Given the continued movement towards lower middle market transactions, the authors thought it would be helpful to have some guidelines, however limited the datapoints, for legal counsel and private equity practitioners when structuring and negotiating a co-investment in the lower middle market. Reviewing the transactions completed within the last five years by Koley Jessen, we found the results outlined below.

CO-INVESTMENT STRUCTURE IN THE LOWER MIDDLE MARKET

Typically, the Sponsor will propose the co-investment structure used for a specific transaction, with input from the LP. Factors the Sponsor, as well as LP, will consider when determining the optimal structure include: (i) the LPs desired level of involvement in management of the co-investment and/or portfolio company; (ii) how much access the LP will have to portfolio company information, as well as other transparency considerations; (iii) tax consequences; and (iv) the confidential nature of the LPs co-investment information (i.e., identity and investment amount). Our review of lower middle market transactions indicated two prevalent co-investment structures (that are consistent with the more traditional middle market private equity co-investment model): (A) a direct investment in the portfolio company, and (B) an investment in an aggregation vehicle that holds equity securities in either the portfolio company or the Sponsor’s acquisition vehicle.

Direct Investment in Portfolio Company. In a direct investment, the LP makes a direct capital contribution to the portfolio company (or, alternatively, through a newly formed acquisition vehicle), in exchange for equity securities. Our lower middle market data suggests that an LP will typically secure a significant minority equity position to the Sponsor, averaging twenty-seven percent (27%) of the total equity investment. Under a direct investment structure, the LP can (i) exercise its management of the investment by voting the equity securities, (ii) negotiate minority investor protections (such as tag-along rights and registration rights) that may not be available in a co-investment aggregation vehicle, and (iii) secure access to portfolio company information not typically available to entities several levels above the portfolio company. Given the level of involvement, LPs making a direct investment typically employ experienced advisors or managers to monitor the co-investment. The Sponsor then receives the benefit of additional capital without the added cost associated with management of the co-investment vehicle. Additionally, the Sponsor can generally insulate itself from a potential conflict of interest, in particular between a Sponsor-managed co-investment vehicle and the fund. In a direct co-investment, the LP is responsible for managing its own investment and the Sponsor is only responsible for the management of the fund.

Indirect Investment in Portfolio Company through an Aggregation Vehicle. Where there are multiple LPs, the co-investment can be structured such that each LP makes a capital contribution to an aggregation vehicle, which in turn will hold equity securities in either the portfolio company or the Sponsor’s acquisition vehicle. Under a structure using an aggregation vehicle, the LP is a passive investor not actively involved in the management of either the aggregation vehicle or portfolio company; rather, the Sponsor secures management rights to act behalf of the vehicle. Further, our transaction data suggests that aggregation vehicles are used in lower middle market transactions where the Sponsor is offering a smaller or limited investment opportunity. Under this structure, LPs contributed, on average, sixteen (16%) of the total equity investment (as opposed to twenty-seven percent (27%) for direct investments). Additionally, typical with a small or limited investment where the investor may have less negotiating leverage, a majority of the co-investments we reviewed were presented as a “take-it-or-leave-it” opportunity using form co-investment documents.

CO-INVESTMENT TERMS IN THE LOWER MIDDLE MARKET

Examining our transaction data, co-investment trends and terms in the lower middle market tend to diverge from those in the general private equity market.

Tag Along Rights. In the co-investment context, tag along rights protect the interest of co-investors by allowing the LP negotiating leverage at the time of a potential exit event. Our data indicates that a hundred percent (100%) of the transactions included tag-along rights (as opposed to sixty-eight percent (68%) of survey respondents in the Joining Forces Survey who reported including tag along rights). Where the co-investment was structured as a direct investment, the LP secured tag along rights at the operating company level as a typical minority protection provision. Where the co-investment was structured as an indirect investment through an aggregation vehicle, the LPs secured collective tag along rights at the operating company level through the aggregation vehicle.

Drag Along Rights. The drag along right acts as a control mechanism for the Sponsor, allowing the Sponsor to control the timing of an exit event. In our review, we again found that Sponsors secured drag along rights a hundred percent (100%) of the time. Anecdotally, authors have not seen a divergence on this datapoint, although

>> Continued from Page 11
acknowledge that only forty-six percent (46%) of survey respondents in the Joint Forces Survey reported securing such rights. From this comparison, it would appear Sponsors have greater leverage to secure protective rights (at least with respect to controlling the fund exit) when negotiating co-investment opportunities in the lower middle market, than the private equity market in general.

