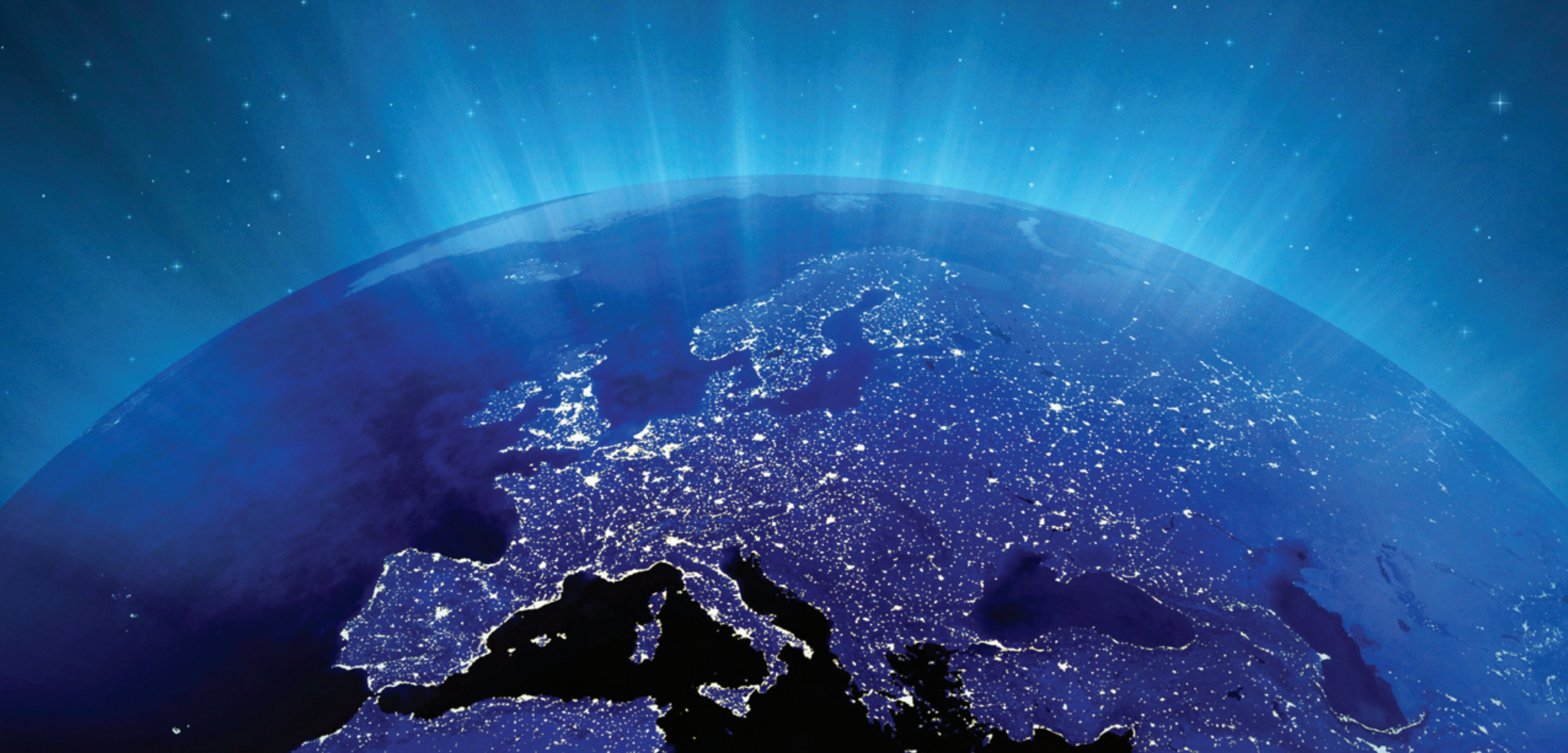
DIRECTORS ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

JEFFREY W. FERGUSON

General Counsel of The Carlyle Group

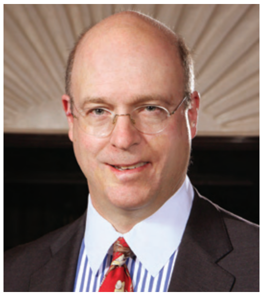


THE SPEAKERS

Jeffrey W. Ferguson
General Counsel & Managing Director of The Carlyle Group

Paul Bird
Partner, Debevoise & Plimpton LLP

Daniel Lennon
Partner, Latham & Watkins LLP



Thomas Bell
Partner, Simpson Thacher & Bartlett LLP

TO THE READER:

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished Guest of Honor's personal accomplishments in his career and his leadership in the profession, we are honoring Jeffrey W. Ferguson, General Counsel of The Carlyle Group. His address will focus on the challenges and opportunities for private equity in the new regulatory and legal environment. The Panelists' additional topics include mergers and acquisitions and investment management.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Directors and their advisors, including General Counsel.

Jack Friedman
Directors Roundtable
Chairman & Moderator

Jeffrey W. Ferguson
General Counsel &
Managing Director of
The Carlyle Group

THE CARLYLE GROUP

Jeffrey W. Ferguson is a Managing Director and serves as General Counsel for The Carlyle Group. He is based in Washington, D.C.

Prior to joining Carlyle, Mr. Ferguson was an Associate with the law firm of Latham & Watkins.

Mr. Ferguson graduated from the University of Virginia, where he was a member of Phi Beta Kappa. He received his law degree also from University of Virginia, and has been a member of the bars of the District of Columbia and Virginia since 1991.

JACK FRIEDMAN: As Chairman of the Directors Roundtable, I have the opportunity to speak with Directors regularly. They are concerned that a corporation today hardly ever gets the positive recognition that it deserves. One corporation we honored was even criticized for giving away free milk powder to children in poor countries. The opportunity to have top management of major companies speak with leaders of the business community is very valuable.

We are very pleased that Jeffrey Ferguson, our Guest of Honor today, is the General Counsel of The Carlyle Group, a renowned private equity firm. The Carlyle Group has outstanding businesspeople, who are professionally and personally active in their communities and government; and play an important role in working to improve society.

We will start with Jeff's opening remarks, followed by individual comments from the Distinguished Panelists: Thomas Bell of Simpson Thacher & Bartlett; Daniel Lennon of Latham & Watkins; and Paul Bird of Debevoise & Plimpton.

There will then be a discussion among the speakers and questions from the audience. The event will be taped and sent out to about 150,000 people globally by electronic publication. An important aspect of this Honor is that the recognition will be projected worldwide.

JEFFREY W. FERGUSON: Thank you, Jack. It is, indeed, an honor and a privilege to be here. I greatly appreciate the invitation, and it's great to see so many friends and colleagues and former colleagues in the audience. So welcome and thank you for coming. Finally, the panel here is very distinguished, and they're some of my closest allies, so I have no reason to worry here – any question, I'm confident they can answer!

I think the topic that went out in the notice was to address opportunities and challenges in the private equity world in the current legal and regulatory environment, and my entire career, essentially, since law school, has been working with The Carlyle Group, either as

outside counsel in a law firm or, since 1999, as In-House Counsel. But everything I know is really Carlyle. It has been really my entire career.

So with that, I'd like to start, for many of you in the audience, with just a brief history about Carlyle, and I think it parallels much of private equity's experience over the last two decades.

I would like to start by reminding everyone that the current Great Recession is the third economic downturn in the U.S. or globally in Carlyle's history. I think history will show that from Carlyle's experience, each economic downturn in the past has resulted in some transformations of Carlyle's business and private equity's business that caused private equity and Carlyle to be stronger than before. I would predict that this economic downturn will result in the same consequence, that Carlyle and private equity will in many ways transform itself and come out stronger than before the Great Recession of 2008/2009 and '10, '11 and '12 – or however long it goes on.

But just back to the history: Carlyle was formed in 1987, when I was still in law school. My introduction to Carlyle was really as a summer associate in a law firm where the founders were subletting office space. The people who started Carlyle had become weary of their existing jobs in the world and decided they wanted to do something on their own. The law firm had some extra space, so they sublet it to the gentlemen who became the founders of Carlyle.

My first assignment in 1989 was with these guys who at that time had named their new firm "The Washington Company," which was conducting business as a merchant bank. They were an intermediary; they were providing services for fees, consulting with people. They were basically setting up transactions where Alaska native companies could sell tax losses to profitable companies. Working on those transactions was the beginning of my legal career and my association with Carlyle, or the firm that became Carlyle. Let me assure you, those transactions were perfectly legitimate; they were expressly authorized by statute enacted by Congress, so there was nothing improper. Those transactions were effective as a means to give reparations to the Alaskan natives.

In the early days, seed money was provided to Carlyle as a startup organization by four banks or groups; the Mellon family provided some of the seed capital; Alex Brown and T. Rowe Price; and a bank in California called First Interstate Bank.

After a year, three of those investors in Carlyle decided they did not really like the business model, because Carlyle was raising money deal-by-deal from many of their customers and clients. At a very cheap price, three of the four sold out their interests to the founders of

Carlyle and to the Mellon family. That was a big mistake on their part, because the Mellon family has profited quite handsomely from their original investment in Carlyle, and for that, we're always thankful. They've been a great partner for us.

But back in 1990, to get to the business that Carlyle was in, was at that time very different than today. Carlyle was raising money deal-by-deal. They would consider engaging in hostile transactions, to acquire toehold interests in companies; it would be financed with junk bonds; maybe 5 or 10% would be provided with equity infusions from Carlyle or the investors, they would raise money deal-by-deal. In the midst of that, the first recession hit Carlyle in 1990 or 1991. One consequence of the first recession was really that Carlyle ceased working in the consulting business for fees, and instead they began focusing on investment opportunities. Prices had fallen during the recession, so it was a good buying opportunity, and they raised their first fund – a little buy-out fund here in the U.S. – it had a hundred million dollars, which was a huge success back in that time. They were quite successful with that first fund.

The real transformation that happened as a result of that first recession was the idea that Carlyle could form an investment partnership, an investment fund, and that they could acquire larger interests in companies and maybe even controlling interests in companies, instead of merely toehold positions that they had originally started out doing.

They abandoned the idea of hostile transactions, and started working on friendly transactions, cooperating with the management team of the intended target. They diversified, and acquired companies in different industries. They used more moderate amounts of leverage than they did before the first economic downturn.

