WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Ronald Cami

General Counsel
of Global Investment Firm TPG

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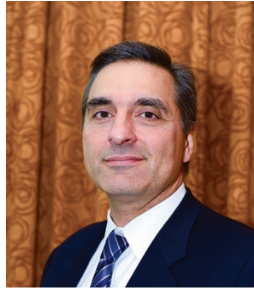
THE SPEAKERS



Ronald Cami
General Counsel, TPG

Michael Gerstenzang
Partner, Cleary Gottlieb Steen & Hamilton LLP

Julian Pritchard
U.S. Managing Partner, Freshfields Bruckhaus Deringer

John Loder
Partner, Ropes & Gray LLP

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, www.directorsroundtable.com.)

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 Ronald Cami, General Counsel of TPG, with the leading global honor for General Counsel. TPG is a leading global investment firm with nearly $60 billion of assets under management. His address will focus on key issues facing General Counsel of leading global investment firms. The panelists' additional topics include dealmaking and strategy in the United States and emerging markets, and regulation of private investment companies.

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

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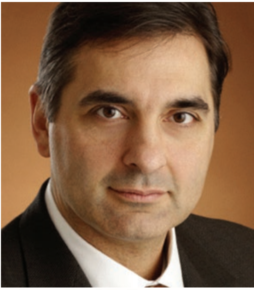

Ronald Cami
General Counsel, TPG

Mr. Cami is a partner and General Counsel of TPG. From 2000 until he joined TPG in 2010, Mr. Cami was partner at the law firm, Cravath, Swaine & Moore LLP, in New York City, where his practice was focused on mergers & acquisitions, leveraged transactions and general corporate and board advice. From 1994 through 2000, Mr. Cami was an associate in the New York and London offices of Cravath. Prior to that, Mr. Cami served as law clerk to the Honorable Kevin Thomas Duffy of the Southern District of New York, during which time Judge Duffy presided over the first World Trade Center bombing criminal case. Mr. Cami graduated magna cum laude from Harvard University and earned his J.D., *summa cum laude* with order of the coif distinction, from Rutgers Law School.

TPG

TPG is a leading global private investment firm with $54.5 billion of capital under management. Founded in 1992, TPG specializes in recognizing value — or the potential for value — where others do not. Our contrarian philosophy, global reach, and deep investment and operational expertise set TPG apart from other firms. Our complementary asset classes offer a unique investment platform.

We are problem solvers, partners and pioneers. TPG's approach to investing helps us recognize value — or the potential for value — where others cannot see it. This contrarian philosophy has delivered consistent and outstanding performance because we dedicate the right mix of capital, time, and management and operational expertise to make successful investments out of challenging situations. Some of TPG's most noteworthy accomplishments have been in situations involving complicated structures, cyclical and regulatory risk, and distressed and turnaround situations. We maintain a mid- to long-term perspective on investments to help companies grow to meet their full potential.

From steady-state buyouts to turnarounds to "off the beaten path" opportunities, we bring deep investment skills, experience, operational and management expertise. Our investments span a range of industries including financial services, travel and entertainment, technology, industrials, retail, consumer products, media and communications, and healthcare.TPG has an extensive global network and long-standing, on-the-ground presence in critical markets. The deep insight we have gained positions TPG to recognize — and act on — opportunities that arise from global macroeconomic trends.

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JACK FRIEDMAN: Welcome. For those who are not familiar with the Directors Roundtable, we are a civic group that does programming for Boards of Directors and their advisors on a global basis. We have done 750 programs over 23 years, and have never charged the audience to attend. I am the Chairman, and will be the moderator today; my name is Jack Friedman.

We are very fortunate that Ron Cami has agreed to be the Honoree today.

Boards of Directors have told us that they are very concerned that companies are always criticized for their actions and rarely get complimented for any good that's done. We provide a neutral forum that gives people a chance to meet important leaders, like Ron, which is a very worthy function on a national and global basis.

I would like to briefly read two emails that we received. These will be included in the transcript of the program which will go out to about 150,000 leaders after the program on a global basis.

The first email is from Dean John J. Farmer, Jr. of Rutgers School of Law–Newark:

> Rutgers School of Law-Newark is enormously proud that the Directors Roundtable has selected Ron Cami as a distinguished general counsel. As someone from a non-affluent background who worked his way through Harvard and then law school, Ron is a sterling example of the student who took advantage of the opportunity offered by Rutgers to be the first in his family to find a career in the law. We were very proud watching the outstanding student he became at Rutgers Law, then watched with great pleasure and little surprise as he became a partner at Cravath. In recruiting Ron to the West Coast, TPG Capital gained not only a general counsel of exceptional skill but also a man of warmth and integrity who is dedicated to his family and community. We applaud the Directors Roundtable for recognizing Ron Cami with this global honor.

We received another email from Judge Kevin Duffy, a United States district judge, who had Ron as his clerk:

> I am truly sorry that I cannot be with you today to honor my former associate and close friend, Ron Cami.
>
> Ron and I first met at a time when our country was getting used to the fact that our institutions and way of life were under attack from terrorists. Ron came to work with me when I was the judge assigned to various terrorist cases originally growing out of the 1993 bombing of New York's World Trade Center.
>
> Perhaps the most difficult of these cases were the ones directly involving Ramzi Yousef, a cold-blooded murderer who could, and did, kill even his co-religionists — apparently just to prove that he could do it. Yousef was the master planner and builder of the World Trade Center bomb.
>
> The difficulty in such trials is not presented by questions of law, but rather of fairness. The job that Ron and I had was to make sure that Yousef was given a completely fair trial. The trial got worldwide publicity, and our work was scrutinized by people everywhere. It is my belief that our work exhibited the best parts of our system of law and our institutions. In such a trial, the judge is in a particularly lonely situation. The only person to whom he can turn is his law clerk, and I was truly blessed with Ron Cami as my clerk. He not only had a great sense of fairness, but a sense of humor that helped me through a most difficult period.
>
> I am sure you will hear from others today about Ron's prowess as a lawyer. He is truly worthy of such praise. Underlying all of his legal skills, however, is a wonderful sense of fairness, which is the cornerstone upon which all else rests. I commend your organization for its work and for its choice this year to honor Ron Cami as distinguished General Counsel. I ask you to extend my congratulations to Ron with a reminder of my great respect and affection for him.

I want to thank the audience for coming, and we will get started. Later, each of the panelists will introduce their respective topics. Their opening remarks will be followed by an extensive roundtable discussion among all the speakers, and you'll be invited to come up at the end of the program and congratulate the people.

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RONALD CAMI: Thank you, Jack, for the invitation. It's a privilege to be here, and it's particularly an honor here to be here representing TPG. I recognize this has a lot more to do with TPG and my colleagues there than it does with me, but it's also quite nice to see so many friends. As you all know, we have such busy lives that we sometimes don't stay in touch, so it's very special to me to see so many of you here. Thank you very much for being here.

I also want to thank the panelists for putting in the time and effort to hopefully make this an entertaining and possibly even illuminating presentation. Just to set expectations, Michael Gerstenzang will cover the ever-evolving GP/LP relationships that we deal with in our industry; John Loder will cover the regulatory environment in which we now find ourselves dealing with on a continual basis; and Julian will focus on dealmaking, particularly in developing growth countries.

One of the things about going inhouse is you have to learn how to use PowerPoint — I can't go anywhere without it — so forgive me for using a PowerPoint! I want to accomplish two things: first, give a little bit of a history of TPG, focusing on the role lawyers played at seminal moments in TPG's history, and I'm hoping with that, I'll be able to describe the evolution of the industry as a whole, but more importantly, describe the role lawyers, both internal and external, play at TPG and other similar investment firms.

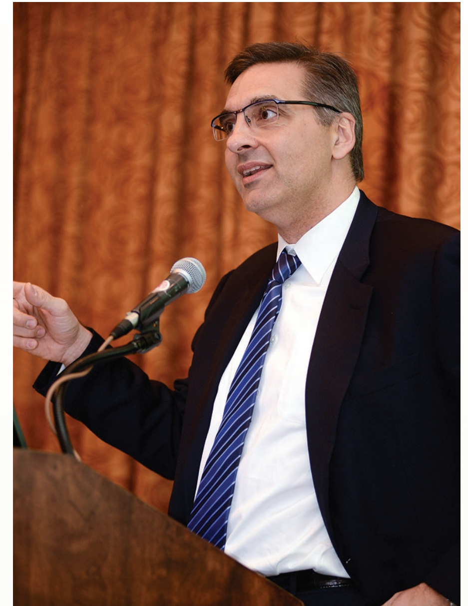
The second thing I'm hoping to do is spend a minute or so talking about how our legal department approaches providing legal services, and how we view our external law firms as part of the legal department. So when you hear me say "our legal department," I mean the whole kit and caboodle, without external law firms. Mainly I hope to show how we approach providing legal services, how we think about what it means to be a lawyer in the 21st century for a business like ours. Hopefully, some of the general things covered will be helpful to your business.

I want to start by highlighting that TPG is a classic American story filled with grit, boldness, a lot of talent, a little bit of luck, and good, old-fashioned common sense. It's basically two guys who, in 20 years, helped build up a lot of great companies, and delivered outsized returns for their investors. $50 billion invested in 20 years, and here's a staggering number: $20 billion since 2009. Twenty years ago it was only a dream. So let's start at the beginning.

When you took an "Introduction to Philosophy" class, there's always a class about pre-Socrates and pre-Plato? Well, this is pre-TPG history. TPG's pre-history starts with this man: Sid Richardson, legendary wildcatter. If you ever go back and read about this guy, he made and lost four or five fortunes. He literally would go wildcatting, find some oil deep in the heart of Texas, boom, bust, boom, bust. That ethos of being willing to take risks has never left. It's a really important part of thinking about being a lawyer at TPG. You're trained, as a lawyer, to be conservative, but you have to reorient yourself to being a risk manager and that means learning how to take risks, prudently and thoughtfully in an environment where there are booms and busts along the way.

Sid, fortunately for his heirs, never got married, and never had any children, and when he died, he was on the "boom" side of the boom-bust cycle. His sister had a child, Perry, and Sid left a large portion of his vast wealth to him. Perry had four remarkable sons — all of them are still alive — and they decided they were going to take their money and put it to work.

There's a lot of talk today about alternative investments firms and how everyone is broadening out beyond private equity and hedge funds and real estate. One of the great untold stories in American business is the Bass family. Deep in the heart of



Texas — of all places, Ft. Worth, Texas — these guys, 35 years ago, had this: they built a vast alternative investments firm — if you take all of the successor firms, they've managed over $150 billion. You can see all the types of operations that are covered, and I want people to remember this slide when we talk about where TPG is today, because, in effect, what our founders are doing is recreating this at a different level.

