

Financial Institutions

E-ALERT

June 12, 2008

Private Equity Investments in Financial Institutions

Recent market conditions have provided ample opportunities for private equity firms to invest in financial institutions in need of capital. Examples include Citadel Investment Group's investment in E*Trade Financial Corporation, Texas Pacific Group's investment in Washington Mutual, and the most recent investment by a consortium of investors led by Corsair Capital in National City. Such investments, however, are subject to Federal statutes and regulations governing the ownership in, or control of, a financial institution. The collapse of the Blackstone Group's acquisition of Alliance Data Systems, due in large part to bank regulatory issues, highlighted the complexity and uncertainty that can accompany private equity investments in financial institutions. This E-alert briefly reports on bank regulatory considerations typical to these investments.

The Bank Holding Company Act subjects companies that control banks to comprehensive oversight and regulation by the Federal Reserve. Companies that control banks are known as Bank Holding Companies and are subject to capital requirements, restrictions on non-banking activities, and other regulatory limitations. The Savings and Loan Holding Company Act, which is administered by the Office of Thrift Supervision, establishes a similar regulatory regime for companies that control savings associations (more commonly referred to as thrifts). The Change in Bank Control Act requires companies (and also individuals) that acquire control over a bank or a thrift in a transaction not subject to one of the Holding Company Acts to file a prior notice with the bank's federal regulator and the regulator may disapprove the acquisition within a specified period. The Federal bank regulators' determination of whether a company controls or acquires control over a bank or thrift is nuanced because the regulators maintain discretion in approving applications (and disapproving notices) and because the inquiry is heavily influenced by informal agency guidance and issuances. And many states additionally have their own laws that regulate the extent to which companies may control financial institutions chartered under their laws.

Private equity firms should approach investments in financial institutions mindful of control issues and with the assistance of experienced and effective regulatory counsel. Enlisting the help of bank regulatory counsel during the initial planning stages of an investment in a financial institution will help to ensure that the transaction complies with applicable regulatory requirements and will also establish a point of contact with the Federal bank regulators.

COVINGTON

COVINGTON & BURLING LLP

BRUSSELS

Kunstlan 44 /
44 Avenue des Arts
1040 Brussels
T: 32.2.549.5230
F: 32.2.502.1598

LONDON

265 Strand
London WC2R 1BH
T: 44.(0)20.7067.2000
F: 44.(0)20.7067.2222

NEW YORK

The New York Times Building
620 Eighth Avenue
New York, NY 10018
T: 212.841.1000
F: 212.841.1010

SAN FRANCISCO

One Front Street
San Francisco, CA 94111
T: 415.591.6000
F: 415.591.6091

WASHINGTON

1201 Pennsylvania Avenue NW
Washington, DC 20004-2401
T: 202.662.6000
F: 202.662.6291

WWW.COV.COM

Attorneys in Covington's Financial Institutions Group have advised many clients on control issues, including in several of the private equity investments mentioned above. The Financial Institutions Group's expertise with respect to control issues derives from advising clients on bank acquisitions and investments over the course of the past three decades. Please do not hesitate to contact any member of our Financial Institutions Group, including the undersigned, should you have any questions.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our financial institutions practice group:

Stuart Stock	202.662.5384	sstock@cov.com
Keith Noreika	202.662.5497	knoreika@cov.com
D. Jean Veta	202.662.5294	jveta@cov.com
Mark Plotkin	202.662.5656	mplotkin@cov.com

This information is not intended as legal advice, which may often turn on specific facts. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Covington & Burling LLP is one of the world's preeminent law firms known for handling sensitive and important client matters. This alert is intended to bring breaking developments to our clients and other interested colleagues in areas of interest to them. Please send an email to unsubscribe@cov.com if you do not wish to receive future alerts.

© 2008 Covington & Burling LLP. All rights reserved.