Later in the few years after the recession of 1991, they became serious about being investors. We registered as an investment advisor in 1996 with the U.S. Securities & Exchange Commission. At the end of the decade, Carlyle diversified and became global. We opened offices in London, in Paris, in Munich, across the United States, in New York and San Francisco. We started a European buy-out fund in the late '90s. We also, at the very end of the decade, began forming venture funds in the U.S. and in Europe, as well as real estate funds.

So rising out of the first economic downturn at the beginning of the '90s, Carlyle expanded, made good investments when prices were low, made some profits, and became a global firm.

One innovation that Carlyle brought to the private equity industry was the creation of multiple separate funds around the world that would be managed by Carlyle investment teams resident in the local jurisdictions, instead of asking investment professionals in the U.S. to source and consummate investment transactions in foreign countries. So hiring a deal team in London, in France, or in Germany was innovative for private equity firms back in the '90s.

The culmination of the global growth was that CalPERS invested in Carlyle in late 2000 or early 2001. Corresponding with that, I had recently joined the firm as the first in-house lawyer. I was the only lawyer for a while, and we hired our second lawyer shortly before CalPERS invested.

We were at that time beginning to think of Carlyle as a cohesive operating business. Towards the end of the '90s, Carlyle itself became a business that required management. When I was hired, part of my job was to help in operating the company and to help in managing the internal global investment advisory business that Carlyle had become, so the investment professionals could focus on investment opportunities around the world.

Then came the dot-com bubble and an economic downturn. That really wasn't economically very significant except for venture capital funds. But that economic downturn corresponded in some ways with 9/11, and there was a lot of economic turmoil in the world. A transformation followed. For Carlyle, the real transformation was that we continued, with the capital infusion by CalPERS, to expand

rapidly to other parts of the world. We hired numerous professionals and opened funds in Asia – buy-out funds, venture funds, real estate funds. The economic turmoil created good investment opportunities arising from the recession. You could buy companies at a very low price, and our investors made very high returns from those investments. The success of these recession-period investments really generated massive growth at Carlyle, increasing complexity in many ways. It created a golden era, at that time, for private equity. Carlyle and private equity were raising numerous funds; in any given year, we were raising maybe 10 to 15 investment funds at a time. We were buying companies, financing them with covenant-lite financing packages, generating large profits, distributing lots of cash to investors. Everyone was happy from 2003 to 2007.

The economic downturn, however, made Carlyle realize that we had to become serious investors. We moved away from associations with certain political figures. We hired Lou Gerstner, who is a very gifted man and deserves all the credit he gets. We became serious investors, very professional investors. We created compliance programs and best practices policies. We followed them, thankfully!

After the recession, the dot-com bubble and so forth, deal sizes became huge. Club deals came in vogue. We had to pool capital with other private equity firms to have sufficient capital for public-to-private transactions. The complexity and diversification in product growth simply mushroomed from 2003 to 2007.

Somewhere along that time period, due to growth outside the U.S. – more than half of all of our employees were outside of the United States instead of inside the United States – Carlyle was truly a global organization.

Of course, that attracted a lot of scrutiny from governments, tax authorities, unions and so forth which really drove a lot of my work at the time. That's the time period when Carlyle became more serious about developing infrastructure. We hired several more lawyers, and we also began to experience litigation for the first time. It wasn't really significant litigation at the time; it was simply the fact that we had become a deep pocket, and we were named as defendants in litigation where we should not have been named.

Carlyle realized during this time period that in addition to all the portfolio companies we needed to supervise, Carlyle itself was a big, global business, and we needed to focus on improving the management of ourselves as a company. My role, and that of the lawyers that work with me, is heavily involved in operating and managing the business that is Carlyle; so the deal guys could focus more on investment opportunities.

In 2007, Mubadala Development Company, which is an investment branch of Abu Dhabi, made an investment alongside CalPERS in Carlyle. They have been a great partner. I have been overwhelmed with their sophistication and strategic thinking.

Unfortunately, shortly after that, the Great Recession hit and when the Great Recession hit, fundraising simply stopped. Deal flow dried up; financing dried up. Litigation has mushroomed over the last couple of years, and of course, there are myriad new regulatory and legislative proposals.

So where is Carlyle now? Carlyle now is a full-service alternative investment firm. We have 64 funds around the world, 86 billion of capital committed to our funds. We have about $30 billion dollars in dry powder waiting to be invested. We've invested $56 billion or so of capital in 920 corporate and real estate investments around the world. More than half of those are outside of the United States. We have 879 employees around the world; more than half of those are outside of the United States. We have 28 offices in 18 countries. We have 1,300 investors in 72 countries, and we have a very good track record.

We have seven lawyers at Carlyle, working in-house. They're all all-purpose generalist lawyers, and each of us does a little bit of everything around the world, as you can imagine. We endeavor to please investors in 72 countries and develop suitable cross-border investment structures for them. We have 64 funds and numerous fund investment professional teams around the world – and by the way, our investment professionals are generally CEO-quality alpha types. One interesting thing about working for Carlyle, I think, is that our clients are a lot smarter than the lawyers working for them in many ways. Several of our deal guys might have Ph.D.s in aerospace engineering, and while they were getting that degree at MIT, they happened to get also a law degree at Harvard. So they are not the easiest group of people to advise and it is a fun and interesting challenge to work with such talented investment professionals.

In addition to the lawyers, we have four compliance personnel; they all report to me. Compliance in recent years has become a key and critical issue. Everyone has heard in the news about insider trading issues affecting hedge funds and some law firms. We are very serious about those issues and I thank our compliance people for ensuring that we're on top of all of those issues.

We have one of the most talented tax functions in private equity. I'm a former tax lawyer. Our tax function also reports to me, and I'm not going to mention the name of the person who does all the work, because I'm afraid you would want to hire her – she's really that good. But we have one of the most talented tax functions in all of private equity, and she's sitting back there at the back of the room, if you want to meet her. But you can't hire her!

There is enormous complexity at Carlyle. I think we do embrace the complexity. In today's world, you have to live with complexity to survive.

We are geographically diverse. We have investments in multiple industries. We have investment teams that are specialists in those industries. We have a very diversified group of investment products for investors, and we have deal teams around the world who have a lot of autonomy, because a lot of decision-making authority at Carlyle is very dispersed. It is a vibrant and challenging place to be a lawyer.

So that's a quick overview of the background and the history of Carlyle. Now to get onto the topic that we were intending to discuss, and to engage our talented panel today: what are the challenges and opportunities for private equity in the current legal and regulatory environment? I really interpret that question today to be, "What is the likely transformation that Carlyle and private equity will experience *after* the Great Recession of 2008/2009?" To begin that discussion, question number one is, "Well, what *is* the current legal and regulatory environment?"

When I think of the current legal and regulatory environment, I remember the Madoff situation. As a result of that, we have regulators that are being ultra-strict in their charges. We have proposed legislation directed at private equity, proposals on the Hill now that all private equity firms and hedge fund sponsors register as investment advisors. That won't affect Carlyle, really, because we've been registered as an investment advisor for 13 years.

There is also, in Europe, the AIFM directive – the "EU directive" we call it – a very complicated set of proposals that are designed to regulate private equity and hedge funds, requiring greater transparency, greater disclosure of information that has never been disclosed before, and relationships between the sponsors and the investors and their portfolio companies that are, in many ways, unnatural. So everyone is focused, these days, on the EU directive and the harmful consequences that might flow from that.

> "My role, and that of the lawyers that work with me, is heavily involved in operating and managing the business that is Carlyle; so the deal guys could focus more on investment opportunities." — *Jeffrey W. Ferguson*

Congress is seeking to tax carried interest for private equity firms as ordinary income instead of flow-through capital gain. There is other legislation, not really specifically directed at private equity, but generally legislation targeting health care reform, labor reform. That will have an effect on private equity, because it will affect our portfolio companies. It may create opportunities. All of that legislation will create new businesses that might be great investment opportunities for us. There are bankruptcies. There are class actions. There are many foreign countries desperate for revenue; as everyone may have seen in the newspaper, Australia is seeking to tax a large gain realized by TPG on a large Australian investment. That's piqued everyone's interest; all of our lawyers are monitoring those types of issues.

The potential, possible transformations for Carlyle and private equity after the Great Recession – the first, I would say, is fundraising. There has not been much fundraising recently. Investors may not have the capital to invest. You've read in the newspaper that foundations and state pension plans have suffered massive losses. The state pension plans have gotten together and produced a set of investor principles we refer to in our industry as the "ILPA principles," which set forth their view of suitable terms of the private equity partnerships in which they invest. The ILPA principles essentially propose very significant changes in the economic terms of PE funds, as well as numerous changes in governance rights and information rights. We are grappling with attempts by our investor base to redefine the relationship between the investors and the private equity sponsor.

What is the opportunity that might come of that? Well, I suspect that we will end up negotiating a good deal with our investors going forward. As a result of such negotiation, I think the relationship between the sponsor like Carlyle and its investors will be strengthened. There will be more trust, and the relationship might be stronger going forward. It could enhance our competitive position.

We may also attract new investors that have new ideas and new interests. It could be an innovative time to create new products, if we negotiate a good deal with our investors. Separately managed accounts may rise in number to supplement opportunities to invest in pooled capital investment funds.

The second area of transformation for Carlyle and private equity, I believe, will be in transparency. It's obvious that investors and other people want to know much more about Carlyle. There's greater scrutiny by investors, by government regulators, by tax authorities. The opportunity here is to reveal more information about what we really do. I think transparency will create a greater sense of trust, and it will help people understand the potential value creation that can be a part of private equity. We might need a new name, I'm not sure we will be private equity anymore. We will have to come up with a snappy moniker.

Another area of transformation that we might predict is in the area of deal-making. Right now there's no financing, there are not many deals going on – although in the third quarter of 2009 new opportunities for investments are arising. What is the opportunity here? We will look to our outside lawyers to be responsible for developing innovative deal structures going forward, and innovative deal terms. I suspect that reverse breakup fees and MAC clauses will probably change a little bit going forward.

From Carlyle's perspective, instead of using leverage and doing financial engineering, we will be forced to find value with the strength of our operational expertise. In that regard, we are hiring, every day, people with business operation and industry expertise. Going forward, I think that will be a mantra for private equity firms, which will be to strengthen the core operations of a business with the expertise we can bring.

We may also find, in a world with less financing available, that private equity firms increasingly acquire minority interest instead of controlling interest.

Finally, the area for transformation for private equity is complexity. It's unavoidable, and we must embrace it. I think Carlyle has done that in its entire history. The challenges are to build a good infrastructure to embrace complexity. I think Carlyle is perhaps not unique, but a leader in terms of having that type of infrastructure. But we will need, going forward, very strong business and legal risk assessment functions.