The other thing about the Bass family is they did two things really well: they found talent, and then they designed their structure around empowering that talent. Another ethos that lives within TPG, besides taking risk and being willing to take risk, is this idea of empowering talented people, which is a wonderful thing for lawyers, but can also be challenging in the sense that everyone's a prince. So you have to consider that when you are advising them.

Talking about talent, these are the names of people who came out of the Bass group: Coulter and Bonderman formed TPG; but just to highlight a few others, Richard Rainwater — for those of you who are old enough, is a legendary dealmaker. He did a Disney deal pre-Michael Eisner, for

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the Bass family, that was one of the great deals of all time. Barry Sternlicht, everyone probably knows. Tom Barrack, started Colony Capital. Glenn August is obviously Oak Hill.

Real TPG history starts with Continental. It's the early '90s; Continental is now facing its second bankruptcy in a few years — and this is so important to understand from our history — this is not a typical deal; it's highly complicated, no auction process, no investment bank leading a conventional process, etc. David Bonderman, is, first and foremost, a lawyer. He's one of us: Harvard Law School, partner at Arnold & Porter in D.C. A lot of lawyers who become business guys do it early in their career. David had a very, very successful run at Arnold & Porter, and was the managing partner there. He argued successfully in front of the Supreme Court, and got discovered by the Bass family. He took on a *pro bono* case to preserve some land in Texas that the Bass family cared about. They say, "Why don't you come here" — he's in his mid-forties, basically the age I am now — chucks it all to go become an investor for the Bass family!

Again, think about the ethos of willing to take risk and be bold. But from my perspective he is a lawyer. He thinks like a lawyer; he understands the issues like a lawyer does; has a healthy respect for the value a lawyer can bring and that's both wonderful but also very, very challenging when your boss probably understands law better than you do.

Anyway, back to Continental. David had a lot of bankruptcy experience. So he was able to look at the deal differently than others were, trying to find value in complexity, trying to find value in turning the company around operationally. This transaction becomes the cornerstone of the TPG model, which basically has three prongs to it: find companies that have good businesses (especially if they are poorly run) that are underappreciated as a value investor

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>
> *– Ronald Cami*

might; add value operationally; and/or find value in the terms or the dynamics of the transaction itself, often through complexity. Put another way, our deal and investing professionals seek an angle to drive returns, usually from one of these prongs. To this day, every transaction we do, we look at it from one of these three factors. Is there some intrinsic value in a classic, Warren Buffet sort of way? Operationally, can we add value? TPG was the first alternative investment firm to really do this. It's commonplace now that most firms have operations staff on the ground, but we were the first to do it, and that was Jim and David's innovation. The third aspect is the deal itself: being clever, being thoughtful, and trying to find value in the complexity.

You can see from this page — this was Continental before it was acquired by TPG. The deal was completed in '93, and it drops. Even in this iconic deal, there's a time period where it is a real struggle, a real challenge. From a lawyer's standpoint, particularly from a lawyer who grew up at Cravath in an external law firm, where you do the deal and you're done, this is a very different mindset — the real work begins after the deal is completed.

Allow me a quick digression to say I'm very happy to see some of our portfolio company management here. Management is the critical piece of this work, and finding the right management team and then supporting them with resources, a global infrastructure and specialized talent and skills is an incredibly important part of our investments, again all after the closing.

Another thing you, as a lawyer, always have to remember: one of the people who trained me at Cravath once said, "I do weddings; I don't do marriages." It's just the opposite actually. We do marriages, not weddings. You can see it drop, and then through that drop, there's a lot of operational work that goes into it, and then the rest is history. Continental was one of the great monumental deals. In my experience, the better lawyers think about post-closing before closing occurs and help plan and coordinate the legal aspects of that company.

Here's a quick timeline of TPG history. You can see the growth is just incredible. The top line shows the U.S. private equity business. By TPG III in 1999, there's the beginning of an organization. TPG III was just under a $4 billion fund, which at the time was huge, but now relatively small. TPG VI is close to $20 billion.

In 1994, TPG opens an office in Shanghai. Three years earlier we opened an office in London. Julian will be talking about the developing market, but the developing market and growth markets have always been part of our ethos. Again, there is boldness, being willing to take risk.

Then you can see in 1997, we formalized an ops group. We literally have probably 100 people who do nothing but operational stuff — things like lean procurement, supply chain management, and talent management.

Then 2001 was a real fork-in-the-road decision, when our founders decided TPG was not going to be just private equity, and we were going to become an alternative investments firm, broadening beyond private equity. It started by setting up a venture fund in the biotech space. Later on, TPG

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Star was a mid-market, growth-oriented platform — very, very different type of investing.

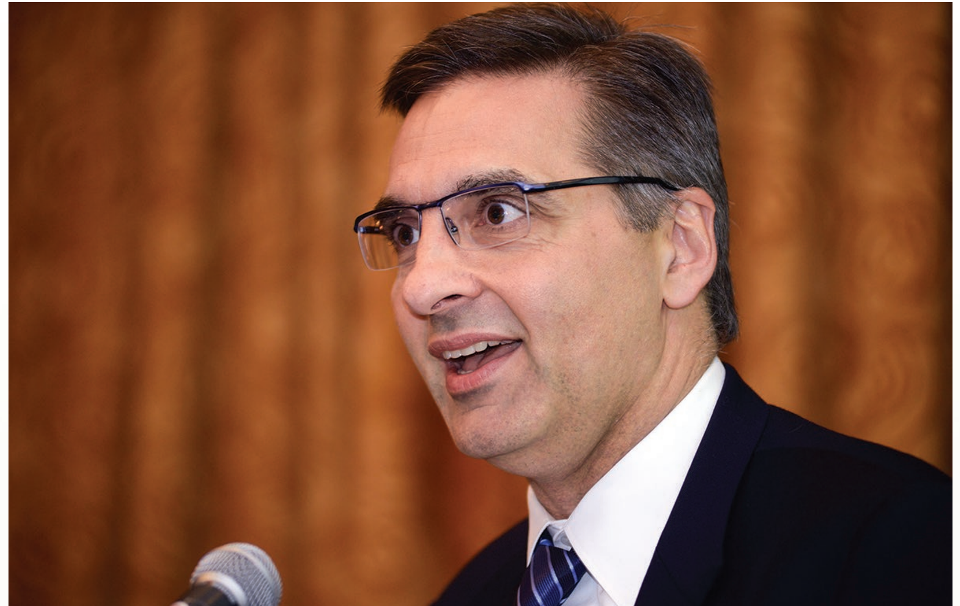
Then 2009, really the first real step towards something completely different, with the hiring of Alan Waxman from Goldman Sachs to start a credit platform. Just last year, we started a real estate platform. Lastly, we raised a modest amount of GP capital to help continue this growth.

This slide is another way of looking at the growth: 1992, TPG Partners, four people, less than a billion under management.

This is TPG today. You can see my great PowerPoint skills — I can't even get the words on one box. TPG is not TPG Capital anymore; it's TPG Holdings. It's a much broader platform. It's got private equity, the credit opportunities, real estate, and then strategic interests. We hope to keep this growing. An important thing to note is this is all done internally; this is organic growth.

Meanwhile, while all this is happening, the world turns upside-down in 2008. My colleagues up here will talk a lot about the impact of the Great Recession. Needless to say, it changes the dynamic very much, particularly with our investors, which Michael will discuss. The regulatory scrutiny also grows dramatically — one thing to remember from a legal perspective is up until about 2008, firms like ours are governed by a very complex set of private documents. It's a private ordering of things: very complicated, very bespoke, very customized, but private. As a lawyer representing the firm, either internally or externally, it requires a tremendous amount of work and a great deal of thoughtful execution around contracts but little to no regulatory or public scrutiny.

Starting in 2008, it becomes much more than that. In addition to a changing and more complicated dynamic with our investors. In addition to a changing and more complicated dynamic with our investors, we have regulators in the U.S. The European Union is about to regulate us, as



well. I had the pleasure — I suppose that's the right word — of hosting a Chinese delegation to San Francisco, who were coming to talk to us about how *they* are going to regulate us. We are regulated in Hong Kong. Lawyers now have to consider things like international treaties, or "positive" law rather than just contractual arrangements.

There are two more things to mention. One is heavy media scrutiny; our industry is now under the public microscope, particularly with the last presidential election. This is new to us and must always be considered. One that's not up here, for obvious reasons, is the Plaintiffs' Bar. The Plaintiffs' Bar has taken a much more aggressing approach than in the past *vis-à-vis* our industry and serves a little bit like a regulator, so to speak. So another thing to consider as a likelihood and impact on litigation.

So you go from a private ordering of things, where it's basically a world focused on contractual negotiations — contentious sometimes, to be sure — a world where you have that plus all this positive law to consider and worry about.

This page shows media perception of private equity in 1985.

Then, good guys in 2004; this was a recent Bloomberg cover. You can see from these magazine covers that the media's perception changed dramatically.

Why does this matter? One of the things we try to do in our legal department is think about more than just what is the legally right answer. To be effective at our jobs, it is necessary to go beyond what is legally permissible, which is, in and of itself, a very hard question often. It's a question about which reasonable minds can differ. But to be effective, you have to add other constituencies to that. How's the government going to react? How's the press going to react? How are your customers and investors going to react? As internal lawyers we also expect this from our external lawyers, and I'm happy to say, they satisfy this — we need to think ahead on all these aspects, not just the technically legal answer.

So, this is TPG today, again. Remember the slide with the Bass family, and I'd like to turn now on how we think about it from our legal department. This is a chart I stare at almost every day. The way we break it down is, you start with the functions across the top. These are things we have to do extremely well. Not "okay," but A+ work.

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Starting with the deals, investor management, compliance, litigation, and going all the way to our portfolio companies.

Then, you have to cover all of these functions one level down by investing platform. Our credit platform compliance is very different than compliance for our private equity platform, and our real estate platform deals are very different than the credit platform deals. If you try to do a one-size-fits-all approach, you'll fail.

On top of that you have to distinguish by jurisdiction at third level down. This bottom row shows the different geographies and only an American can do this, right? Only an American can put up a box and say, "Asia." It is much more complicated than that. India is very different than Singapore, which is very different than China, and obviously Europe — where the U.K. is very different from places like Russia and Turkey. We had an investment in a liquor company in Turkey — a Muslim country — that turned out to be one of the greatest deals we've ever done. But that's very different than a deal in the U.K. The Americas are still our largest market.

