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- Link directly back to model agreements and language
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- Reduce your overall risk by staying ahead of changes


Westlaw Business Currents highlights

- Westlaw Business and law firm-authored content focuses exclusively on the business law aspects of market developments
- Articles of interest are identified and analyzed to provide insight to specific areas associated with business law
- Dynamic content in Westlaw Business Currents reflects the constantly changing market environment
- Provides an online forum where business lawyers can learn and exchange ideas and information with their colleagues and staff

Westlaw Business Currents can help you:

- Position your firm ahead of changing markets by staying informed of trends and developments
- Provide informed advice to clients by leveraging Westlaw Business news and analysis to answer questions and build knowledge
- Draft the best possible agreements using information on current trends as a starting point to research terms and language
- Keep your colleagues and team members informed of the latest trends using the Westlaw Business Currents sharing options

Westlaw Business Currents offers reliable, timely analysis of relevant legal issues



Thursday, July 16, 2009 15:26 EDT Ely Razin, Esq., Editor In Chief

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LEGAL ANALYSIS

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M&A STRUCTURING: WHAT HAPPENS IN NEWCO, STAYS IN NEWCO

Are M&A legal structures about to be pierced or collapsed? Not if the Delaware courts have anything to do with it, as seen as their ruling on the recent Blackstone/Alliance Data aborted acquisition. The upshot: when working with any purchaser, certainly of the PE "smart money" kind, *caveat vendor* – PE funds are known as smart money for good reason. Prolific creators of multiple legal entities and complex partnerships, PE funds are careful to segment one legal identity (and set of obligations) from another, and certainly from the main funds and the General Partner. The issue is broader than PE purchases, as triangular mergers deploying NewCo's are routinely used. As banks and policy-makers look to M&A (including that of the PE variety) to salvage the distraught financial system, careful lawyering is more important than ever.

Today's environment may make PE funds, or firms hungry for investment from them, tempted (or rushed) into overlooking the Contracts 101 legal structuring issues which are critical to any agreement. Furthermore, as Alliance Data shows, it may be harder getting PE involved with financial service firms then it seems at first blush. Entering into an agreement hastily is done at your own risk. Many of these issues could have been avoided had different negotiating strategies (or more careful drafting principles) been applied. With experiences like those of Alliance Data burned into our collective consciousness, all future deals should be subject to careful review of the players and their assumed obligations.


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