The opportunity, I think, is obvious. If you can embrace complexity, you will have a competitive advantage against other people bidding for investment opportunities. So embracing complexity, I think, will be a transformation that arises from the Great Recession.

Sorry I've continued on so long. Why don't I turn it over to some other folks on the panel who are true experts and will have great insights.

JACK FRIEDMAN: Jeff, let me thank you very much for this clearer picture of The Carlyle Group.

I just wanted to spend one moment before we go to the next speaker. What do you do with outside law firms? You have your inside staff and you work with law firms all over the world.

JEFFREY W. FERGUSON: Unfortunately!

JACK FRIEDMAN: These three law firms on the Panel here are really all he needs!

JEFFREY W. FERGUSON: Well, Carlyle is truly a global organization. At last count, we used 39 law firms around the world. Almost every aspect of our business is very heavily lawyered. We used Simpson Thacher and Debevoise and a few other firms, primarily to raise funds. The process of raising a private equity fund is a long negotiation with sophisticated institutional investors. That process, to form and raise one fund, will take 12 to 18 months easily, sometimes longer. To create a structure that satisfies institutional investors in 72 different countries that all have their own different tax issues and other regulatory issues and various contractual restrictions, it is complex – the process of fundraising is really an amazing transactional process. When you step back, it's amazing that you can accomplish one transaction and bring 50 or more – sometimes hundreds of investors – into a single negotiated transaction, and Tom Bell at Simpson Thacher is a master at doing that. So fund formation is one function that we use law firms for, to a great extent.

Paul Bird and Dan Lennon at Debevoise and Latham & Watkins, we engage them primarily to do mergers and acquisition work. They are the people negotiating the acquisition and disposition of our deals. Both Latham and Debevoise also do M&A work for us outside of the United States, but inevitably, we use a number of European firms and Asian firms to do M&A work, as well.

Finally, we use a series of firms to work on various regulatory issues. In different parts of the world, there are various regulatory issues that we face. I think Carlyle has 15 or 16 separate investment advisors around the world. Each of them is subject to different types of regulatory obligations in different parts of the world. So we have regulatory lawyers helping to advise us there.

We have numerous firms – six or seven firms – working on litigation matters for us now. We are very heavy utilizers of legal services.

THOMAS BELL: It's more like, what *don't* you use.

JEFFREY W. FERGUSON: Yes. I haven't come across a tax-exempt bond lawyer recently at Carlyle's place of business, and there might be a few others. But we use lawyers across all spectrums very heavily.

JACK FRIEDMAN: Thank you very much. I'd like to have Tom introduce himself.

THOMAS BELL: As Jeff indicated, my perspective on today's panel is from a fund formation point of view, that's the practice of our law firm that I head up, and that's sort of the perspective that I'll address as today's topic. Let me first start by thanking Jack for inviting me to be on this panel, and say what a real pleasure it is to be here, to see my good friend and client, Jeff, honored. So, thank you.

Well, let's start with two charts I have here on private equity fundraising totals over the past five years by quarter. You're not going to be able to read the nitty gritty numbers here; but you don't need to. The bar graphs, even from a distance, will show the major point. This chart is for global private equity fundraising, and this other chart is for global real estate fundraising, and those are the two major categories of fundraising out there where they keep industry data statistics. Both of them show that fundraising totals, beginning in the third quarter of 2008 with the collapse of Lehman and the other events of September 2008 – they really just collapsed, really just fell off the charts. So just looking at quarterly numbers, declines in the neighborhood of over 90% in real estate funds, and north of 75% declines in the case of private equity funds occurred.

Predictably, that has resulted in an enormous imbalance between supply and demand forces in the marketplace, and as you'd suspect, that has resulted in significant pressure on readjusting the pricing of the terms of these funds, broadly considered. So LPs are focused not just on the straightforward economics of a fund – what's its management fee, what's the carry formula, what's the management fee offset, etc. – but they're also focused on non-economic

terms, and those are getting under significant pressure to get repriced.

Jeff mentioned that there is a document that's been put out by the Institutional Limited Partners Association, or ILPA; it's called "Private Equity Principles." It purports to be a set of "best practices" guidelines for the terms of private equity partnerships. Unfortunately, there's no truth in advertising laws applicable to these sorts of publications.

I get asked a lot what I think of those guidelines and what I think their impact is. For me, I'd summarize it by saying I regard them as more a symptom rather than a causal factor. The issues that they put forward there, and the proposals they make, are ones that have been around for quite some time. They are not at all unique to the current cycle, but rather reflect a long-time effort on the part of LPs, which until the current environment has been largely unsuccessful, to change the basic deal on a number of fronts in private equity funds and similar types of funds.

I think that some aspects of the private equity funds will change. I think that, in general, offsets will go up. I wouldn't be surprised if they ultimately end up somewhere pretty close to 100%. I think, in general, the terms of GP clawbacks will change in a way which places LPs less at risk of being left holding the bag on clawbacks. I think there will be a lot more transparency about what private equity firms are doing with their portfolios and investments. I think there will be much more detailed and rigorous analytical reporting. I think that the governance provisions of these funds, especially when a crisis arises, will change in a way which gives the LPs more leverage in terms of resolving those situations.

The net effect of all of that, I think, is going to be that both from a revenue and a cost point of view for private equity firms, margins will be compressed and the business will be, at the margin, less profitable going forward. It's been an enormously profitable business. But I think that the pressure on profit margins will spur a trend that's already been underway for some time, of consolidation of assets under management, at those few firms that are able to, in the face of these pressures, be successful with their business model, both in terms of fundraising and in terms of making successful investments, and in terms of being able to deal with the increased complexity and cost burden arising from greater regulatory and reporting demands.

There's a debate going on within the LP community about whether investors should be focused more on the global institutionalized firms, like Carlyle, or should they be more focused on those remaining boutiques out there who stick to their knitting, who are very focused on being successful at a single strategy or a single part of the world.

I think that there is a role for *both* models, both the institutional and the boutique, going forward. But I do think, over time, that there will be a growing advantage for the global institutionalized platform.

The private equity business, as Jeff described in his own example of Carlyle's early evolution started out as a small business, a kind of Tom, Dick and Harry type of business; just a handful of guys doing deals and really no infrastructure around them, and that's changed dramatically. I think that it's become, surprisingly for many people, a capital-intensive business. It's become a business that if you want to take your business to the next level, requires significant working capital to finance expansion of your platform. For example, when you go out to raise a new type of fund, you typically have to first hire a management team for that strategy, and then raise the fund, rather than doing the reverse. So you can face a fundraising period of upwards of a year or more while you've got the overhead of those professionals in their offices that aren't generating any revenue, because they have no capital to manage. That's significant and in far-flung places in the world can amount to millions of dollars in one year.

The whole administration, reporting and compliance burden, both for regulatory reasons, as Jeff described, and in terms of just investor demands, with the variety of investors coming from all around the world and each having their own set of reporting issues that they want addressed, creates a huge burden on a firm, that boutiques really struggle to deal with.

Just to give you, again, another detail as an illustration, there's a practice called "side letters" with these funds. A typical large fund will have at least one hundred to two hundred investors, probably 50% of which will have a side letter that will address the unique issues, the distinctive or special issues, that each investor has with respect to the fund. Just the side letters alone are the size of a phone book. Add onto that a hundred-plus-page partnership agreement, and you really have a "stop-a-speeding-bullet" set of documents that the firm has to live with on an ongoing basis, and clients are continually surprised about how large a challenge it is from a compliance perspective.

Another economy of scale and barrier to entering the business is the capital needed by a private equity firm to invest in its funds. If you look at the high end of the business, and there are a number of firms that are in this size range, you have firms with $80 or $90 or $100 billion of capital under management. Now, it's a commercial term in the marketplace that investors demand that there is a percentage of the capital in each investment that has to be contributed by the firm and its employees. That market term is, right now, around two or three percent on average, and that number's going up. It's going up because investors are convinced that the best way to police the conflicts inherent in the business is by requiring the firms to have more skin in the game.

> "There is enormous complexity at Carlyle. I think we do embrace the complexity. In today's world, you have to live with complexity to survive." — *Jeffrey W. Ferguson*

Well, on a $90 billion portfolio, 3% is close to $3 billion! That's a *huge* nut for a group of professionals to be able to provide and tie up in illiquid assets. So, what you are seeing is most of the major firms are taking one or two steps in response. One step is to sell a significant minority stake to an outside strategic investor. Jeff described the CalPERS transaction and the Mubadala capital raising transactions that Carlyle has entered into. Earlier this week, Apax announced it sold a major stake of itself (at quite an impressive valuation, given the economic cycle) to CIC, the China sovereign wealth fund. Blackstone, before it went public, sold stakes first to a Japanese bank and then to AIG, and Silver Lake sold a stake in itself to CalPERS. I think you're going to see more and more of these strategic minority transactions because these private equity firms, as they grow and develop, need capital. They need capital for the investments in their funds and they need working capital for growing their platforms.

The other step I think private equity firms might take is deciding to go public, as Blackstone, Apollo, Fortress, Oaktree and others have done. There's an active debate in the private equity community, both on the LP side, as well as with private equity firms themselves about whether that's a good thing or a bad thing. I think there are genuine arguments on both sides of that issue, but I see more and more clients and firms concluding that on balance, the advantages of having access to the public capital markets, and being able to use publicly traded stock in an acquisition currency – as illustrated when Blackstone acquired GSO – create significant competitive advantages that outweigh the disadvantages.

So, those are the remarks I'm going to offer up for the moment, and we can pursue those topics further, later.

JACK FRIEDMAN: Let me ask a question. What qualifies an individual to invest under the current laws?

THOMAS BELL: Well, that varies from jurisdiction to jurisdiction. But the typical standard in the United States is that somebody has to be an accredited investor and a qualified purchaser. If you have a million dollars' net worth including assets like your residence, under current law, you're an accredited investor. If you have $5 million or more of investment assets, excluding non-investment assets like your home, you're a qualified purchaser. The vast majority of funds raising large amounts of money, are qualified purchaser funds.

I would say that for our clients, those suitability standards are not a practical issue, because, unless somebody's a friend of the family or some Hollywood star you want to make nice to or something like that, nobody's going to accept a commitment for less than a million dollars, and the only people who are going to be able to make a commitment like that are the people who are well enough off to meet the relevant thresholds.

So it's quite unusual to have an investor that wants to go into one of these funds and that the sponsor can't, in one way or another, be able to take in because of legal restrictions on suitability.