But real estate in Americas is very different than Growth Investing in Americas. You have to fit each of these boxes within each of these boxes; it's very multi-dimensional. The challenge we face in our legal department, is how to cover these multidimensional topics by platform and by geography really well.

A lot has been written about the role of internal lawyers, and so give me two seconds to give you our spin of that.

We ask ourselves in the TPG legal department the fundamental question, which is a platitude, and I'm sorry to use a platitude, but, "How do you add value?" By adding value, how do you improve your business better than an alternative lawyer? That's the challenge we face in our legal department. We talk about it all the time — how do we add value? How do we add a distinctive judgment to what we're trying to do as a business matter? That's where we start. It's a very different mindset than you might have when you graduate law school. But without that mindset, I don't see how you can succeed.

> "Another ethos that lives within TPG, besides taking risk and being willing to take risk, is this idea of empowering talented people, which is a wonderful thing for lawyers, but can also be challenging in the sense that everyone's a prince. So you have to consider that when you are advising them." — *Ronald Cami*

We break that platitude down into four things: First, problem solving; second, strategic thinking; third — and this one will be a little unique, I think — understanding organizational psychology. I'll elaborate on that in a second. The fourth one is empathy. I'll explain that one in a second, too.

But I'll start with problem solving. You start with what's the right answer. But again, it's not just "the answer is 'X'"; it's "how do you think about that answer, taking into account non-legal matters?" One of the interesting things that's happened in our country over the last few years is, lawyers have become, for the lack of a better phrase, chief ethical officers of major organizations. I don't know why that's happened. I guess something about the nature of being lawyers gives us credibility to be the chief ethical officer. It was a strange thing for me when I started working at TPG and business professionals were asking me to tell them what is "right" as opposed to what is "legal." It's a pretty powerful thing to think about and in my opinion a huge responsibility. I'm not sure it's necessarily the most effective and efficient way to think about it, but it's true. The business world thinks and looks to us to answer the question, "What is right?" So when we problem-solve, we not only want to answer what's legal, but what is right.

Strategic thinking is just a consultant's way of saying, "Think ahead." We can't do our jobs effectively thinking about the law and all these other non-legal issues only as they are today; we have to think about them in the future, and predict where the law is heading, and be ready for that.

When I first started, I said, "How am I going to do this? What skills do we need to make it possible to accurately predict what is "coming down the legal pike"? I've come to the conclusion that the key to this all is breadth. To be effective at this, you have to have breadth that comes from a variety of personal and professional experiences. This is my one soapbox point. We notice that a lot of the law firms, for efficiency reasons, have developed a division of labor model, which is a little bit of an assembly line approach, and I worry that over time, it's going to deprive the business world of the classic counselor — the guy with the three-piece suit and the pipe — like these guys up here in their paintings — who see the world more broadly and understand how things fit together. When we do our strategic thinking, we actually try to enlarge our horizons. This is going to sound ridiculous, but I ask my team to read broadly, including *The Economist* cover to cover, because I don't see how you can do our jobs without understanding what's happening around the world culturally, legally and in government policies.

The last two things that I'll highlight are organizational behavior. One of the privileges of working at TPG is these are the most talented people I've ever been around, and that's saying something, having been at Cravath. These are incredibly gifted, incredibly empowered people. But they don't just do what you tell them to do. They're more like my kids — my kids don't do what I tell

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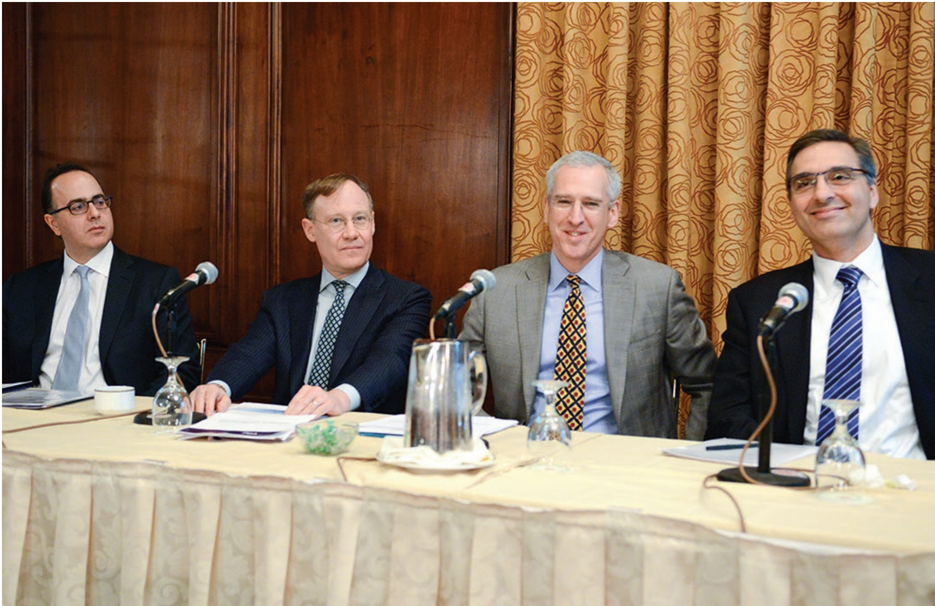

them to do, either! So in order to do our jobs effectively, we have to figure out how to motivate them, how to cajole them, how to get them to see your way of thinking.

The only way to do that, in my view, is the last point, which is empathy. The best external lawyers we have do this very well. They figure out how to get inside that person's brain, and be that person, and think about what that person is trying to accomplish as a business matter. Once you are able to do that, you can start understanding their way of thinking, and understanding a more effective way of counseling and influencing them.

Let me close and talk about the importance of external law firms. Doing all the things we do is impossible without great help from the outside. The legal profession has been beat up, made fun of — there's a lot of lawyer jokes — but going back to what Jack was saying about fairness and the rule of law, it can't be done without many of the people in this room and the firms you all work for. The second and last point from my soapbox — I'd be proud of that, and try not to lose sight of that as you go by your busy days earning a living, that there is a real and powerful societal function that you all serve in preserving and pushing this thing called the rule of law, and we at TPG rely on it desperately. From the breadth of things we have to cover to the vast global reach we have. We need both the scale that law firms provide as well as the judgment, the empathy, and the great wisdom that we get from our law firms, and I'm happy to report that we get that in spades from the firms with which we work.

Thank you very much.

JACK FRIEDMAN: I want to ask a few quick questions. One of the most famous things about private equity is the idea that they have a different idea of how you motivate management. People say, "Oh, you believe in a different compensation." What have you noticed motivating financially the executives of companies taken over, so you really get them to do a good job?

RONALD CAMI: I'll just highlight two points: You can't achieve the success we all wanted to without fantastic management. It's such an obvious statement, but great CEOs, CFOs, Chief Legal Officers, etc., are critical to any success — probably the most critical thing to any deal or company working.

Also, I think it's okay to make money when done with integrity. This is an old-fashioned way of incentivizing people, by having them create sweat equity. They're putting their money in and getting their money out by building and growing a company, as opposed to just getting a check every week. That, for ambitious people, is very, very powerful. It shouldn't surprise anyone that it works, with the right people.

JACK FRIEDMAN: When you're doing all these deals, not only do you have your team, which includes your legal team and your managers, but also the outside banks and the government regulators. What is the scope of people you're interacting with as General Counsel?

RONALD CAMI: Well, on a particular transaction, we were very blessed to have so many law firms that are very good at this, and so the interaction starts with the outside law firms. Most transactions, unfortunately, have a bank involved, and you have to deal with them. But in addition to that, particularly as — I know Julian will talk about this — there are things like investigative firms with which we'll interact.

JACK FRIEDMAN: You mean look at the targets to see if they're worth investing in?

RONALD CAMI: Even more than that — understanding if the human beings we are partnering with are good people.

Auditing firms play a huge role in what we do; especially in accounting and forensic due diligence.

Often, we will also interact with industry consultants if we're going into a new industry or a country with which we're not that experienced, we'll often get help and become experts fast.

One of the things you have to be able to do in our business is learn quickly, and there are lots of learning curves you climb, and the most effective people in our business

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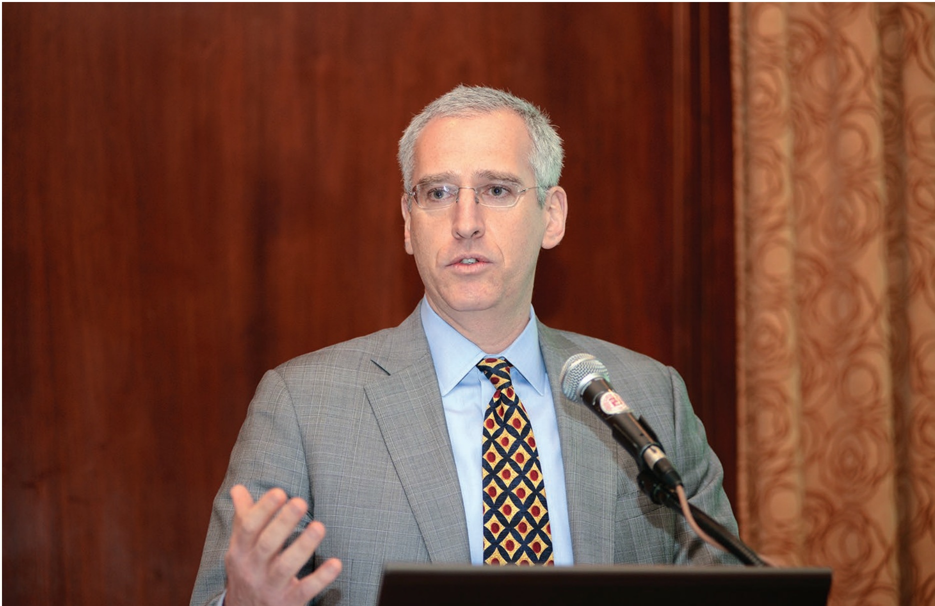

have that talent — to teach themselves. It's one of the reasons why David is so good at it, because one of the things law school teaches is how to learn, how to teach yourself. There is probably very little law that's applicable from when he graduated, but that skill set is really critical.

JACK FRIEDMAN: We'll have more discussion with Ron as the morning progresses. Our next speaker is Michael Gerstenzang from Cleary Gottlieb, who will introduce his topic.

