21st Century Money, Banking & Commerce Alert®

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BankUnited Sold to Private Equity Firms

As we have predicted, the continuing efforts of private equity firms to create structures that are consistent with bank control and holding company rules and that can be used to acquire financial institutions, and the willingness of banking regulators to accommodate private investors and put fresh capital to work in the banking business, were again reflected on May 21, 2009, when the FDIC announced that it had sold BankUnited, FSB, Coral Gables, Florida, to a newly chartered federal savings bank owned by WL Ross & Co. LLC, Carlyle Investment Management L.L.C., Blackstone Capital Partners V L.P., Centerbridge Capital Partners, L.P., LeFrak Organization, Inc, The Wellcome Trust, Greenaap Investments Ltd., and East Rock Endowment Fund. The management team will be led by John Kanas. The transaction is described by the FDIC in a press release at http://www.fdic.gov/news/news/press/2009/pr09072.html.

Of note is the FDIC's announcement in the BankUnited press release that it will issue guidance in the near future on the criteria it uses in evaluating a consortium's eligibility for deposit insurance, as well as on other terms and conditions that may assist private equity investors to formulate a bid for a failed or failing institution.

This transaction resembles the approach employed in the acquisition of IndyMac Federal Bank, FSB, by a consortium of investors, which the FDIC announced on January 2, 2009. See our 21st Century Money, Banking & Commerce Alert®, ***FDIC Announces Sale of IndyMac to Holding Company Comprised of Private Equity Investors*** (Jan. 6, 2009). The FDIC and the new BankUnited entered into a loss sharing agreement and will share the losses on approximately $10.7 billion in assets acquired by the new institution from the failed institution. The investors will provide the new institution with $900 million in new capital and will install new management.

In a series of Alerts and articles, we have traced developments in the business structures for investments in or acquisitions of healthy and failed banks by private equity and hedge funds. We have made specific suggestions to facilitate bidding for failed institutions by such firms and the infusion of new capital into the banking business. See our most recent articles on the types of transactions and loss coverage being offered by the FDIC: Vartanian and Nesbitt, ***Bank Enforcement, Failure, and Rescue Trends: Regulatory Rubber Meets Rough Economic Road in Financial Crisis***, 92 Banking Rep. (BNA) 846 (April 7, 2009), and Vartanian and Lenaghan, ***Crisis Revamps Pattern of Bank and S&L Holding Company Approvals***, 92 Banking Rep. (BNA) 17 (April 28, 2009.) Also see our 21st Century Money Banking & Commerce Alert®, ***Fresh Capital is So Close: Another Call to Modify Control Rules***, (April 7, 2009.)

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Our new book, ***The BHC Guide: New Rules of the Road for Banks and Their Investors,*** will be available soon. It provides a survey of the control and other regulatory issues that private equity investors should consider when evaluating an opportunity to invest in a bank or savings and loan holding company. Copies will be available through our website.

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