JACK FRIEDMAN: I'd like to have our next two distinguished speakers from Latham and Debevoise introduce themselves. They are going to speak together about the M&A world.

DANIEL LENNON: Good morning. I'm Dan Lennon from Latham, as Jack mentioned, and Paul and I will share some thoughts about M&A from the private equity perspective.

But before we do that, Jack mentioned at the beginning that his organization is limited in talking about the many accomplishments of the panelists, but the three panelists here aren't so limited with respect to Jeff. I've been working with Carlyle, as have Tom and Paul, for a good, long time, and wanted to say, this is a very well-earned award. Much of the growth and success of Carlyle is attributable to their fantastic General Counsel, who probably knows more about the core business of private equity than anyone. So Jeff, if we had wine here as we usually do, we would toast you, but congratulations!

Since we're speaking together, I'll introduce Paul, M&A partner from Debevoise & Plimpton, one of the nation's leading M&A lawyers. So we will talk a bit about a few of the M&A issues we see going forward in this new market.

I think that, as Jeff said, it's going to be a time of a lot of opportunity for private equity, but also some challenges. I think during the so-called LBO boom of 2005–2007, we got used to seeing a lot of similar deals – large-take privates with common deal terms that looked a lot alike, and we think that's going away in the coming market.

What we expect to see is private equity transactions that have less leverage. There's more expensive financing, so the deals will look different. There will be a lot of more special situations, distressed investing, more private deals and less big, public-take private deals that you've been reading about.

So we think that's going to really drive a large variation in deal terms, much larger than we saw in 2005–2007.

One area where we will see that and a good example is deal certainty. We've all read, and maybe saw some cartoons in the paper, about reverse breakup fees as financing conditions that were things we spoke a lot about in the LBO boom. Those things were driven by market occurrences that the historic perspective is: back in pre-2005 private equity firms who did LBOs relied on debt to acquire businesses. You really had conditional deals, conditional on closing; the closing was conditioned on obtaining the debt financing they needed to get their transactions done.

That changed in 2005, 2006, 2007, as bank finance became less conditional, and really more attractive and more flexible.

What's going to happen? There's a lot of commentary. Will those terms change as a result of the experience of the deals we've read about in 2007–2008, where there was litigation; some deals were terminated; some deals were withdrawn. A lot of people have been predicting that financing, as a result, will be much more conditional, but on the other hand, sellers will demand private equity firms expose themselves to a much more significant risk, and take all the risk related to financing.

I think the commentators would probably be a bit wrong. I think what we're seeing in the markets today, as financing re-emerges, financing looks less conditional than the pre-2005 period, which has a lot more risk involved. Very broad market flex terms and the ability for financing sources to change the actual costs of the financing for the private equity sponsors will play into how the discussions and negotiations go over, you know, financing conditions, reverse breakup fees and other types of remedies that buyers might have against a private equity buyer if there's not a closing.

I also think that you'll see, as Jeff mentioned before, a lot of emphasis placed on deal creativity. These deals are not going to be the same, and we're going to have to use some of the old tools we all saw earlier in the decade to get deals done. Burnouts used to bridge gaps between buyers and sellers. We also often see what's called "seller paper," that a seller has taken back from a private equity buyer to help finance the deal. There's been more of that in the last year, and we'll continue to see that. I think we'll see a lot of, instead of the classic large so-called "club deals" and private equity firms getting together to buy a large public company, we'll see probably less of that and more of the type of transaction that was much more common, again, in the late '90s, early part of this decade. Joint venture transactions between private equity and strategic buyers, companies that might want to make an investment, and a business would need financing from a private equity buyer. They don't want to put that financing on their balance sheet, so the private equity buyers and those strategic businesses team up to buy an asset that really benefits both the strategic company that's helping finance the deal, as well as the private equity buyer. Distressed debt deals out of bankruptcy will also be very prevalent, we think, over the next year or two, as they have in the last year.

PAUL BIRD: My name is Paul Bird, and I'm the co-head of the M&A group at Debevoise. I've been working with private equity firms since I was a summer associate, about 23-some-odd years ago. So I've lived through each of the boom years and the downturns that Jeff was describing.

I'd just like to second Dan and Tom's recognition of Jeff as a client and as a senior counsel and senior executive in his very fine firm. It's working with the kinds of companies that Carlyle is, and the kinds of companies that they buy, and the kinds of deals that they work on, which lends a lot of spice to our lives as lawyers and keeps us pretty busy.

I'd like to maybe assess the current situation and what we've been through in the past couple of years by thinking about what one of my least favorite parts of any deal negotiation had historically been. Which was when, after some 72 hours of going around the clock with clients and jousting with the other side to complete a transaction and get the documents all just right, the principals, after some kind of contentious negotiation, would look each other in the eye and say, "Well, look, fine. We've got this contract now, but you know that we're just going to put it in the bottom drawer tomorrow and never look at it again." I always had a sinking feeling for me and my team, as the lawyers, that our baby was not going to see the light of day in the future.

Well, that all changed. Probably one of the biggest lessons that we learned coming out of what we call the 2005 to summer of 2007, the high-water mark for deal activity, and some people call the "deal frenzy," what we learned is that what the lawyers do on these transactions for their clients really *does* matter, and any of us who were involved in negotiating deals during 2007 often have the somewhat sobering experience within one or two days, in some cases, of a contract being signed, of people wanting to know exactly what it meant. What were their obligations to get financing? What were the bank's obligations to help them get financing? Did the buyer have a right to invoke a condition that would help them not close the deal? Did the seller have a right to specifically enforce the contract?

Many of the contract terms that Dan was just referring to came under unprecedented scrutiny in a series of litigations involving private equity firms, principally on the buy side, and corporate and sometimes private equity firms on the sell side, to determine just who had what obligation under these hundred-page documents. We're going to talk a little bit about how some of those decisions affect today's current practice, but I think what that means for us, on this side of the table as deal lawyers, is that we go back to basics a bit. By "back to basics," I mean a recognition by clients and by the lawyers who serve them that the process of putting a deal together is one that is difficult. It may take time. It takes a considerable amount of preparation and expertise. It's typically not done overnight or over a weekend. So that's what I mean by 2009 and forward, a return to basics of deal lawyering.

I think in terms of the market landscape, we see our private equity firm clients embracing all kinds of complexity in what we think of as a new buyout model. It's not just about buying a company and gaining control over it anymore. There are too many factors out there influencing how deals are made available to the private equity community for firms to be able to come in and just buy 100% of a company or buy an outright controlling stake. We are seeing, and have seen in the beginning of '07, but carrying right through the '08 and into '09 period, all kinds of minority-style investments. Sometimes in public companies, the private investments in public equities known as "pipes," those deals were prolific during a period of time when the financial institutions across the country required capital, and private equity stepped up in a very significant way to negotiate private investments in public companies. These are privately negotiated transactions involving very significant equity checks to provide them with additional capital. We're seeing, I think, a new wave of those on the horizon right now. Shared control transactions, shared control has become a new mantra of the private equity world where you have either families or you have corporates with a need to sell in the current environment with a recognition that pricing values have dropped, with the recognition that asset values simply have not recovered and are not likely to recover for some immediate period of time. These kinds of sellers are very reluctant to sell the whole business. Many of the deals that we're looking at, and have actually signed up and completed in the second half of this year, have exactly those characteristics: a corporate seller that wants schmuck insurance, but in a big way. They don't want just a 10% piece of it, they want more than a 10% stake. They're

not using a continuing equity interest in the company for sale as a way to breach a valuation gap necessarily. They are more interested in preserving some of the value that they know is in a business, that they know their shareholders may want them to divest, but that they nonetheless feel contains considerable upside in a period of time when asset values are at an historic low. We're seeing families facing the same kind of issue as we, in this country, are now getting into the third and fourth and sometimes fifth generation of families that have very significant corporate holdings. We are observing clients negotiating with these kinds of asset owners in a way that also is resulting in a reluctance to part with the entire business, but a recognition that gaining liquidity for certain parts of the family, certain branches of the family, certain generations of the family, is an imperative that will drive some deal-making.

As Dan said, when we think of traditional buyouts, they are smaller now – I think this year, in '09, there have only been a handful of deals – and by "smaller," I mean they are considerably smaller than the mega-deals that we saw during the boom period. I think the largest deal so far is just under $6 billion, and there have only been a handful of transactions between one and five. Equity checks are considerably larger as a percentage of the purchase price. For many of us, and I'm sure many of the people in this audience, it was typical for a period of time to have a private equity firm writing an equity check that only represented 15, 20, 25% of the overall purchase price, the enterprise value of the company. We've seen very few deals that haven't had, this year and starting last year, closer to 50% of the purchase price funded by equity. Some have had 100% of the purchase price funded by equity. So there is quite a radical change in the model that Jeff's colleagues are forced to apply to the investments that they're looking at.

What does that mean? I think it means for private equity firms, in terms of how they will make money, they too, will return to basics. I think that the ability of private equity firms to operate the kinds of companies that they are buying better by making the kinds of changes more quickly and the kinds of investments more quickly than a corporate management might be able to make, is going to be one of the driving factors that separates the firms that will make good deals during this period of downturn in the economy from those that don't.

DANIEL LENNON: I think that you could expect private equity firms to expand, go beyond the traditional model that we've seen. The private equity firms, for their investments, look for a business that's been sure, with an excellent management team, and use debt, hopefully attractively financed, to help improve their returns, as well as making improvements themselves in the business.

While that, obviously, will continue, given the state of the debt market and, frankly, the increased competition in the private equity business that's occurred in the last 10 years, you'll see firms looking to new areas and applying new approaches. For instance, private equity firms will typically say a great management team and a stable team is critical. But you'll see, in order to generate the same returns, looking at businesses such as, in bankruptcy – if you've ever worked on a matter relating to these businesses, free-fall bankruptcy is a downward spiral; management often leaves, and because of the stigma of bankruptcy, it's not a *classic* place for a private equity firm to make an investment. But in order to generate the same returns with less debt, they will look at these deals, and there will be a different set of risks and benefits there.

> "I think transparency will create a greater sense of trust, and it will help people understand the potential value creation that can be a part of private equity."
> *— Jeffrey W. Ferguson*

I think you'll also see, as you have seen at Carlyle and other firms, just an increased focus on industry specialization and doing deals with team members that have very, very deep expertise. You'll see, at a firm like Carlyle and their main competitors, as opposed to a generalist approach, a much more industry-specific approach going forward. You'll see obviously, the deals will look very different, industry to industry, over the next several years.