MICHAEL GERSTENZANG: There's an old show business expression: "Never follow Sinatra!" So I'm not quite sure how I drew the short straw and am the first of the panelists after Ron!

Let me start by saying congratulations to Ron and to TPG. If you look at the list of people and firms that have gotten this award, it's really impressive. Ron and TPG deserve to be on that list. As somebody who works on a daily basis with Ron, I'm really proud of Ron and his organization.

I want to focus on the current state of relationships between GPs and LPs, GPs being the sponsors who organize private equity funds, and LPs being the investors who give them money. An important starting point in that discussion is to recognize that private equity has a very different funding mechanic than most businesses you are familiar with, because private equity funds have, by contract, a limited life. They are given money to invest over five or six years, and then that's it — they have another four or five years to harvest those investments. But once that money is spent, they have to go back to their investors and get more money.

So private equity funds are inherently unstable compared to "Corporate America," where you raise money and things might go well or might not go well, but you never have to give that money back; you can spend it, invest it, and reinvest it in perpetuity — there's no fixed life for Facebook or General Motors. This feature of private equity funds makes it fundamentally important that private equity firms have strong relationships with their investors. These relationships are the lifeblood of a private equity firm.

The relationship that private equity firms have with investors has undergone tremendous change in recent years. I've been helping to raise private equity funds for about 20 years, and I would say that the last three years have witnessed the most significant changes in this process, at least since I've been involved with it.

There are a few reasons for that. One is that investors are getting more savvy and more demanding. They sense a shift in the pendulum, the negotiating dynamic, between investors and sponsors. Perception is powerful particularly in negotiations, and when one side perceives that they have more bargaining power, they increasingly use that to test the limits of their power.

This was galvanized initially in 2009, and then more fundamentally in January, 2011, when something called the "Institutional Limited Partners Association," ILPA, published a set of principles for investing in private equity funds. The ILPA principles contain some very general guidelines on transparency, alignment and governance. But they also include a number of very specific ways in which general partners should implement those principles in private equity fund agreements.

The publication of the ILPA principles was really the first time that limited partners, as a community, came behind a set of guidelines, and it was perfect timing because of the perceived shift in the balance of power. ILPA Version 2.0 has become central to every discussion between limited partners and general partners. It's almost automatic, when we're representing a sponsor raising a new fund, that the limited partners ask, as a due diligence matter, for what has come to be called an "ILPA audit." This is a summary that explains how your fund agreement fits with the ILPA principles (or doesn't), and if it doesn't fit within the ILPA principles, an explanation for why it doesn't, or what mitigating factors there are. ILPA has moved front and center in the negotiations between limited partners and general partners.

What does that mean for private equity firms? It means a lot more scrutiny of

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economics, and aligning incentives by focusing private equity sponsors on carried interest as opposed to management fees. It means a lot more focus on transparency — what kind of information goes to the limited partners, and the frequency and detail of that information. It means a lot more scrutiny on governance — not making investment decisions, but a much more active role for the advisory committee or another committee comprised of limited partners, who really want to understand, in a granular way, what's going on with the private equity firm. They want to understand who the key people are, who are the emerging stars, what new businesses will the private equity firm be entering in the next two, three, five years. So, it is a very different environment than we've had historically.

Another area of change in the relationship between LPs and GPs is that the largest LPs — and these tend to be institutional investors and pension plans — are doing two things that, in some ways, run contrary to each other. The first thing the public pension plans are doing is reducing the number of relationships they have with general partners. Preqin, which is the leading publisher of information about private equity firms and regularly conducts surveys of limited partners, recently did a survey in which 47% of the institutional limited partners said, "we're going to reduce the number of relationships we have with general partners." So there will be fewer GP/LP relationships.

The second thing that institutional limited partners are doing is increasing the amount that they are investing in private equity. The same Preqin survey revealed that 86% of investors intend to increase their commitments to private equity funds in 2013 relative to 2012.

How is that possible? You reduce the relationships but you increase the amount invested? The way that you do that is you deepen the relationships you have with your core group of general partners. These LPs will give more money to a smaller subset of general partners. The terms under which they do that are evolving, however. Increasingly, the large institutional investors are looking for very deep relationships with their sponsors. This is done by, among other things, a broad allocation to them — some people call this a global managed account — where the investors turn over a very significant amount of money and say, "We want to invest this across all of your funds, or across all of your funds and then in some particular deals that we especially like." Large institutional investors are trying to tailor the way that they invest more money with fewer general partners.

> "This transaction (Continental) becomes the cornerstone of the TPG model, which basically has three prongs to it: find companies that have good businesses (especially if they are poorly run) that are underappreciated as a value investor might; add value operationally; and/or find value in the terms or the dynamics of the transaction itself, often through complexity. Put another way, our deal and investing professionals seek an angle to drive returns, usually from one of these prongs."
>
> – *Ronald Cami*

A big part of this is what people call "co-investment," and that is the ability of a limited partner to invest an additional amount in a particular deal at their option. That, for a long time, has been a part of the scenery for private equity. But it's becoming much more organized and, in some cases, very systematic.

Now, why is that? Traditionally there were two big reasons LPs looked for co-investment. One is they like the idea of optionality to invest additional money into particular deals that they find attractive. The other reason is, at least traditionally, there weren't incremental fees charged on the co-investment piece of the investment. Co-investment allowed the LPs to average down the fees they were charged on the dollars invested.

But there is another, emerging reason for active co-investment — and it's important for sponsors to recognize this — and that is a knowledge transfer froms GPs to LPs. Increasingly, we're seeing the largest institutional investors are becoming, in some sense, not just partners with the private equity firms, but competitors of those private equity firms, as they go out and look to do deals on their own. This has been true for probably 10 years for some of the largest sovereign wealth funds. But, smaller institutional investors — public pension plans, both in the U.S. and abroad — are becoming much more active in that. They are looking for relationships with GPs to help them do that.

So where does all that leave us? There are a couple of important takeaways, I think. One is, you have an increasing level of "investor choice." You have institutional investors who are narrowing their relationships, and allocating to investments that they particularly like, through co-investment. This poses challenges for general partners. It's difficult to manage this from a relationship point of view and from a conflicts point of view; and it's difficult to see at what point investor choice ends. Do you end up with a menu of selections all the way down to the smallest details of your relationships with limited partners, or

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is it a broader set of choices, and then you try to slot people into A, B or C?

There's a related question, which is: do investors really know how to exercise the choices that they are demanding? If you think about typical investors, they are government pension plans; they tend to be understaffed; there tends to be a lot of employee turnover; and the idea that they are going to be better at choosing particular deals or particular funds or sub-funds than the sponsors is an open question.

The second relates to the current model of fundraising — the inherent instability of having to go back to the market and raise a new fund every five or six years, and be subject during the fundraising window to all kinds of vagaries, not necessarily relating to your performance as a private equity manager, but to what's going on out in the world. There have been some examples of so-called "permanent capital," but that really is a minority of cases in private equity, and there is a question for the future about whether sponsors and limited partners can agree to a more permanent funding source than the current method of fundraising. That would be bad for the lawyers, but probably good for the industry.

JACK FRIEDMAN: I will mention a case example of how hard it is, even when you're a great world expert, to make a good investment. This is a true story that was in the news. It was publicly disclosed, so there's nothing confidential in what I'm going to say.

A trust many years ago had a $4 billion endowment. They asked a famous Wall Street firm to create a strategy for hedging their endowment, so that if interest rates went up or down, there would be no difference. They just wanted to preserve capital, the principal value, where it was.

That sounds like a pretty straightforward assignment. A few months later, the annual report came out which said that with the strategy the endowment had lost 10% — $400 million. That shows how tough it is out there, it's really tough.

Could you give us a sense of what the document looks like? Is it a huge prospectus with a giant contract as Exhibit "A" and a large, specific agreement between the GPs and the LPs?

MICHAEL GERSTENZANG: It's long and complicated! There is an offering document, but the operative document is the partnership agreement. These are often close to 100 pages, and unlike most contracts that lawyers work on, which tend to survive only a couple of years, partnership agreements survive for 12, 13, 15 years. One of the things that, as a fund lawyer, you find yourself doing is looking back at old partnership agreements as the life of the fund continues through various stages, through the investment stage, the harvest stage, through dissolution of the fund. Looking back at these provisions that you negotiated 12 years ago, you sometimes wonder, "What did we intend when we wrote this?"

The first partnership agreement that I worked on was actually for the first TPG fund. I was a young associate, and for some reason I thought it would be a good idea to double-space the partnership agreement. That was a terrible idea. This was before email, and so the only way to distribute these documents was through FedEx. You had to print this thing out — it was about 200 pages double-spaced — and make enough copies, to make the FedEx deadline. It was the most stressful period of my life!

JACK FRIEDMAN: When you have several investors with that contract, and they're in different parts of the world, how do you get one document that everyone agrees on? What do you do if someone wants to back out of the deal?

RONALD CAMI: One thing Michael mentioned, in addition to the big, thick document, there are side letters that you have with almost each investor, and those are separate operative agreements with those investors. As Michael was saying, many investors are expecting customized provisions, so if you have a fund with a hundred LPs, which — we have a couple that have more than that — you literally have a hundred side letters with each of them, and you deal with a lot of the negotiations that way. It's an enormous effort, and Michael's team does a phenomenal job managing it.