Management Fees. A typical benefit to an LP making a co-investment is reduced or eliminated Sponsor fees. Traditionally, a Sponsor will charge a two percent (2%) management fee on fund assets, as well as twenty percent (20%) on carried interest. Our transaction data shows that about sixty percent (60%) of the time, both the management fee and carried interest are eliminated on a co-investment opportunity. According to the Preqin Survey, about forty-nine percent (49%) of the Sponsors waived the management fee, and about forty-eight percent (48%) did not collect carried interest either on the co-investment piece.

Expense Reimbursement. Where the co-investment was structured using an aggregation vehicle with Sponsor management rights, in nearly every co-investment opportunity, the LPs were responsible for the expenses of the aggregation vehicle. Alternatively, in the general private equity market, thirty-eight percent (38%) of survey respondents confirmed that the LPs are responsible for the expenses of the co-investment vehicle.

Board Participation. In about fifty percent (50%) of transactions where the co-investment was structured as a direct investment, the LP was reserved a seat on the board of the portfolio company. Conversely, where the co-investment was structured using an aggregation vehicle, the no board seat was reserved for the LPs. According to the Joint Forces Survey, twenty-six percent (26%) of respondents did not reserve a board seat for LPs.

CONCLUSIONS

Our review of lower middle market transactions indicates that while the prevalent co-investment structures are consistent across lower middle-market as well as traditional middle market private equity co-investment model, the co-investment trends and terms in the lower middle market tend to diverge from those in the general private equity market. Again, we stress that datapoints included in this review may be a snapshot through a straw, so to speak, but nonetheless a helpful datapoint that will hopefully prompt a more robust study in the future that focuses on lower middle market transactions and provides a better vantage point for practitioners to follow. ■

- Thank You -

Thanks to our generous sponsors we have a fantastic event planned for the Private Equity and Venture Capital Subcommittee Dinner on Thursday September 14, 2017 at 6:15 p.m. The dinner will be held at Wrigley Rooftops, 1010 W. Waveland Avenue, where we will be able to watch the Cubs/Mets game (bus transportation between the hotel and the game will depart promptly at 6:15pm). This is a sold out event and promises to be a night to remember.

Please join us in thanking our sponsors, Houlihan Lokey and PitchBook Data, Inc., without whose assistance this event would not be possible.
### Important Dates

#### NOVEMBER
**Business Law Section Fall Meeting**  
November 17-18, 2017  
Washington, D.C.

#### APRIL
**Business Law Section Spring Meeting**  
April 12-14, 2018  
Orlando, FL.

#### SEPTEMBER
**Business Law Section Annual Meeting**  
September 13-15, 2018  
Austin, TX.

### Articles & Authors Needed

The Committee is collecting articles for future newsletters which are circulated to our members worldwide. Please send your submissions to Brett Stewart at brett.stewart@mcmillan.ca

Articles should be 1500 words or less, and on any topic of interest to practitioners in the private equity and venture capital sectors. From short scholarly articles, to practice tips, reviews/summaries of a Section program, life in the trenches, interesting pro bono projects, humorous looks at life and the law, or even how you balance work and personal life. We appreciate your help in making this newsletter a success.