THOMAS BELL: I think another gating constraint on transaction activity rising to the extraordinary levels we saw in '05–'07, is that investors will impose – much more than they've been able to in the past – limitations on how much capital can be deployed by a fund in any given year. I think there's definitely a perspective among investors that one of the main contributing factors to the terrible performance of recent vintage funds was that they just jumped in with too much capital into one particular phase of the cycle that turned out to be the top of the market, and GPs have to be kind of forced to paternalistically prevent themselves from doing that. So you may be able to raise a $15 billion fund, but you're not going to be able to put out more than, pick a number, $3 billion, in any given year.

PAUL BIRD: That's an interesting observation, Tom, because one of the items I was going to comment on is in terms of what explained the levels of activity that we had during the '05 to '07 period, and what explains what you might call the new conservatism or even humility of the deal-making in the world today. Well, I think it all turns on the same basic need, and that is financing. When financing – whether it's equity financing or debt financing – is plentiful and inexpensive, and there are many providers, that is fuel for a deal-making environment. And it breeds a certain competitiveness as well, not only among the banks that are trying to provide the financing for these deals and earn their livelihood by doing so, but also by the private equity firms.

Remember in the '05 to '07 period, we had a high-water mark in terms both of numbers of firms out there doing deals, as well as the size of the funds that were doing deals. I don't have the numbers – probably Jeff and Tom have them much better – but when most of us started out, a billion-dollar private equity fund was really the top of the market. There were very few of them. Now, there are probably a dozen or so firms in the $10 to $20 billion range, and they're not only in the U.S., and they're not only in New York; they're in Chicago, they're in California; they're all across the country, and they're also in Europe and Asia, as well. We just completed a transaction on the sell side for a financial institution in Taiwan, and the principal driver behind that deal was a private equity firm, a Hong Kong-based private equity firm.

THOMAS BELL: Yes, let me just chime in on that. The largest fund that anyone raised this year was for Hellman & Friedman. They're based in San Francisco, and they raised about $9 billion this year.

JACK FRIEDMAN: I'm from Los Angeles and I'm glad to hear that someone is propping up our economy.

DANIEL LENNON: Well, it's interesting. As Paul says, in 2007, we were in a situation where the financing sources were offering private equity firms even more financing than they would take for particular deals; and you went to an environment over the last year or so, where there's no financing, period, available, until recently. But I also think that there's a misunderstanding. Many people look at private equity and the boom, and they say the deals that were done at the time are troubled – the interesting thing about what happened is the financing was so attractive, that there will be some trouble deals, but the flexibility in the financing will avoid problems for many of the more solid deals done – and Tom rightly predicts that terms are going to get tougher in this, continue to be tougher for private equity firms and their funds in this market – but at the same time, I think you'll also likely see, in the alternative asset class, an important class for major institutional investors, private equity perhaps performing better than some of the other alternative investors like hedge funds that have, in some cases, less favorable structures.

So there will definitely be pressure on private equity fund terms when they're raising investments over the next several years, but there's a lot of reasons to believe there could be a turn up in that as a result of – although performance might be down on an absolute basis, historically, for private equity firms, they likely will be stronger than some of the other alternative asset investments available.

JEFFREY W. FERGUSON: When you look at what the effect is of some of the looser financing terms that were available during the boom period, many companies have avoided restructuring today primarily because of the kinds of terms that could be negotiated during the boom period. I'm talking about the lack of financial covenants, the much-maligned covenant-lite financing packages that were put together. That covenant-lite financing package is making it possible for some companies, and has made it possible for some companies, to weather this very substantial economic downturn and position themselves to still exist and still be employing their employees when the market turns up. The same thing is true for the much-maligned pick-toggle feature on some of the bonds that were issued to finance these deals. That's a feature that allows a company, rather than paying cash interest on their debt, to hit the toggle switch and have the debt accrue rather than be a drain on the company's cash resources. Many companies have actually hit that toggle switch, and that, also, is helping them survive this downturn.

DANIEL LENNON: That's one of the reasons I think we'll continue to see more distressed bankruptcy, not because at the end of the last year, the beginning of this year, our bankruptcy professionals and our restructuring professionals were telling us there were really fewer bankruptcy filings than we expected to have, given the state of the market, post-Lehman collapse. But part of the reason was that the terms of the debt financings allowed troubled companies to avoid default, as Paul said; now, eventually some companies will run out of room and they'll either need to file bankruptcy or, more likely, need to refinance. There's a large amount of debt coming due in 2012, '13 and '14 which will not only increase refinancing activity, but also M&A activity and opportunities for private equity investors.

PAUL BIRD: I wanted to shift the conversation to something more substantive in terms of deal terms that we are seeing in the market these days, and developments in them. Dan, you talked about deal certainty and the emergence during the boom period of what became referred to as the reverse breakup or the reverse termination fee, and coming out of the boom and into the downturn, many people wondered whether that structure would survive.

Let me put that concept in historical perspective, and maybe even to define for the members of the audience who are not working in the M&A field, exactly what a reverse termination fee is. It's necessary to understand the historical perspective.

Pre-2005, when private equity firms did deals, they formed companies, special-purpose vehicles – call it a shell company – to make the acquisition, sign the acquisition agreement, and the transaction was inevitably conditioned on financing. The ability of the banks to show up at the closing and provide the debt financing for the transaction, that element of private equity deal-making was called a "financing condition," was essentially *free* to the private equity firm. They didn't have to pay for it. They didn't have to put earnest money down. They didn't have to make a payment to the seller or the target company if the deal wasn't completed. You might ask yourself, well, how did they manage, for so long, from early 1980s until the early 2000s, to be a force in the M&A market if they weren't *really* standing behind their deals the way strategic buyers were, and I think there were a whole host of reasons for that, some of which have to do with the characteristics of private equity firms that Jeff was alluding to. These firms have grown up to have a single focus, which is to make investments and complete deals. So for many of the private equity firms running right through the early 2000s, their track record was very good. They had never failed to complete a transaction. They brought to the table a relatively horizontal, flat deal-making structure in terms of decision making by comparison with some of their corporate counterparts. They could make decisions quickly and promise relatively quick deal execution. They had cultivated extensive relationships with financing sources around the country and around the world, and they were able to describe and present to sellers financing packages that even though conditional, were very real in terms of how extensive they were and the level of commitment that the private equity firms expected to get from the banks.

So there was a rationale for that kind of deal-making. Then it changed. Dan, some of the factors that you and I talked about, in terms of why it changed are the emergence of more funds, greater competition and public deals as a target for private equity firms. It's one thing for a public Board to sell a division subject to a financing condition; it's quite something else for a public company to sell itself subject to a financing condition.

So there became, in the mid-2000s, a new imperative, which was to get rid of financing conditions.

DANIEL LENNON: The way this was structured originally in 2005, two deals that shocked M&A lawyers and worried the private equity firms were the SunGard and Neiman Marcus deals created the concept of a reverse breakup fee; if there wasn't a closing, and there were liquidated damages in an amount, specific, that would require the private equity firm to write a check, those fees...

> "Going forward, I think that will be a mantra for private equity firms, which will be to strengthen the core operations of a business with the expertise we can bring." – *Jeffrey W. Ferguson*

THOMAS BELL: It's sort of like a residential real estate transaction: you make a deposit – here there's no deposit, there's just an unsecured obligation – but you make a deposit, and you can always walk away from the deal by paying or losing the deposit.

DANIEL LENNON: The fees develop in the neighborhood of 3, 3½%, in most cases because there's a similar determination fee on the other side of a public company, M&A deal for other reasons, running the other way. But ironically, in the pre-2005 period where you saw the prevalence of financing conditions, we saw very few deals not get done. Sponsors felt they had to, in fact, close, and many sponsors closed many deals when the financing went south or the business didn't go as well as they'd like, because they felt that their reputation was on the line. They had to do this or else it would really hurt their ability to do transactions in the future. Whereas the instances of more deals not getting done in the 2007 period to the early '08 period were much more numerous. In fact, there's at least one deal out there where the private equity firm did just say, "Sorry, here's the reverse breakup fee; I'm not going to close, that's our deal." The seller tried to bring the private equity firm to court and failed; the Delaware Chancery Court said, "A deal's a deal – that's the deal you cut."

THOMAS BELL: I guess that private equity firm must have had good lawyers.

DANIEL LENNON: Of course – they always do! So that developed. I think it's going to be interesting to see what happens. There has been some evidence of deals in the last three months where these issues have been pushed pretty hard.

PAUL BIRD: Well, it's true that for sellers, the emergence of the reverse termination fee and the disappearance of the financing condition did have some surprising and unhappy consequences, not just deals that weren't completed that, in some cases, turned on this deal term, which allowed a private equity firm not to complete a transaction, and in lieu of that, pay a fee. But it also led to a fair number of negotiations in transactions, after contracts had been signed, when for one reason or another the market was turning south generally, and potentially the value of the private equity firm's equity commitment already would have been impaired if the deal were closed at that time. Private equity firms, after all, they are not like strategic buyers; they don't have permanent capital. They typically don't have across their corporate practice the kind of equity, credit lines with banks that allow them to finance their transactions. They operate primarily on a deal-by-deal basis, and that's historically been the reason why they needed to limit their exposure to transactions by the kind of special purpose vehicles that they had historically used.

But I think now what we're seeing as a result of the back-and-forth over reverse termination fees, and the relationship between those fees and specific performance is somewhat greater clarity. In the recently announced large deal, they arrived at a relatively good balance between buyer and seller in terms of a remedy of specific performance. It's very clear in that contract that if the debt financing is available, then the reverse termination fee in that deal is not available as an exit for the private equity firm. They have to fund their equity commitment and complete that deal.

In many contracts that were done during the '07 and '08 period, the interplay between those two very important terms wasn't all that clear and in fact it's the ambiguity in those terms that sometimes resulted in an unhappy outcome for the seller.