The other thing that these LP agreements have is built-in flexibility, so that you can structure them individually — it's a tax lawyer's dream. I knew nothing about this world before I started, and it's been a very steep learning curve. Thanks to a lot of help, I'm starting to get it. You can structure each transaction in very customized ways, treating foreign investors differently than U.S. investors; and even U.S. investors, treating pension funds differently than high net worth individuals. It's a marvel, as an outsider, dealing with it. It's a wonderful example of how powerful a

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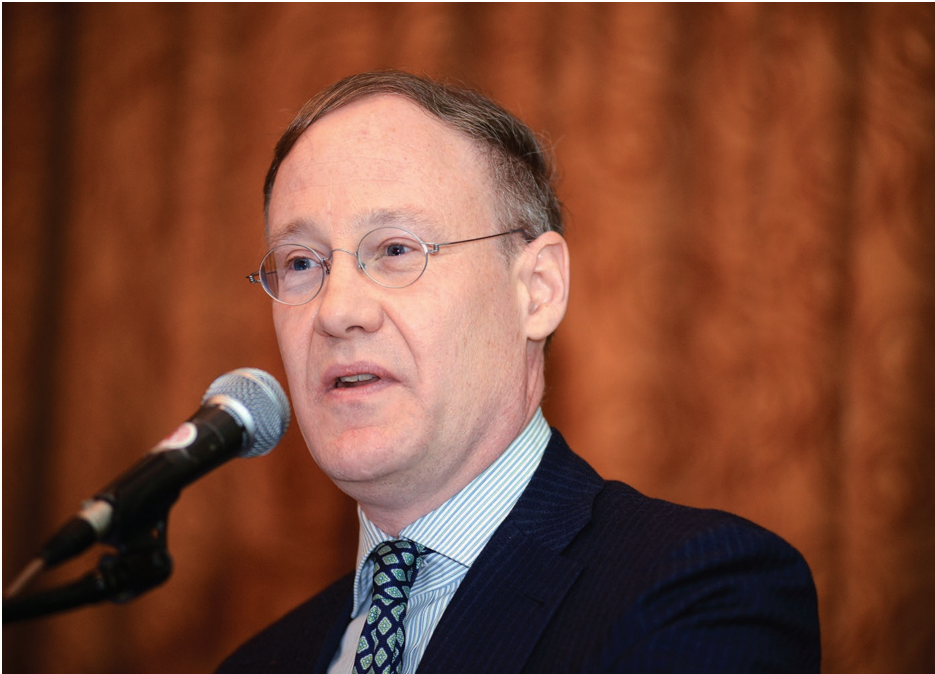

private ordering of things can be — think of it as a massive constitution for the governing of our little world.

JACK FRIEDMAN: I assume all the lawyers have to be incredibly careful that no side letter conflicts with another. So you have to reconcile those, although they're customized.

RONALD CAMI: It's a challenge.

JACK FRIEDMAN: It's quite something. Our next speaker will be John Loder of Ropes & Gray.

JOHN LODER: Thank you very much. Let me begin by adding my congratulations to Ron for this honor. I think the Directors Roundtable made a good pick. Ron, in my experience, is unusual in bringing together not only a very complete understanding of the legal complexities of the matters he's working on, but also — as he, himself, mentioned — understanding that these things are all surrounded by a lot of human dynamics. There are also significant ethical and reputational issues that bear on the decisions that clients have to make based on lawyers' advice. The best lawyers bring it all together, and Ron is one of those who really does that.

I've been asked by Ron to talk about the degree to which the private equity industry has become a regulated industry in the last few years. As he said, it's a big change from the origins of this industry 25, 30 years ago. This is inherently the most technical or legalistic of the topics that are going to be presented today, and I apologize for that in advance. I'll try to keep it at a relatively high level.

There is a handout that I will talk from, for those of you who want to follow along, but if you don't have the handout or don't want to follow along, I'm going to try to make it clear, anyway.

There is a tremendous amount of money that's managed in this country in essentially unregulated money pools. Private equity *funds* are not regulated in any formal way by the government. The same has been true of hedge funds, and until recently, it was also the case that the companies that *managed* these money pools were largely exempt from regulation.

That has changed. The principal regulator for companies in the private equity business now, and for hedge funds, as well, is the U.S. Securities and Exchange Commission, and the principal regulatory regime under which the regulation is done is the Investment Advisers Act of 1940, which is administered by the SEC.

Until 2010, there was actually an exemption in the Investment Advisers Act for any investment advisor who managed fewer than 15 clients and didn't publicly hold itself out as an investment advisor. The hedge fund industry, the private equity industry, the venture capital industry, largely relied on this exemption to avoid regulation. If you had fewer than 15 *funds* that you were managing — each *fund* counted as one client — the individual limited partners invested in the funds didn't count as clients — you were exempt.

Some of the largest firms crossed that 15-client threshold a few years ago. TPG was one of the firms that had gotten big enough several years ago that it had more than 15 funds that it was managing, and it had to register with the SEC, but much of the industry was still not regulated until as recently as a year ago.

In the Dodd-Frank Act, which Congress passed in the summer of 2010, this exemption for investment advisors with fewer than 15 clients was abolished, and the result was that private equity fund managers and hedge fund managers who had previously enjoyed complete exemption from federal regulation had to get registered.

This requirement kicked in just a year ago — February of 2012. There are still exemptions under the SEC regulations for the venture capital industry, for so-called foreign private advisors, for family offices, and for hedge fund and private equity managers that manage less than $150 million in assets. But obviously, $150 million is a very low threshold, and so there are now a tremendous number of newly

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registered participants in the hedge fund and private equity space.

As I mentioned, the deadline for registration was a year ago this month. At the end of March of last year, after all of these registrations had been made, the SEC did a census and published some statistics. There are now 4,000 managers of private funds who are registered with the SEC as investment advisors. Thirty-four percent of those 4,000 are newly registered as a result of the Dodd-Frank Act. These 4,000 registered advisors managed a total of 31,000 private funds, with $8 trillion in assets in private funds. That $8 trillion number is an important one; it's obviously a large number. The biggest sector of the asset management industry, and the most highly regulated for a long time, has been the mutual fund business. There's about $12 trillion in mutual funds. So the $8 trillion in these now newly registered and regulated private fund advisors is a big number in relation to the other parts of the asset management industry that the SEC is charged with regulating. By the way, the SEC was not given any additional resources to undertake the regulation of these large, newly regulated and registered parts of the industry.

The SEC accounted that as of the end of March of last year, 48 of the 50 largest hedge fund managers in the world were now registered with the SEC as investment advisors, and 37 of the world's 50 largest private equity managers are now registered with the SEC.

Thirty-seven of the 50 largest private equity organizations globally are now regulated by the SEC. The 13 who aren't are presumably organizations that operate outside the U.S. and don't manage money for U.S. investors. Of the 37 large private equity firms that are now registered with the SEC, 17 of them are newly registered as a result of Dodd-Frank. So, the percentage of the private equity industry that's only become registered and subject to regulation in the last year is pretty substantial.

What does it mean to be registered with the SEC and regulated as an investment advisor? There are several key elements to that regulatory scheme. The first one is that you're required to keep very extensive books and records. Most organizations would do that anyway, but there are elaborate regulations as to books and records that have to be kept. Second, the SEC, for registered investment advisors, has the right under statute to come in at any time and look at all of the books and records — not only those that are required to be kept, but *any* records that a private equity firm that's registered with the SEC maintains. They have an active inspection program where teams of examiners will show up, often on not very much notice, and say, "We're here to conduct an examination of your organization." They get access to essentially everything — not only the paper records, but emails and *all* the other forms of documentation that are in existence at an organization.

One of the most complex parts of the regulatory scheme is that there is now a requirement to have a chief compliance officer and a full-fledged set of written compliance policies and procedures. There are filings that have to be made with the SEC; the principal document is called "Form ADV," which is a registration form, and which also contains an extensive client disclosure document that has to be made available to clients on a regular basis.

In addition to examinations and filings, there are a whole bunch of substantive regulations that govern aspects of the operations of registered investment advisors. There's a requirement for a code of ethics which regulates the personal securities transactions and investing activities of people who work at the firm. There are requirements for insider trading policies and procedures. There is a regulation on advertising, and advertising is defined, for this purpose, to include anything that's provided to more than 10 people. So, almost all of the communications that are made to a client base, for example, count as advertising under this regulation, and are subject to the standards prescribed in the SEC's advertising regulation.

There is an elaborate regulation dealing with custody of client assets. The general partner of a fund is deemed to have custody of the assets in the fund, and this has been an intense focus of the SEC since the Madoff affair, where clearly one of the big problems was that that firm was receiving assets from clients and was not properly accounting for them and keeping them in a place where they were safe and subject to verification.

There are regulations regarding the use of solicitors who go out and raise money for the investment advisor to manage. There is a complicated new rule called the "Pay to Play" rule, which regulates political contributions by people who work at investment advisory firms.

So the regulatory scheme is pretty pervasive and pretty complicated.

In addition to all the specific regulations, there are also very broad anti-fraud

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provisions. Section 206 of the Investment Advisers Act, the statute itself, prohibits fraudulent, deceptive and manipulative conduct towards clients and prospective clients. Remember, in a private equity firm, the clients are the funds, not the investors in the funds. So the SEC plugged that gap a few years ago by adopting a rule that prohibits advisors from engaging in fraudulent, deceptive or manipulative conduct towards investors or prospective investors in the funds that they regulate. So, the statements that are made in your dealings with your investors and your marketing of funds to prospective new investors are subject to the SEC's anti-fraud standard.

Probably the most important element in the regulation scheme for investment advisors is the principle that the relationship between an investment advisor and its clients is inherently a fiduciary relationship. The Investment Advisers Act doesn't come out and state that, but the U.S. Supreme Court, 50 years ago, in a decision called *SEC v. Capital Gains Research Bureau*, stated pretty definitively that the relationship between an investment advisor and its clients is inherently, a fiduciary relationship. It said that a fiduciary has an affirmative duty of utmost good faith, full and fair disclosure of all material facts, and an affirmative obligation to employ care to avoid misleading clients.

This is a much higher standard than applies to almost any other category of commercial enterprise in its dealing with its customer. For example, it is a higher standard than governs broker-dealer firms in their dealings with their customers. One of the difficult cultural bridges that people sometimes have to cross when they come out of the investment banking arena and go to work at private equity, is to understand that at private equity, they're operating under the fiduciary standard, which is a higher standard of forthcomingness in dealing with clients than they may have operated under in the earlier stages of their careers.

"Strategic thinking is just a consultant's way of saying, 'Think ahead.' We can't do our jobs effectively thinking about the law and all these other non-legal issues only as they are today; we have to think about them in the future, and predict where the law is heading, and be ready for that."

– *Ronald Cami*

I'll mention one other part of the regulatory scheme which is new. Section 404 of the Dodd-Frank Act was adopted in response to concerns that during the financial market crisis, the regulators didn't have a clear enough sense of what was going on in the financial markets and in the economy. There was a lack of understanding about the total amount of leverage in the economy; a lack of understanding about the extent to which people were using over-the-counter derivatives; a lack of understanding as to the interconnectedness of financial institutions. So one of the proposed solutions to that was Section 404, which authorized the SEC and the Commodity Futures Trading Commission – the regulator of many of the derivatives markets – to require the filing of reports by advisors to unregistered money pools. These reports are filed with the SEC or the CFTC as relevant; they're not publicly available, but the SEC and the CFTC turn the data over to the Financial Stability Oversight Council, which is this newly created umbrella organization of financial regulators under Dodd-Frank. The filings are made on a very complicated form called "Form PF," and any of you who work in asset management businesses, hedge fund businesses, private equity firms, have probably struggled a lot over the last year as you've had to figure out how to make your filings on Form PF, which contains very extensive data about the holdings of the portfolios that the investment advisors are managing.

