Title: PRIVATE EQUITY: Fund Formation and Transactional Issues

Credit: Hours: (2)

Type: Seminar limited up to 25 upper level students.

Pre-requisites: Business Organizations.

Course Description: The course is designed to introduce upper level students to the fundamental and critical issues arising in private equity fund formation and the transactions engaged in by private equity funds. The principal focus of the course will be on understanding the legal and commercial aspects of private equity as an asset class and on introducing students to the legal documents used in the process of raising and investing capital. Pre-requisite for the course is Business Organizations. Contract, corporate, partnership, limited liability company and securities laws will be the principal legal regimes applied in the course. The course will also deal incidentally with various other laws, including tax, ERISA, bankruptcy and anti-trust laws.

Conduct of the Classes: The class will be conducted as a seminar with an emphasis on student participation based on research and the reading materials assigned for each session. Grades will be based on a take home final exam. Class attendance and participation will be important and may have a positive impact on final grade, (it raises final grades, but does not lower them).

Course Materials: The course materials will include: Private Equity as an Asset Class by Guy Fraser-Sampson (John Wiley & Sons, Ltd, 2nd ed. 2010); Selected Delaware General Corporate Law and Limited Liability Company Law; current news in Private Equity (WSJ); selected cases; and transactional documents used in the Private Equity area.

Role of the Course in the Curriculum: The course will supplement and strengthen students’ knowledge of certain basic legal disciplines that are core to practicing in the transactional area of corporate law (e.g., corporate, securities, tax, ERISA and partnership law). Private Equity as an asset class is a major force in the global economy and having an understanding of how investment funds are created and operate will be valuable to students whether or not they ultimately practice in this area.

Attendance: Students will be expected to attend class and participate in class discussions.

Proposed Syllabus (14 weeks):

Week 1: Introduction to Private Equity
Private Equity as an asset class: What is it? Why?
Economic and Social Issues
The Major Investors/Limited Partners
Sponsors/Investment Personnel
Investment Thesis / Internal Rates of Return
Terminology/Jargon

Week 2: Fund Formation
Legal Considerations/Issues
Key Terms / Term Sheet
Introduction to Marketing and Documentation
Track Record/Finders

Week 3: Fund Documentation
The Offering Memorandum
The Limited Partnership Agreement
The Subscription Agreement
The Brochure
Side Letters

Week 4:  Investing Capital
         Leveraged Buy-Outs and Management Buy-Outs
         Locating Opportunities
         Research
         Auctions
         Sponsor Coverage
         Proprietary Opportunities
         Corporate Carve-Outs

Week 5:  Anatomy of an Auction of a Business
         The Players and their Roles
         Process Letter
         The Confidentiality Agreement
         The Offering Memorandum
         Management Presentations
         The Data Room
         Due Diligence
         Deal Dynamics/Negotiations
         Strategy

Week 6:  The Bid Package
         The Auction Contract and Mark-Up
         Use of Auction Memorandum by Buyers
         Equity Commitment Letter
         Limited Guaranty
         Debt Commitment Letters
         Bid Letter
         Consortium Arrangements/Shareholder Agreements

Week 7:  Introduction to Debt Financing
         Bank
         High Yield
         Mezzanine
         Seller Paper
         The “Recap” Structure

Week 8:  Terms of the Deal/Alternate Investments
         Public vs. Private
         PIPEs and other Non-control investments
         Equity to support acquisitions

Week 9:  Management Participation
         Equity “Roll-over”
         Equity Investment
         Options
         Employment Agreements
         Non-compete Agreements
         Strategy

Week 10: Exit Transactions
         Initial Public Offering
         Sale
         Secondary Buy-outs
Leveraged Build-ups or “Roll ups”

Week 11:  Selected Legal Issues
Cases, e.g., Del Monte, United Rentals
Strike Suits
Anti-trust
Tax Structuring
Key Delaware Law Issues
Securities Law Matters

Week 12:  Introduction to Venture Capital Investing
Valuation
Diligence
IP
Documentation

Week 13:  Current State of the Private Equity Market
Fund Raising
Financing Market
Mega Deals
Regulation of Private Equity Funds
The Future

Weeks 14:  Review and Discussion of Selected Issues