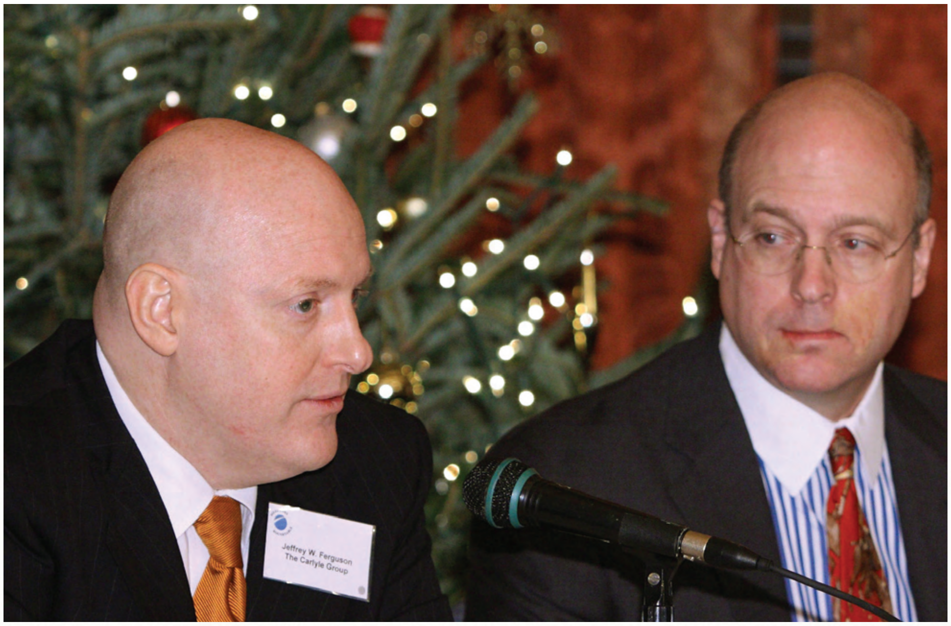
DANIEL LENNON: I think that's right. I think a lot of what will be negotiated will be formed by what did happen with these deals. We had, as Paul mentioned, this period of time in 2007–2008 when, at a confluence of the economy turning south and the financing markets getting tougher, it really resulted in a lot of very hard negotiations and a lot of lawsuits. I think that one of the key lessons we learned from those suits, and the case law that came out of those decisions, but I think that we pick up more as practicing lawyers from the deals that settled. The deals that did get done and renegotiated were completely shaped by the provisions in the agreements. Firms that were more aggressive and opened themselves up to specific performance or greater damages ended up doing much worse in those negotiations, as did sellers who weren't careful and ended up not getting their deals done.

JEFFREY W. FERGUSON: Well I was just going to say, for those of you who are not in an M&A practice, now you know what lawyers at a private equity firm may deal with. It's obvious that all the gentlemen on our panel love what they do, and if you would like to see some copies of some merger agreements and some financial documents, we can provide you samples.

Just to pull it back for a second, though, because my impression is that most people in the audience are not really M&A lawyers, if we pull it back for a minute and take into account all of the parameters of the deals that you've been talking about, let me ask a question to the panel: Does anyone think that private equity, in general, creates systemic risk for our economy?

THOMAS BELL: Not really.

JEFFREY W. FERGUSON: Okay. Just to expand on that, I think that in a world where regulators and legislators are really focused on



financial services firms in terms of enacting what they view as protective new rules, the banks that failed obviously had some issues. Private equity is not really in that category, in my view, and for a variety of reasons, one of which is private equity as a firm or fund really has no indebtedness at the fund level; the only indebtedness incurred is really at the portfolio company level. What that really means is to the extent there is a problem in a particular business, it will not infect the other companies in the portfolio. So there is no real cross-collateralization. From that perspective, the use of leverage by private equity is not as risky, for example, as the use of implied leverage that encumbered all of the banks in their business.

JACK FRIEDMAN: What are some of the misunderstandings or exaggerations people have about private equity?

DANIEL LENNON: I could throw one in, which is that you hear a lot of people say that private equity firms acquire businesses and fire people. That's actually not the model. The model is to generate efficiencies in other ways, make the businesses run better through solid business principles and active management.

JEFFREY W. FERGUSON: That's very true. These days, our greatest talent really is to source investment opportunities, and in today's world, if you engaged in that type of activity and fired a bunch of people after you bought a company, you would essentially lose the ability to source new investment opportunities. You really do have to be friendlier to the employee base, the management base, and work with them to make an acquisition.

DANIEL LENNON: I think it's also interesting when you hear people talk about the financial crisis and they all point to Wall Street and the leveraged loans made to finance buy-out transactions – while some of them did go bad, if you look at the quantum of the problem that the financial system is having; it is really the subprime mortgage problem simply outstrips by many, many multiples any issues you had in any area of leveraged loans made to private equity firms. If that were the problem in the financial system today, it wouldn't cause our banks to blink or financial system to blink, it's the other problems.

JACK FRIEDMAN: From a business point of view, how does a firm like Carlyle and others in the industry, assess mega-trends which may pound the economy?

JEFFREY W. FERGUSON: I think under the guise of a private world, not being under the public microscope of a public company, not having an obligation to disclose so much information, in the public setting you have an opportunity to consider an experiment with trends of that nature. Moreover, one of the most valuable resources we have at Carlyle is the network of all of our portfolio companies. There are so many, with 64 funds all around the world and 950 total investments, we have the ability, without being under a public microscope, to link up different aspects of the businesses of portfolio companies to introduce new relationships. We can see trends developing among our own portfolios, and the management teams in those individual portfolio companies know their business better than anyone else, and they are usually very great resources for us to identify particular trends. Once you see certain patterns developing among different portfolio companies I think a private equity firm is very capable of putting the pieces of the puzzle together and acting to make new investments, or change your portfolio, or create new relationships that are necessary to take advantage of any kind of trend that may be developing. So the private equity model is a comfortable Petri dish.

JACK FRIEDMAN: Your diversity means that you can have different data streams, different expertise, and even two people who are in somewhat different industries. One person says, "Oh, we're going great guns; the future is forever." And someone else says, "No, we're the type of company that buys from you, and I can tell you we're worried about the next six months." You guys have to figure out whose opinion to use. You get information from a diversified data stream.

THOMAS BELL: I think the other thing that's happening is that the large private equity firms have taken in-house some of the consulting and advisory functions relative to legislative affairs, public affairs, director of communications and the like. So there are people now at these firms whose job is to look at what's happening on the legislative and regulatory fronts, and try to separate the wheat from the chaff and have a sense of what the impact is going to be on the firm and its investments.

JACK FRIEDMAN: How do you evaluate deals, and how do they come to you? It doesn't have to be Carlyle's exact technique; it can be more general, because sometimes people can't talk about a particular technique. In general, how do you make a decision when everyone runs to you and says, "Buy us, buy us!"

JEFFREY W. FERGUSON: As the industry got larger, as funds got larger, indeed, target companies would hire investment banks, and they would essentially auction themselves off. It was more of a limited bid process where one private equity firm would be competing against, or bidding against a handful of other private equity firms and maybe some strategic investors who were also interested in that target, and the investment banks all know where we live, so it's not really a challenge to find those deals.

Those are usually not the best deals, though. A private equity firm would prefer to do deals on a proprietary exclusive basis.

JACK FRIEDMAN: Because they're being shopped around. They can be quite obvious.

JEFFREY W. FERGUSON: They're being shopped around, and there's a competitive bid process and that bids the price up.

THOMAS BELL: What Jeff was saying is there are significant efficiencies to club deals.

JEFFREY W. FERGUSON: Exactly, and they are not at all incompatible with competition. Competition is immense, even among the club deals, for the record.

But the type of deal that we prefer to do, which in today's world, because of so many private equity funds existing, are becoming more rare, are proprietary deals. Carlyle is a little different than most of the other private equity firms in terms of the number of investment professionals we have. We roughly have almost twice as many investment professionals per dollar under management as many of the other big private equity firms. That enables our deal guys to be wandering the world, making new relationships and identifying through our network special opportunities that no one else ever thought of. So the best deals you can find are truly proprietary opportunities. You may identify a business that has a division, that is for some reason inefficiently housed in the company where it currently is. You can approach that company and design your own exclusive investment opportunity around this one little division. Those are the types of opportunities that are the best deals, and the type we would like to find. They're increasingly harder to find, though, because sellers are more sophisticated these days than they were seven or ten years ago, and they tend, these days, to call up an investment bank and create a bid situation.

> "These days, our greatest talent really is to source investment opportunities, and in today's world, if you engaged in that type of activity and fired a bunch of people after you bought a company, you would essentially lose the ability to source new investment opportunities. You really do have to be friendlier to the employee base, the management base, and work with them to make an acquisition." – *Jeffrey W. Ferguson*

JACK FRIEDMAN: Maybe one can put it on Google or CraigsList. Communication is easier these days. The whole world is easier to communicate with.

PAUL BIRD: Well, I would say that in this period of hopefully coming out of the doldrums in the deal-making world, a consequence of the considerable weeding-out of financing sources that has occurred, and in some cases, private equity funds that have had to scale back their operations, and a general sobering of the whole community, we are seeing more of the kinds of opportunities that classically firms like Carlyle and their competitor firms are really hoping to find. Which is relatively long lead time transactions sourced internally, not through an auction process, and ones that, because of that internal sourcing and the long lead time involved, become *de facto* exclusive deals. Even if there isn't any kind of exclusivity agreement or explicit arrangement, they become proprietary deals. I think we're seeing a little bit more of that. I think it's a little bit harder to get an auction going in today's market.

JACK FRIEDMAN: One of the purposes of Directors Roundtable honor events is to give leaders a chance to get to know someone whose name they have seen in the news, but they really don't know the person behind it. In the five minutes a month that you have free, what do you like to do for yourself? Maybe it's only three minutes, but I'm generous here!

DANIEL LENNON: Jack tried to get the answer from me, but I wouldn't give it to him!

JACK FRIEDMAN: Jeff, I understand that you played basketball with the President? Almost?

JEFFREY W. FERGUSON: Not with the President. I did play golf one time with a Vice President, who shall remain nameless. Let's see, what do I do in my spare time? My typical spare time is spent hovering around my Blackberry, waiting for David Rubenstein to text me and ask me a question.

That's a hard question to ask. Sleep is good, when you get a chance to take a breather. But really, I enjoy reading. I read a lot of history. I love reading fund partnership agreements!

JACK FRIEDMAN: Does that help you get a good night's sleep?

JEFFREY W. FERGUSON: Yes, it does. In all seriousness, I'm a normal kind of guy. I work in my yard. I have to cut the grass and pull weeds and things like that on weekends. I enjoy drinking a beer and watching football games. I'm pretty normal in that regard.

JACK FRIEDMAN: Let me just mention, my colleague here who many of you met coming in, is Gail Guerin. Gail worked at the White House with David Rubenstein years ago when he was younger – much younger, like we all were! Thirty-whatever-it-is. She said that one of the things that they knew was that at two o'clock in the morning, he was always there, whether working at his desk, awake or asleep or whatever it is, but he put in very long hours and had, even in terms of White House schedules, where it is expected, a schedule for which he was famous. Have I gotten that right?