One of the consequences of being regulated by the SEC is that you're subject to enforcement by the SEC, and the SEC has a very active Division of Enforcement, as you all know. The Division of Enforcement was reorganized three years ago with the creation of five special-purpose national enforcement units. The largest of these specialized units is focused specifically on the asset management industry, and its mandate is to go out and prosecute violations of federal securities laws by private equity firms, hedge fund managers, investment advisors and investment companies. There are 65 or 70 full-time enforcement lawyers at the SEC in the Asset Management Enforcement Unit. It's the largest of these units. The other units are smaller, but they focus on market abuse – things like insider trading and market manipulation; on structured products; and on the Foreign Corrupt Practices Act, which we may hear a little bit about in a few minutes from one of the other speakers. The last one focuses on municipal securities and public pensions.

The SEC has clearly recognized the importance of the private equity and hedge fund sectors, and is devoting a great deal more of its time and attention, both on the examination side and on the enforcement side, to these newly regulated sectors. The SEC brought 50 enforcement cases against hedge fund firms in 2011, and more than that in 2012. So there's been a big rampup in enforcement activity focused on hedge funds. A year ago, Robert Kaplan, who was the co-head of the Asset Management Enforcement Unit at the SEC, gave a speech here in New York in which he said private equity law enforcement today is where hedge fund law enforcement was five or six years ago. It's a prediction that there would be a ramping up of enforcement attention

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directed at private equity. Bruce Karpati, the other chief of the Asset Management Enforcement Unit, gave a speech just two weeks ago, in which he reiterated the idea. He said, "It's not unreasonable to think that the number of enforcement cases involving private equity will increase." We've been forewarned that they're looking for opportunities to bring cases.

The issues that they're likely to focus on when they shine the enforcement spotlight on private equity firms actually include many of the kinds of issues that they've always been concerned about where asset management firms are concerned. One of them is performance claims. If you're advertising or promoting your products, your funds, using past performance records, are those records accurately calculated? Do they include the bad deals as well as the good ones, or are you engaging in cherry picking? The accuracy of statements in marketing materials is clearly going to be a focus. Allocation of investment opportunities is another one. How do you allocate among all the different clients whose accounts you're managing the opportunities to invest in the best deals? They're particularly focused on something Michael touched on, which is how do you allocate investment opportunities as among the funds you manage, and as among the co-investors, the limited partners who want a slice of the investment outside the context of the fund?

They're very focused also on allocation of expenses — how are deal expenses and other expenses allocated as among the private equity firm itself, the funds, and co-investors. There are many opportunities for judgment to be exercised there, but also opportunities for criticism by the regulators.

They're focused on the multiplicity of fees that private equity firms are charging to their clients and portfolio companies. Are these fees being charged for services that are actually being performed? Are they

reasonable in relation to the value of the services performed? Are they appropriately disclosed to all the relevant parties?

They are focused on portfolio valuation, because the valuation of the portfolio drives the performance claim, and also has some effect on the fees that are charged. They're intensely focused on related party transactions. Insider trading, we know, is very high on the SEC's agenda and also on the Justice Department's criminal enforcement agenda.

In examinations of private equity firms just within the past few weeks, we've seen an increasing focus on whether some of the activities of private equity firms constitute broker-dealer activities that would require the firms to register as broker-dealers. Some of the largest firms have a registered broker-dealer; most firms don't. To the extent that firms are providing financial advisory services to portfolio companies, the SEC is raising the question whether those aren't really investment banking services that you need a broker-dealer license to perform. It is an unsettled question, but one that's clearly getting a lot of attention from the regulators.

Finally, they're very focused on a potential misalignment between the clients' interests and the private equity firms' interests. In the case of private equity firms that are publicly owned, they've stated repeatedly that they worry that the pressure to achieve short-term earnings results for the publicly owned private equity firm may be driving decisions that affect the firm's clients.

Ron mentioned, at the beginning of his remarks, the kind of swashbuckling, opportunistic heritage of private equity investing. Bruce Karpati of the SEC's Enforcement Unit, in his speech a couple weeks ago, said, somewhat ominously, in private equity, "certain long-held industry practices may be viewed as putting the manager's interest ahead of those of investors." So I think the tension between what Ron described as the private ordering of arrangements between private equity firms and their investors that has long been the model is now going to have to be reconciled in some way with the fairly prescriptive views of regulators as to how advisors should be dealing with client assets. It will be an interesting dynamic to see play out over the next few years.

Thank you.

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RONALD CAMI: Michael talked about how our investors expect customized service, which is a nice way of saying they want volume discounting. They're looking for better treatment than others — that's the private ordering of things. Meanwhile, the SEC is starting to make noise about fiduciary duties prohibiting things like that.

So, that's just a real-life example of the tension that John was talking about that we have to face. It's really challenging.

JACK FRIEDMAN: Before we have our next speaker, I have a quick question. What are some of the litigation issues that the industry has faced in recent years? What are you being blamed for, fairly or unfairly?

RONALD CAMI: There is a lawsuit, unfortunately, every time you do a transaction in the United States. I'll leave it to others to describe whether those are meritorious or not. So, by far, the biggest thing we have to deal with in the industry is challenging the transactions that we do.

There is also a very well-publicized lawsuit for alleged antitrust violations in Boston right now, alleging that the various firms conspired to keep prices down during the bubble — some of our least successful deals. So that's the big single case, but it's mainly lots of little ones, transaction by transaction.

JACK FRIEDMAN: In 2007, the Roundtable did a program before the liquidity crunch, on the subject of investment opportunities in failed M&A deals. It had to do with the risk of leveraging — 5% down and the money you could make if failure comes. I have done over a dozen articles for the *New York Times* and the *Wall Street Journal*. I called the editors and said, "I want to do an article" — it's June of 2007 — "on how a lot of the economy is going to collapse because of over-leveraging and bad investments, and about people who should have known better." A few weeks later, the whole thing started in.

It's unfortunately a reflection of the fact that often even the most sophisticated business media follow the news, instead of looking ahead and warning people. At our program we had the leading private equity and other firms, all of whom were denying there would be any problem.

One last question on the litigation: Why is it that such a little amount of litigation has been done against the industry?

RONALD CAMI: Great lawyering. Great lawyering!

JACK FRIEDMAN: It's good to hear. I try to give our Guest of Honor an easy question or two. Our next speaker is Julian Pritchard, who is the managing partner for Freshfields here in New York.

JULIAN PRITCHARD: Thanks, Jack. Well, let me add, also, the fact that we are honored to be here with you, Ron; to be associated with TPG; and actually to share the panel with Cleary and Ropes & Gray, our colleagues there, too.

I wanted to build on one of the themes that Ron brought out about TPG's willingness to invest in the emerging markets, and you can see from that rough map at the bottom there — it is Turkey, Russia, Asia and South America. I was struck by two things that Ron told me over the last couple of weeks. The first was a point that he brought out today, which is that TPG opened its Shanghai office three years before it opened its London office. Unfortunately, that was, indeed, prescient about the different growth rates of the British and Chinese economies.

The second point that Ron made to me last week was that half of TPG's most successful investments are in the emerging market, and that struck me, too. I am stating the obvious to the people in this room

when I tell you that willingness to invest in emerging markets is a trend that we are seeing many of our private equity clients and strategic investors follow.

So, what are the different dynamics in these deals? Because there are differences when investing in the emerging markets I want to bring out some of the specifics. The first is that you are dealing with people who have very different backgrounds from your own. That is stating the obvious. But it actually builds out in quite subtle ways. The first is, they have very different expectations as to deal terms; they have very different expectations as to deal timing, and how to negotiate. But they also have fundamental differences in concepts of corporate governance and the paramountcy of shareholder value. It is not just that; there is also a difference in the compliance culture of the countries in which you are investing, and that is probably a British way of saying that in some of these places, it is as commonplace to bribe someone as it is to purchase a cup of coffee.

Thirdly, the risks are from different places. What do I mean by that? Well, normally in a deal in a Western market, you look at the target assets and look for the risks associated

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with the target assets. You look at the risks associated with the seller. But in emerging markets investing, it is very different, because there are a lot of risks that come from external sources, and in particular, risks associated with a state or government of the country in which you are investing. So, for some well-publicized examples, you may be subject to expropriation risk; you may be subject to difficulty in repatriating dividends; you may be subject to surprise taxes; you may even be subject to immigration difficulties, getting your managers in and out of the countries in which you are investing.

Maybe it is not the risks, but there are some particularly acute challenges for private equity investors dealing with emerging markets, because many of the most interesting deal opportunities are for minority investments, and in a private equity context, that means two or three things. By definition, it means you have a lower level of control. You probably have less ability to leverage your investment; and a point that Ron made, it puts a lot of emphasis on who you co-invest with, and how you co-invest with them, and how you vet the people that you co-invest with.

But notwithstanding these challenges, there is a lot of investing that is currently going on in the emerging markets. TPG does something very smart, and it is part of the holistic approach to investing in emerging markets, which is to do a risk mapping exercise. They take countries and they measure them on a variety of risk areas. We do the same, and we have shared our ideas with TPG and vice versa. It is not necessarily rocket science — but if you take a step back and you look at a country by reference to the likelihood of expropriation risks, the number of treaty arbitrations, the tax risks, the corruption risk and so on, you can then create a map of which countries are the most risky for investment.

Right now, there is a very high correlation between the attractiveness of investment in certain countries and those countries being red, or high risk, on the risk map.

So what can you do about it? Maybe these are themes that we can bring out in our discussion. The first, which plays to some of the points that Ron brought out, is a malleability of thought. My own view is you can't do deals in the same way; you have to take a big step back and look not just at the transactional risks, but also at the state risks, and the operational risks — the ongoing risks of running your business in the relevant country. That is where you go from weddings to marriages, when you are looking at investing in these markets, because you know you are going to be there for some time.

The second point goes to the co-investors and the way in which you can gain a benefit from your co-investors. There are lots of ways in which you can marshal your allies when you invest in the emerging markets.

The first is to be smart about how you choose a co-investor, and there are many different types of co-investors. There can be the individual who has a strong reputation, who knows the market and who knows the assets, who knows the business and the market, and maybe he knows the way in which the assets are regulated. That can be very valuable. There is obviously a balance there, because you don't want that person to use connections in an inappropriate way; you want that person to use connections in an appropriate way.

You can also think about getting bulletproof investors. When I talk about bulletproof investors, I mean investors that the local government is going to be very unlikely to challenge or make life difficult for, like the World Bank.