### HOW TO REACH OUR LEADERSHIP

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Organization</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eric Klinger-Wilensky</td>
<td>Chair</td>
<td>Morris, Nichols, Arst &amp; Tunnell LLP</td>
<td><a href="mailto:ekwilensky@mnat.com">ekwilensky@mnat.com</a></td>
</tr>
<tr>
<td>Steve Wilson</td>
<td>Vice Chair</td>
<td>Osborne Clarke</td>
<td><a href="mailto:steve.wilson@osborneclarke.com">steve.wilson@osborneclarke.com</a></td>
</tr>
<tr>
<td>Brett Stewart</td>
<td>Editor, Preferred Returns</td>
<td>McMillan LLP</td>
<td><a href="mailto:brett.stewart@mcmillan.ca">brett.stewart@mcmillan.ca</a></td>
</tr>
<tr>
<td>William Bratton</td>
<td>Co-Chair, Academic Subcommittee</td>
<td>University of Pennsylvania Law School</td>
<td><a href="mailto:wbratton@law.upenn.edu">wbratton@law.upenn.edu</a></td>
</tr>
<tr>
<td>Brian Broughman</td>
<td>Co-Chair, Academic Subcommittee</td>
<td>Maurer School of Law, Indiana University</td>
<td><a href="mailto:bbroughm@indiana.edu">bbroughm@indiana.edu</a></td>
</tr>
<tr>
<td>Matthew Kitay</td>
<td>Co-Chair, Angel Venture Capital Committee</td>
<td>Fox Rothschild LLP</td>
<td><a href="mailto:mkitay@foxrothschild.com">mkitay@foxrothschild.com</a></td>
</tr>
<tr>
<td>Emily Yukich</td>
<td>Co-Chair, Angel Venture Capital Committee</td>
<td>Fox Rothschild LLP</td>
<td><a href="mailto:eyukich@foxrothschild.com">eyukich@foxrothschild.com</a></td>
</tr>
<tr>
<td>Benedict Kwon</td>
<td>Co-Chair, Funds Subcommittee</td>
<td>Stradling, Attorneys at Law</td>
<td><a href="mailto:bkwon@sycr.com">bkwon@sycr.com</a></td>
</tr>
<tr>
<td>David Louis</td>
<td>Co-Chair, Funds Subcommittee</td>
<td>Charles Russell Speechlys</td>
<td><a href="mailto:david.louis@crsblaw.com">david.louis@crsblaw.com</a></td>
</tr>
<tr>
<td>Samantha Horn</td>
<td>Co-Chair, International Subcommittee</td>
<td>Stikeman Elliott LLP</td>
<td><a href="mailto:sghorn@stikeman.com">sghorn@stikeman.com</a></td>
</tr>
<tr>
<td>William McIntosh</td>
<td>Co-Chair, International Subcommittee</td>
<td>Brodies LLP</td>
<td><a href="mailto:william.mcintosh@brodies.com">william.mcintosh@brodies.com</a></td>
</tr>
<tr>
<td>Lisa Stark</td>
<td>Co-Chair, Jurisprudence Subcommittee</td>
<td>K&amp;L Gates LLP</td>
<td><a href="mailto:lisa.stark@klgates.com">lisa.stark@klgates.com</a></td>
</tr>
<tr>
<td>David Albin</td>
<td>Chair, Private Equity M&amp;A Joint Subcommittee</td>
<td>Finn, Dixon &amp; Herling LLP</td>
<td><a href="mailto:dalbin@fdh.com">dalbin@fdh.com</a></td>
</tr>
<tr>
<td>Mireille Fontaine</td>
<td>Vice Chair, Private Equity M&amp;A Joint Subcommittee</td>
<td>BCF LLP</td>
<td><a href="mailto:mireille.fontaine@bcf.ca">mireille.fontaine@bcf.ca</a></td>
</tr>
<tr>
<td>Thomas Mullen</td>
<td>Co-Chair, Jurisprudence Subcommittee</td>
<td>Potter Anderson &amp; Corroon LLP</td>
<td><a href="mailto:tmullen@potteranderson.com">tmullen@potteranderson.com</a></td>
</tr>
<tr>
<td>Scott Bleier</td>
<td>Co-Chair, Venture Capital Financing Subcommittee</td>
<td>Morse Barnes-Brown &amp; Pendleton PC</td>
<td><a href="mailto:sbleier@mbbp.com">sbleier@mbbp.com</a></td>
</tr>
<tr>
<td>Joshua Geffon</td>
<td>Co-Chair, Venture Capital Financing Subcommittee</td>
<td>Stradling, Attorneys at Law</td>
<td><a href="mailto:jgeffon@sycr.com">jgeffon@sycr.com</a></td>
</tr>
<tr>
<td>Jonathan Gworek</td>
<td>Chair, Programs Subcommittee &amp; Immediate Past Chair</td>
<td>Morse Barnes-Brown &amp; Pendleton PC</td>
<td><a href="mailto:jgworek@mbbp.com">jgworek@mbbp.com</a></td>
</tr>
<tr>
<td>Jenna Nand</td>
<td>Co-Chair, Membership</td>
<td>Fortuna Law PLLC</td>
<td><a href="mailto:jnand@fortuna-law.com">jnand@fortuna-law.com</a></td>
</tr>
<tr>
<td>Jeffrey Koh</td>
<td>Co-Chair, Membership</td>
<td></td>
<td><a href="mailto:sghorn@stikeman.com">sghorn@stikeman.com</a></td>
</tr>
</tbody>
</table>