JEFFREY W. FERGUSON: There's absolutely no doubt that David Rubenstein is the hardest-working man I have ever come across. By the way, one other story that comes out of the White House is that David consistently says, "Vending machine food is way underrated," because he ate dinner from the vending machines at the old executive office building all the time. I think I have enjoyed success at Carlyle because when I was at Latham & Watkins, I routinely would work until 2 or 3 a.m., and the security guard would wake me up to send me home.

But when I got to Carlyle, and I could go home at night around eleven o'clock, I felt completely liberated. I could actually go to a restaurant before it closed and get something to eat. My weekends are a little more free. I am on a few phone calls on weekends now, but not in the office drafting documents around the clock.

However, David Rubenstein would often call me. I would be in my office at Carlyle at eleven o'clock at night, and David Rubenstein would call me from some strange part of the world, really just to catch up on what was going on. I have known David 18 years or so; every time he calls, "Hello, this is David Rubenstein." I want to say, very badly, "I'm sorry – David who?" The next thing out of his mouth often might be, "What have you done today to make money for our investors?" But he is a very hard-working guy, and he always seemed impressed and surprised that I was in the office at eleven o'clock and would take his phone calls.

> "Once you see certain patterns developing among different portfolio companies I think a private equity firm is very capable of putting the pieces of the puzzle together and acting to make new investments, or change your portfolio, or create new relationships that are necessary to take advantage of any kind of trend that may be developing." – *Jeffrey W. Ferguson*

JACK FRIEDMAN: Let me thank the panel. We'll have you all participate in the questions now. Let's start with the audience.

AUDIENCE MEMBER: Jeff, once you acquire a company how much energy is involved dealing in business issues managing them really to try to push that toward the ground?

JEFFREY W. FERGUSON: Well, there are seven lawyers in-house in all of Carlyle. There are 950 portfolio companies. So, we don't have the bandwidth to get involved in managing or operating, or even liaising, with the portfolio companies. Our investment teams are responsible for being a steward of the portfolio companies. From time to time, special issues arise, usually in the context of legislative developments or special issues. I mean, for example, you might recall the legislation to the special rule, the limited exception to cancellation of indebtedness income. When that legislation was around, we were very active in contacting our portfolio companies and finding out who would care, what the parameters would be that we should try to work through in that regard. So it's really on a rare issue where we get involved with the portfolio companies. The investment professionals do almost all of that work.

One of the benefits of being M&A counsel at Carlyle, though, as Dan and Paul may attest, is if you are involved in the M&A activity, chances are pretty good that you will continue taking on legal work from the portfolio company on their separate issues, even after we've acquired them.

THOMAS BELL: I would say that Carlyle's approach is typical of the industry, by and large. The private equity professionals play what I would call a board-level role and not a day-to-day operational management role. The exception is when special issues arise or if there is a portfolio company crisis or something like that. If it's a financial issue, a capital structure issue, or a basic corporate strategy-type issue, they will get more involved because I think they feel that's more within their core competency. But what's the right marketing strategy for a drug company; it's something they really don't get involved in unless they think somebody is making an obvious mistake.

JACK FRIEDMAN: What is the type of expertise on an investment team?

JEFFREY W. FERGUSON: Well, at Carlyle, if you really look at the buy-out investment professionals here in the U.S., they are divided into industry-specialized teams. So, for example, I think we cover eight or nine industries. One team is devoted to aerospace and defense deals; that's all they've worked on in their entire careers. Many of them have former positions, either in government or with defense contractors. When they come to us, they all have MBAs. They have worked in the aerospace defense industry for their entire careers. They are very linked in to that community. Whenever a potential deal arises, they are specialists in the industry. They know all the players and it is easier for them to source deals. By the same token we have a telecommunications group, experts in cable opportunities and other telecommunications opportunities. We have a health care group. So across various industries, we have industry-specialist deal teams, all of whom at least have an MBA, either from Wharton or Harvard. For some reason, we rarely hire people from other schools!

THOMAS BELL: I think Carlyle's been in the vanguard of that approach. I think they would say that it gives them the best of both worlds in terms of having industry-specific expertise on the investment team, while at the same time having the flexibility to make investments across a diversified range of industries depending on which opportunities arise, as opposed to being maybe caught in an adverse cycle of a specific industry, as some industry-specific boutiques can find themselves. A lot of other firms have copied Carlyle's model, or tried to imitate it to a greater or lesser degree.

JACK FRIEDMAN: When you decide to make an acquisition, what is the checklist for obstacles that you know automatically you're going to have to start overcoming? They may include financing, or antitrust and other government approvals in several countries.

JEFFREY W. FERGUSON: Dan or Paul?

DANIEL LENNON: Well, the list would be long. But I guess there's a series of clear business or financial obstacles. There's competition from other potential buyers. There's getting to the right price, structuring the financing, and negotiating the contract.

PAUL BIRD: All those regulatory approvals.

DANIEL LENNON: Regulatory approvals will take a large part of that off. There are customers or other relationships where you need to get third-party consents to get deals done. You see other constituencies in the company, like labor unions, that you may have to deal with, to work through.

PAUL BIRD: Tax issues are pervasive, that we have to structure with. There may be limitations on foreign ownership.

DANIEL LENNON: You could probably get a seven or eight-page list for legal, accounting, tax, regulatory. There's any number, it's a long list. That's why these deals take a long time and are hard to execute.

JACK FRIEDMAN: When you have a deal, do you usually have a lead law firm and then you bring in expertise from different parties?

DANIEL LENNON: That's usually the structure. You get lead advisors for legal, accounting, and their financial advisors.

THOMAS BELL: It's typically the M&A counsel, who will act as lead counsel and prepare a huge due diligence report that goes through all the various issues that they've been asked to diligence. It's a huge effort.

DANIEL LENNON: That's because of, more so than any type of investor that we typically deal with, the level of detail private equity investors like to go into to understand all the risks. It's very important for them.

JACK FRIEDMAN: If the law firm is coordinating things, what do you ask your banker and accountant to do?

DANIEL LENNON: The law firm manages the legal piece, and the accounting firm coordinates the accounting aspect of the diligence, and the financial advisor upon financing and doing financial analysis and negotiations of the financial issues.

PAUL BIRD: Jack, to sum up the response to your question, I think the biggest challenge in a private equity firm's negotiation with a seller is getting on the same page in terms of value, because there are different hurdles that firms go through to get into a process that's competitive or to push a process along that they've generated themselves. Those processes can go for a long way without the two sides really coming together on the basic valuation of the transac-

tion. This diligence exercise that not only the lawyers, but very importantly, the accountants, and the private equity firms themselves engage in, the focus of that is coming up with the justification of your view on value. So that you can have, at the end of the day, a conversation with the seller. You can list why you think there are these adjustments to the value of the business the seller has proposed that are very real, and you can support that discussion.

JEFFREY W. FERGUSON: Even beyond just getting to the purchase of the company, that process is critical, from Carlyle's perspective, in developing what we call the hundred-day plan. So the day we close, we want to have in place a plan over the next hundred days to take very quick action to fix what we think is broken in a particular company. Then try to move towards the proposition for creating value in that portfolio company, to be able to sell it for a large gain down the road. All of that plan is really put together in the due diligence phase.

JACK FRIEDMAN: Any other questions?

AUDIENCE MEMBER: What is the importance of management in making an acquisition?

JEFFREY W. FERGUSON: One of the things you look for is a great management team. Sometimes you might find a company that doesn't have a great management team in place, and you bring with you to that transaction a new management team. These days, we tend to be acquiring companies that have in place what we regard as great management teams . It might be the managers of that division, or it might be the whole company. Where, for some reason, that company wants to go to the next level, they need some capital infusion, they need a network of relationships. There are a variety of reasons why we might buy those companies, but it's very common that we will buy companies that have great prospects for the future, primarily because they have good management teams in place. A good management team is critical to any successful investment.

JACK FRIEDMAN: The gentleman here.

AUDIENCE MEMBER: You were talking about the history of the Carlyle Group and I was wondering if Carlyle had a management team that focused on small businesses?

JEFFREY W. FERGUSON: Well, we have several funds that have operated in the venture capital world, making small investments in startup companies. Slightly more advanced than startup companies, usually. After the burst of the dot-com bubble, there was an evolution, so our investment professionals who focused on the venture capital deals moved up the capital chain a little bit and focused on growth deals, companies that actually have proven earnings. Being an East Coast firm as opposed to a West Coast firm, we are more accustomed to and more comfortable with the more developed companies.

We do, however, have a joint venture with, for example, Bob Johnson, where there is a fund of which we are co-sponsors. That fund pays particular attention to investing in new companies, startup companies; new, smaller opportunities. They have just had their final closing with roughly $330 million of capital commitments, I believe, and are just beginning their investment process. Their office is primarily based up the road here in Bethesda, and we are trying to help mentor them in the process of becoming a private equity firm, so we do have those investments.

As well, we have our technology group in the U.S. buyout group based in Charlotte. They tend to come across various technology opportunities that are smaller, less-developed companies that we may often acquire. So it runs the gamut.

JACK FRIEDMAN: How many people do you have in Carlyle, and how many in your 900-and-some-odd companies?

JEFFREY W. FERGUSON: In all the portfolio companies?

JACK FRIEDMAN: Yes.

JEFFREY W. FERGUSON: In all the portfolio companies I don't know, but several hundred thousand. I think I saw 400,000.

JACK FRIEDMAN: In other words, directly or indirectly, you're one of the largest employers.

JEFFREY W. FERGUSON: I mean, if you take the entire group together, around the world, we're certainly, if you viewed it, and because we're an investment firm and we only own them to sell them, it's not a consolidated group, so to speak, but the collective whole would certainly be well within the *Fortune* 50 realm of companies.

JACK FRIEDMAN: How many work at Carlyle itself?

JEFFREY W. FERGUSON: Just under a thousand, about 900.

THOMAS BELL: On Carlyle's website, there's an annual report which I think contains a lot of metrics about these things. It's actually a very interesting thing to read.

JACK FRIEDMAN: Let me thank the audience, because the Roundtable is about the audience. Most importantly, I want to thank our Guest of Honor. We don't just honor you; we really feel that you're honoring us by spending your time with us and sharing your expertise. Thank you for the favor you've done us. Third, I want to thank the panelists for sharing their time and expertise as well.