But there are also — and this is the subtlety of it — ways in which you can gain support and information from regulators themselves. We have seen examples of situations where you start off down the road and at some point during your deal, you say, "Well, maybe we should go and talk to the regulator." The regulator says, "Thanks — I'm glad you did talk to us, because actually, we were about to expropriate that asset tomorrow, and lucky you didn't sign your deal." So having an appropriate dialog with a regulator is important, too.

Finally, I'd say that a lot of clients tell us that they are sometimes frustrated about the length of the process and the elongation of deal processes. Actually taking your time in emerging markets and investments, many of our clients say, allows us to get to know the market, get to know the management team, get to know the assets better, get to know the regulatory risks, and have time to address the risks in a not necessarily purely contractual way.

I might just give you one example of that before I close, which is that, I would like to do a straw poll here: Who knows what I mean when I talk about BIT structuring? So BIT structuring is a common concept for — in this case it is the emerging markets investing — where you look at the bilateral investment treaties that exist between your country and the country in which you are investing.

So, a real-life example is a big U.S. oil company wants to buy assets in Venezuela, and let us say there are $20 billion worth

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of assets in Venezuela. If that big U.S. oil company just sets up a U.S. subsidiary, buys the assets from whoever — there is no bilateral investment treaty between Venezuela and the United States, which means that you will not be able to bring a claim to a nice, comfortable arbitration tribunal in Washington, D.C. or in the Hague. You will be forced, if your assets are expropriated, to fight it out in Venezuelan court.

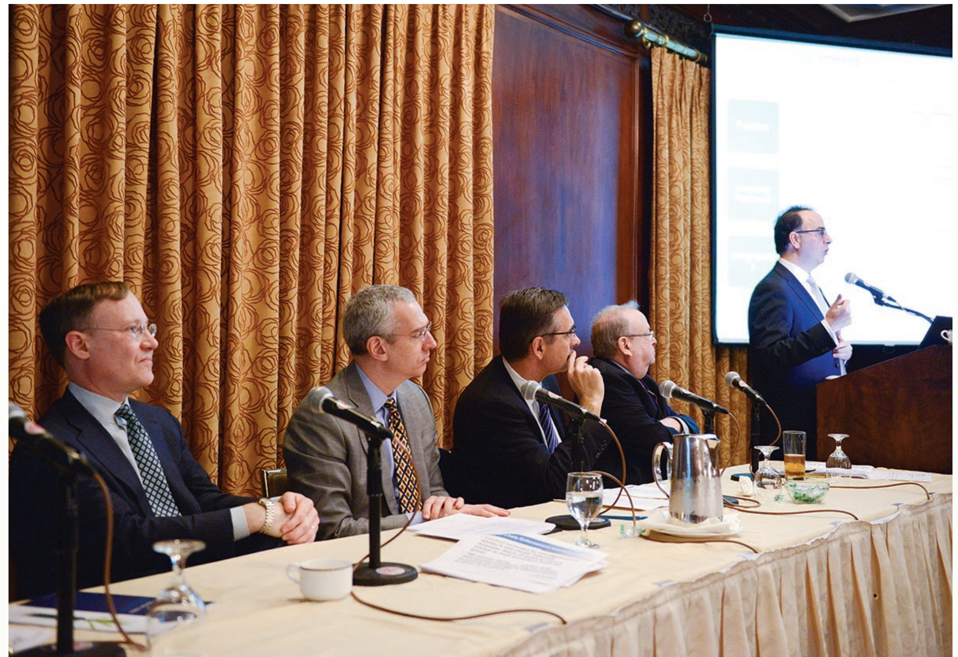
So, with some simple early-stage structuring, when you have thought about the expropriation risk, you can use your expertise in bilateral investment treaty analysis and match that with the tax houses, and then invest through the country which *does* have a bilateral investment treaty with Venezuela.

So, you can do these things which are non-contractual, which are not hugely outside the box, but they take a little bit of thought and analysis.

That is all I was going to say by way of initial remarks, but perhaps we can build on those things during Q&A. Thank you.

JACK FRIEDMAN: Thank you. Although we have lawyers up here, I'd like to turn to the dealmaking environment right now. Could anyone comment on the outlook for volume of deals for the next year and where we are in the cycle of dealmaking by private equity?

RONALD CAMI: I'm stating the obvious — the salient characteristic of the market right now is a tremendous amount of money flooded by virtue of central banks around the world pumping money into the market. That is affecting lots of things, including the rates on debt instruments which are incredibly low, which gives people a lot of borrowing power. There is cash flowing to allow people to do transactions. I'm not in the predicting business, but logic suggests that there should be a healthy volume of work this year, and early signs are that is right.



JACK FRIEDMAN: We're talking about largely M&A deals primarily? What is the liability of a fund for loans that it takes?

RONALD CAMI: We very rarely, if we can avoid it, put liability at the fund level. We use classic corporate structuring to protect liability from touching the fund. So typically, the liabilities that debt incurred will be at the portfolio company or at special purpose vehicles formed for the purpose of the transaction. Occasionally the deal just necessitates putting debt at the fund, but going back to those complicated limited partnership agreements, the limited partners do a pretty effective job of limiting our ability to do too much of that.

JACK FRIEDMAN: Are the lenders usually traditional banks?

RONALD CAMI: Yes.

JACK FRIEDMAN: Also, in buying companies and restructuring the capital of a portfolio company, there is a lot written about battles with bondholders who are annoyed that they're getting reduced value on the bonds because the market thought that the bondholders were going to be at the tail end.

RONALD CAMI: One of the things, when you do deals, is complex structures around how you put the debt in and then unfortunately, when you take risk. This is — again, I'll emphasize this — a high-risk business. John mentioned mutual funds — the alternative investment world is in that section of the Chinese menu of investment opportunities that is focused on high-risk, high-reward, and by definition, that means there is going to be some transactions — hopefully not too many — where it doesn't work. In those things, as you might imagine, there are pretty healthy battles about what to do with the carcass when things go bad.

In the end, bondholders, particularly bondholders who are not secured or even subordinated, end up getting the short end of the stick, by virtue of the agreements they signed up to.

MICHAEL GERSTENZANG: The limited partners recognize the risk/reward choice they are making. Public pension plans commit billions of dollars to private equity, but as a percentage of the total

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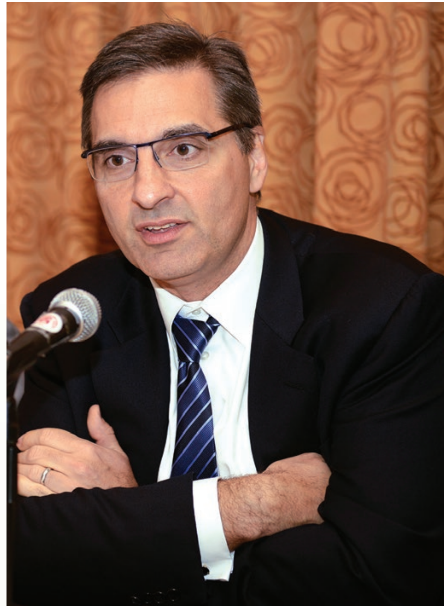
assets that they manage, it is actually quite small. For a large U.S. public pension plan, it could be seven or eight percent across all alternative investments, of which private equity is one part. So the percentage that they put at risk in this asset class is relatively small. Why do they do it? Because they need the return that private equity and other alternatives offer. As we all know from reading the papers, public pension plans tend to be woefully underfunded. They need to have *some* exposure to high-risk, high-return investment strategies, because otherwise, they face significant challenges in meeting their long-term obligations. They understand the risk; they put a relatively small percentage of their overall portfolio into alternatives; but it is critically important for them to do that, because of the liabilities that they face.

JACK FRIEDMAN: Internationally, let us take Europe, for example. There is variety in Europe, Britain and the Continent. Is the private equity business in that geographic area basically the same as in the U.S., or are they different in some way?

JULIAN PRITCHARD: I think that if you look at businesses at the top end, like CVC and Premier and Cinven, then at least towards the left-hand end of the function scale on Ron's map, they're pretty similar. They'll do the same kind of transactions, and they'll actually do the same kind of transactions in the same markets, albeit that those funds may do less in the United States. The business model and the types of structures at that end of the scale are also similar.

There has been less regulatory scrutiny in most aspects of the financial industry — but there has been slightly less regulatory scrutiny in the U.K. and Europe, and that is partly because there is a kind of schizophrenia where most regulation is political to some extent. The regulators can't work out which is worse — the amount that is being paid to people on Boards of Directors, or the amount of money



that private equity and other alternative investment fund managers are making. So a lot of the thrust of regulation is actually focused on increasing the stewardship that is shown by investors over their assets, as opposed to attacking the stewards.

But I would say, in answer to your question, Jack, it is a similar business.

JACK FRIEDMAN: Are there private equity firms that are based in different parts of Asia?

RONALD CAMI: There are a massive number of local private equity firms in every major jurisdiction in Asia. When we compete, the globals compete against local competitors everywhere. So in China, there are hundreds of private equity shops that have been formed relatively recently. It is similar in India and Singapore and Japan; even places like Indonesia and Malaysia.

JULIAN PRITCHARD: It is interesting when it presents challenges for the U.S. and western Europe-based investors, because sometimes you can be dealing with different kinds of acceptance of compliance risk. Let me give you one example that Ron and I were discussing earlier, which John touched on, which is FCPA risk. We all know that in the places I mentioned, without naming individual countries, some of the places in which you are going to invest are high on the corruption scale. What does that mean, particularly when you are making a minority investment? Let us say you are TPG making a 30% investment in a company in one of these markets. You don't control the Board, by and large, and you don't control its compliance culture by and large. What can you do, contractually, that imposes a measure of control? You can get into this very challenging balance of measuring, balancing two evils. One is that you have a minority investment where you don't have any step-in right or control right over the compliance of the target, and then you are into a pretty uncomfortable world where if a bribery occurs at the target, and you have a 30% investment with no step-in rights, you have very little option. You can't continue to fund the company. Maybe you have to sell the business. Maybe you have to sell it to one of these investors who has less stringent rules on it with respect to bribery.

The other alternative is to have the step-in rights and say, okay, look, if there is a problem, we will be able to step in and remediate that problem and impose our own compliance culture on the business. But then you have the hidden doubt at the back of your mind as to whether the U.S. regulator, the DOJ, will say, "Well, you should have done something in advance, you should have exercised your step-in rights; you didn't exercise them enough." I'd be intrigued to hear Ron's thoughts on where TPG sees that balance.