Thomas H. Bell

Partner

SIMPSON THACHER

Thomas H. Bell is a partner at Simpson Thacher & Bartlett, where he is a member of the firm's corporate department. Mr. Bell specializes in investment management matters and oversees the firm's private funds practice, an area in which the firm has a preeminent international presence, having been chosen as the "Global Private Funds Law Firm of the Year" for the last five years (2005-2009) by *Who's Who Legal.* He advises clients globally on organizing and advising a wide range of buyout funds, real estate funds, venture capital funds and other kinds of private equity funds, as well as hedge funds, offshore funds and other kinds of funds for alternative asset categories. He is a frequent lecturer before professional groups on private investment funds of all kinds.

Representative buyout, real estate, venture capital and other private equity clients include Aquiline Capital Partners, Calera Capital, CapGen Financial, The Carlyle Group, Evercore Partners, Ferrer Freeman, The JE Robert Companies, JC Flowers & Co., Morgan Stanley, New Mountain Capital and Sterling Investment Partners. Representative hedge fund and similar private investment fund clients include Brummer & Partners, ESL Investments, and Zurich Capital Markets.

Mr. Bell joined Simpson Thacher in 1983 and became a partner in 1992. He received his BA *summa cum laude* from Dartmouth College in 1978, where he was elected Phi Beta Kappa. He received his JD from Yale Law School in 1983, where he was editor of *The Yale Law Journal.* Mr. Bell is the past chair of the Subcommittee on Specialized Investment Vehicles of the International Bar Association. Mr. Bell is a member of the Subcommittee on Private Investment Entities of the American Bar Association. He is the founder and past co-chair of the International Conference on Private Investment Funds co-sponsored by the IBA and the ABA. Mr. Bell was named "Global Private Funds Lawyer of the Year" for 2006 and 2007 by *Who's Who Legal.* He received an award for "Outstanding Contribution to the Legal Profession" from *Chambers Awards for Excellence* in 2007. He enjoys the highest ranking from *Chambers Global, Chambers USA, PLC Which Lawyer?, IFLR* and *The Best Lawyers in America.*

Simpson Thacher & Bartlett

Simpson Thacher & Bartlett LLP is widely recognized as one of the preeminent law firms in the world. The firm devotes to its clients the legal talent and skill of over 800 lawyers with a commitment to hard work, excellence and integrity. Building on 125 years of experience, the firm has played a substantial role in connection with many of the most complex and noteworthy corporate transactions and disputes of the last decade. Headquartered in New York City with offices in Beijing, Hong Kong, London, Los Angeles, Palo Alto, São Paulo, Tokyo and Washington, D.C., our lawyers work as a fully integrated team to provide the global presence our clients demand.

Clients across a spectrum of industries and in jurisdictions across the world turn to Simpson Thacher to help them address their evolving business challenges. The firm provides a full array of general corporate and litigation services to industrial corporations, commercial banks, investment banks and other financial institutions, private equity firms and financial sponsors, partnerships, joint ventures and similar business entities, insurance companies, educational and philanthropic institutions and individuals. Important aspects of the Firm's practice include cross-border finance, banking and bank regulation, mergers and acquisitions, securities issuance and regulation, fund formation, bankruptcy and creditors' rights, energy, infrastructure and asset-based finance, real estate, taxation, litigation and dispute resolution. Our focus on client needs is the hallmark of our practice. We value excellence in client service in all respects – in the thoughtfulness and thoroughness of our work product, in our responsiveness to clients and in the tone and manner in which we work with clients. We offer our clients professional, straightforward and pragmatic advice that recognizes their business as well as the prevailing commercial and legal realities.

Paul S. Bird

Partner

DEBEVOISE & PLIMPTON LLP

Paul Bird is Co-Chair of the firm's Mergers & Acquisitions Group and a prominent New York M&A lawyer. He has worked on major U.S. and cross-border transactions for both private equity and corporate clients. From 1990 to 1993, Mr. Bird was resident in the firm's Paris office where he became a member of the Paris bar and worked extensively on international mergers and acquisitions and other cross-border transactions.

Mr. Bird has been named Dealmaker of the Year by *The American Lawyer* (2008) for his representation of Bain Capital, The Carlyle Group and Clayton, Dubilier & Rice in their $8.5 billion acquisition of HD Supply from The Home Depot. He is recognized as a leading lawyer for mergers and acquisitions and private equity buyouts by *Chambers Global* (2009), *Chambers USA* (2009) and *IFLR1000* (2010). *The Legal 500 U.S.* (2009) recommends Mr. Bird for M&A, where clients note his "great mix of pragmatism, reality and experience make him an ideal advisor for virtually any legal and business issue."

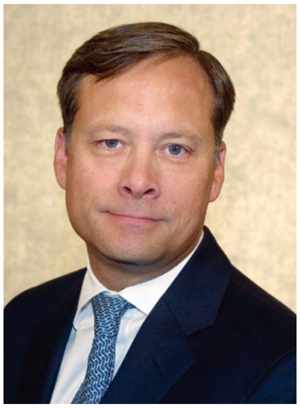
Mr. Bird is a frequent author and speaker on legal developments affecting mergers and acquisitions. He is a co-author of *Takeovers: A Strategic Guide to Mergers & Acquisitions* (Aspen Law & Business 2004, Supplement 2006) and a regular contributor to the *Debevoise & Plimpton Private Equity Report*. Prior to joining Debevoise, Mr. Bird served as Law Clerk to the Honorable Robert W. Sweet, U.S. District Court for the Southern District of New York. He received his B.A. from Yale University in 1983 and his J.D. from Yale Law School in 1987 where he was Senior Editor of the *Yale Law Journal*.

Mr. Bird's recent representations include:

- Bain Capital, The Carlyle Group and Clayton, Dubilier & Rice in their $8.5 billion acquisition of HD Supply from The Home Depot, which *Private Equity Analyst* named "LBO Deal of the Year."
- The Carlyle Group in its $1.5 billion acquisition of PQ Corporation from J.P. Morgan Partners, and PQ Corporation's follow-on acquisition of the Ineos Silicas business from Ineos Group.
- The supervisory board of ABN AMRO in its €72 billion combination with a consortium led by Royal Bank of Scotland. The *IFLR 2008* Europe Awards named this transaction "M&A Deal of the Year."

Debevoise & Plimpton LLP

Debevoise & Plimpton LLP was founded in 1931 with the goal of offering sophisticated legal services. We maintain this tradition of seeking excellence in a comprehensive, modern practice that spans the Americas, Europe and Asia. Our lawyers are responsive, thoughtful, ethical and vigorous advocates with a substantive understanding of our clients' business needs and the many marketplaces in which they compete. We have leading practices that often have a cross-border focus due to the firm's international approach to the practice of law. Debevoise places the highest value on collaboration and interdisciplinary cooperation in order to provide clients with seamless representation across practice areas and across continents. Martin Frederic Evans serves as the firm's Presiding Partner and is based in the New York office.



Daniel T. Lennon
Latham & Watkins LLP

Practices:
Capital Markets, Investment Funds, Mergers & Acquisitions, Private Equity, and Private Equity Finance

Experience
Daniel T. Lennon is a partner in the firm's Corporate Department and is the Chair of the firm's Washington D.C. office Corporate Department. His practice focuses on mergers and acquisitions and private equity transactions, and he regularly represents leading private equity firms and public and private companies in major, complex merger, acquisition, disposition and financing transactions. Representative clients include The Carlyle Group, Platinum Equity, LLC, Ciena Corporation, HCR ManorCare, Vought Aircraft Industries, John Maneely Company and MultiPlan, Inc.

Mr. Lennon has particular expertise in representing private equity firms in connection with leveraged buy-outs and other investment transactions. He has been involved in some of the largest LBO transactions in history, including:

- Representation of The Carlyle Group and Onex Corporation in connection with their $5.6 billion acquisition of Allison Transmission from General Motors.
- Representation of The Carlyle Group in connection with Carlyle's $6.3 billion leveraged buy-out of Manor Care, Inc.
- Representation of The Carlyle Group in connection with Carlyle's investment in the $10.3 billion leveraged buy-out of the supply business of The Home Depot.
- Representation of The Carlyle Group in connection with Carlyle's investment in the $22 billion leveraged buy-out of Kinder Morgan, Inc.

Mr. Lennon also regularly represents clients in the health care, transportation and telecommunications, media and technology industries. Representative transactions in those industries include:

- Representation of The Carlyle Group in connection with Carlyle's $1 billion acquisition of MultiPlan, Inc.
- Representation of Carlyle in connection with its investment in the $3.35 billion LBO of PanAmSat.
- Representation of The Carlyle Group in connection with its investment in the $15 billion LBO of The Hertz Corporation.
- Representation of The Carlyle Group in connection with Carlyle's $1 billion leveraged buy-out of SS&C Technologies, Inc.

Chambers and Partners ranked Mr. Lennon in the first tier in its 2008 U.S. Guide and has noted him for his "insights into structuring private equity deals and his keen insight into the business imperatives informing transaction decisions." Mr. Lennon was also lauded in *IFLR 1000*'s 2008 Guide as a leading private equity lawyer and was noted as "highly recommended" in the M&A area in *Which Lawyers Yearbook* 2009. He has also been named one of the top transactional lawyers in Washington, D.C. by the *Legal Times* and the *Washington Business Journal*.

Latham & Watkins

Founded in 1934, Latham & Watkins has grown into a full-service international powerhouse with approximately 2,000 attorneys in 29 offices around the world. The founders of Latham & Watkins instilled an ethic of hard work, commitment and quality that flourishes today and has nurtured the firm's dramatic growth into one of the world's premier business law firms. With that growth, we have built internationally recognized practices in a wide spectrum of transactional, litigation, corporate and regulatory areas. We have also received praise for our innovative approach to law firm management and for our *pro bono* work both on a local and global scale. Our success is grounded in our devotion to the collaborative process, which reaches across global offices and practices and draws upon our deep subject matter expertise, an abiding commitment to teamwork and a powerful tradition of creative lawyering.

Our departments are each recognized as leaders in the legal profession. Latham consistently ranks among the best transactional and finance practices in leading legal publications such as *The American Lawyer, mergermarket, Chambers* and *Asia Legal Business,* and earns praise worldwide for work on high-profile and groundbreaking deals. The firm has one of the largest and most sophisticated litigation practices in the world, offering expertise in a multitude of substantive areas. Latham is one of the few firms to have been named in *The American Lawyer*'s Litigation Department of the Year survey in 2004, 2006 and 2008.