RONALD CAMI: Well, this is a real-life example of what I was trying to articulate earlier about trying to look ahead and predict. As we sit today, it's probably good advice to say not having control protects the firm more than having control, because you could at least point to it and say, "We don't have control, and the bad thing happened is not our fault," and expect the regulators

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to give you a pass. We concluded that that's not where the regulators are headed; that's not where the future will be. If they see 30% investment, they're going to expect certain steps to be taken to comply with the FCPA or the U.K. Bribery Act. To the extent we can, we try very, very hard to take control over those types of issues, so that we can fix them if necessary. We take the view that in the future, the SEC will appreciate at least the effort to fix things and maybe work through an issue that way more effectively than the old methodology of relying on the corporate veil to protect the firm. It's a real challenging issue, and it's a judgment call, but that's how we look at it.

JACK FRIEDMAN: A number of years ago, I invited a Commissioner of the SEC for a luncheon with the top securities lawyers from the top dozen law firms in the city. One of the issues was whether companies have an obligation to try to correct issues on the Internet which they didn't put out there. The lawyers said, "We tell our clients we don't have a duty; it's just people giving their opinion." Before he became Chairman of the SEC, Harvey Pitt was representing his firm, and Harvey said, "No, it's not so simple." He personally argued with the other eleven. There are regulators around the world who wish to require companies to affirmatively correct things in the marketplace, and not just say, "Well, we didn't do it and therefore, we're not responsible for correcting it."

[QUESTION FROM AUDIENCE:] I have two questions that are principally directed to Ron. You spoke briefly about incentivizing management, and I wondered if you or anyone else has an opinion on what happened to Chesapeake. By all accounts, these guys made a lot of money for themselves, but also for their investors. One can say at the eleventh hour, there was some conflict over their fiduciary responsibilities, disclosure and special treatment but at least in the early stages everyone made money. What is your view of his very special compensation package?

The second question has to do with currency risk. You hear a lot today about what they are calling "currency wars." These are basically the values and we measure our confidence against those of other people. There is nothing more basic to a trading partnership than the honesty between its partners. How do you see that risk being hedged or insured against in the future, and how do you find that risk upsetting or appearing in promises between parties?

RONALD CAMI: I'm going to slightly punt on your first question, only because we have several arrangements with Chesapeake. Other than to generically say it's very different, just by virtue of the fact that they're a public corporation; with different rules versus a private equity model where the underlying companies are, for the most part private, and there is eyes wide open, everyone knows what they're getting into when the compensation structures are set.

When you're dealing with public companies, you have to worry about disclosure and does the shareholder base really, truly understand what management's getting. So, it's a little bit of an apples and oranges comparison. So that's all I'll say about that.

On the second one, this is again, a little bit reminding that, there's an old phrase about all law is local, where our business is really local, and by "local," I mean at the portfolio company level. So each company has their own currency risk that we, the operations group that I talked about, actually have people, that's all they really do is try to understand those kinds of hedges. Sometimes they hedge just by virtue of the portfolio company having lots of businesses around the world, it's just a natural hedge. Other times, they'll have to be very thoughtful, and they'll do currency hedging.

From what I can tell by what the businesspeople think, there's a lot of risk to what you're seeing right now, particularly with all the money being pumped in and — I want to use a careful word here — the manipulation of currency, if you will, and how, by stroke of pen, great investments can turn into bad ones quickly.

JACK FRIEDMAN: Do the Delaware courts ever affect the industry's model in any way, such as fiduciary duties and other issues?

RONALD CAMI: Yes! They affect us very much.

JACK FRIEDMAN: Do you have a formal or informal procedure in which you assess risk?

RONALD CAMI: A little bit of both. Formally, every transaction we think about goes through a committee called the "Investment Review Committee," and the deal professionals bringing that transaction will get, it's a thing to behold. It was very humbling to me when I first started. You have presentations by incredibly talented people who are "effective litigators" in selling their story. Unfortunately for them, the jury is usually smarter and more experienced than they are. I would hear these presentations and think, "All right! We are going to make a ton of money! Let's go!" and, "I've got to tell the lawyers not to get in the way of this one." Then David and Jim will start, and then Jonathan Coslet — he's our Chief Investment Officer — will start, and it is, at times, brutal. Many times, these guys walk out feeling pretty bad.

If you can get through that preliminary process, we have massive due diligence efforts. Between legal, accounting, investigative firms, consulting firms — we really, really attack everything we can and try to turn as many stones as efficiently as possible.

JACK FRIEDMAN: I'm not asking about your firm, but in general: What is the governance structure of the holding company at the top level of the private equity firms? Do they have a Board of Managing Directors, with various committees?

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RONALD CAMI: It varies from firm to firm. Our firm is controlled by two men, pretty simple.

JACK FRIEDMAN: I have one last question. In the five minutes a month you have free for your own time, what do you like to do with those five minutes?

RONALD CAMI: Sleep! Well, I'm at that stage in my life — my wife and I — our kids are at the point where we're almost done with them, and so we spend as much time enjoying them, between sporting events and plays and music things, and so all free time is family time. My wife's a very old-fashioned woman, so she insists on weekend dinners, where we literally sit there like an old Italian family with a three-hour dinner, and everybody is expected to read something, and we make our kids entertain us. We have one who can sing, so we make him get up and sing. All our time is spent as family time, which I really enjoy.

JACK FRIEDMAN: It's great, the idea that in America the customs from the old countries can still be imported here, even as the generations go on.

RONALD CAMI: She's Boston Irish, so go figure!

JACK FRIEDMAN: I want to thank Ron for honoring us by accepting our invitation. I want to thank the various speakers and their firms. Most of all I thank the audience, because our whole purpose is to try to create good programming for them, and we're very pleased that you came today.

RONALD CAMI: Thank you.

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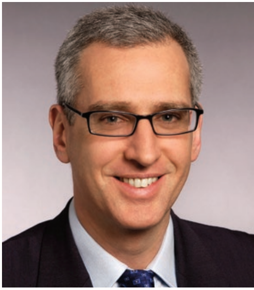

Michael Gerstenzang

Partner, Cleary Gottlieb Steen & Hamilton LLP

CLEARY GOTTLIEB

Michael A. Gerstenzang is a partner based in the New York office.

Mr. Gerstenzang's practice focuses on organizing and advising private investment funds, including buyout funds, international funds, special situations funds, venture capital funds, hedge funds and other types of "alternative asset" investment vehicles. Mr. Gerstenzang also advises private investment funds in their investment activities, including acquisitions, dispositions, and shareholder arrangements with portfolio companies and among private equity consortium members. He has also represented fund sponsors and investment teams in connection with negotiating (and restructuring) "seed" investments, spin-outs, joint ventures and other general partner/management company arrangements.

Mr. Gerstenzang regularly represents TPG in its fund formation and investment activities, as well as Citigroup, Credit Suisse and the Raine Group. He has also advised JPMorgan, Deutsche Bank, KKR, MBK Partners, Victoria Capital Partners, and Unitas in connection with the establishment of private investment funds, and regularly represents several institutional and pension plan investors in private investment funds.

Mr. Gerstenzang is the Chair of the International Bar Association's Subcommittee on Private Investment Funds, and is a member of the Private Investment Fund Forum, a group comprised of lawyers practicing primarily in the private investment fund area. Mr. Gerstenzang regularly speaks on private investment related topics, including at the IBA/ABA International Conference on Private Investment Funds and the Private Equity Forum sponsored by the Practising Law Institute. Mr. Gerstenzang is a member of the Bar in New York, and is admitted to practice before the United States District Court, Southern and Eastern Districts of New York.

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Julian Pritchard

U.S. Managing Partner,
Freshfields Bruckhaus Deringer

Julian Pritchard is a corporate partner, based in our New York office, and is the regional managing partner for our U.S. practice. He advises clients primarily in the area of complex cross-border mergers and acquisitions and has worked in the firm's London, Tokyo and New York offices.

Julian's experience includes advising on the acquisition of Morton Salt by K+S AG from Rohm and Haas, following its merger with Dow Chemical; the sale of Arysta Lifescience Corporation to Permira; the investment by Goldman Sachs, SMBC and Daiwa SMBC in Sanyo Electric; the spinoff by BT Group of O2, its cell phone business; the joint venture between BT Group and KDDI; Swiss Re's sale of its insurance asset manager, Conning; Brascan's contested offer for Canary Wharf and Reed Elsevier's proposed merger with Wolters Kluwer.

Julian is qualified as an attorney in New York and is a solicitor in England and Wales. He was educated at Jesus College, Cambridge, where he received a double first-class degree in law. He joined the firm in 1993 and became a partner in 2002.

Freshfields

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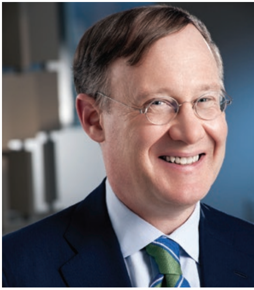
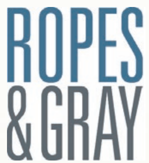


John Loder

Partner, Ropes & Gray LLP



John Loder co-heads Ropes & Gray's Investment Management practice group, which consists of over 100 lawyers. For many years, his practice has focused primarily on investment management industry clients, including investment advisers, mutual funds, hedge funds and the investment management activities and products of banks, broker-dealers and insurance companies. He has extensive experience in the following types of matters, among others:

- the organization of investment advisory firms and investment funds of all types, both SEC-registered and unregistered
- ongoing representation of and advice to open- and closed-end investment companies, exchange-traded funds (ETFs) and their independent directors/trustees (currently including over 500 funds with collective assets totaling several hundred billion dollars)
- mergers and acquisitions of investment advisers and funds
- advice with respect to governance, regulatory and compliance issues of all kinds affecting investment management industry clients
- advice regarding government enforcement matters

He also serves as counsel to the independent directors of several large real estate investment trusts.

Ropes & Gray LLP

Ropes & Gray LLP is a leading global law firm with offices in New York, Washington, D.C., Boston, Chicago, San Francisco, Silicon Valley, London, Hong Kong, Shanghai, Tokyo, and Seoul.

Built on a foundation of more than 140 years of forging strong client relationships, we represent interests across a broad spectrum of industries in corporate law and litigation matters. In addition, we offer counsel on labor and employment issues, tax and benefits, creditors' rights, and private client services. Our clients range in size from large to small companies and include leading industrial companies, financial institutions, government agencies, hospitals and health care organizations, colleges and universities, as well as families and individuals.

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