

SEWARD & KISSEL LLP

BUSINESS TRANSACTIONS GROUP
2011
YEAR IN REVIEW

To Our Clients and Friends

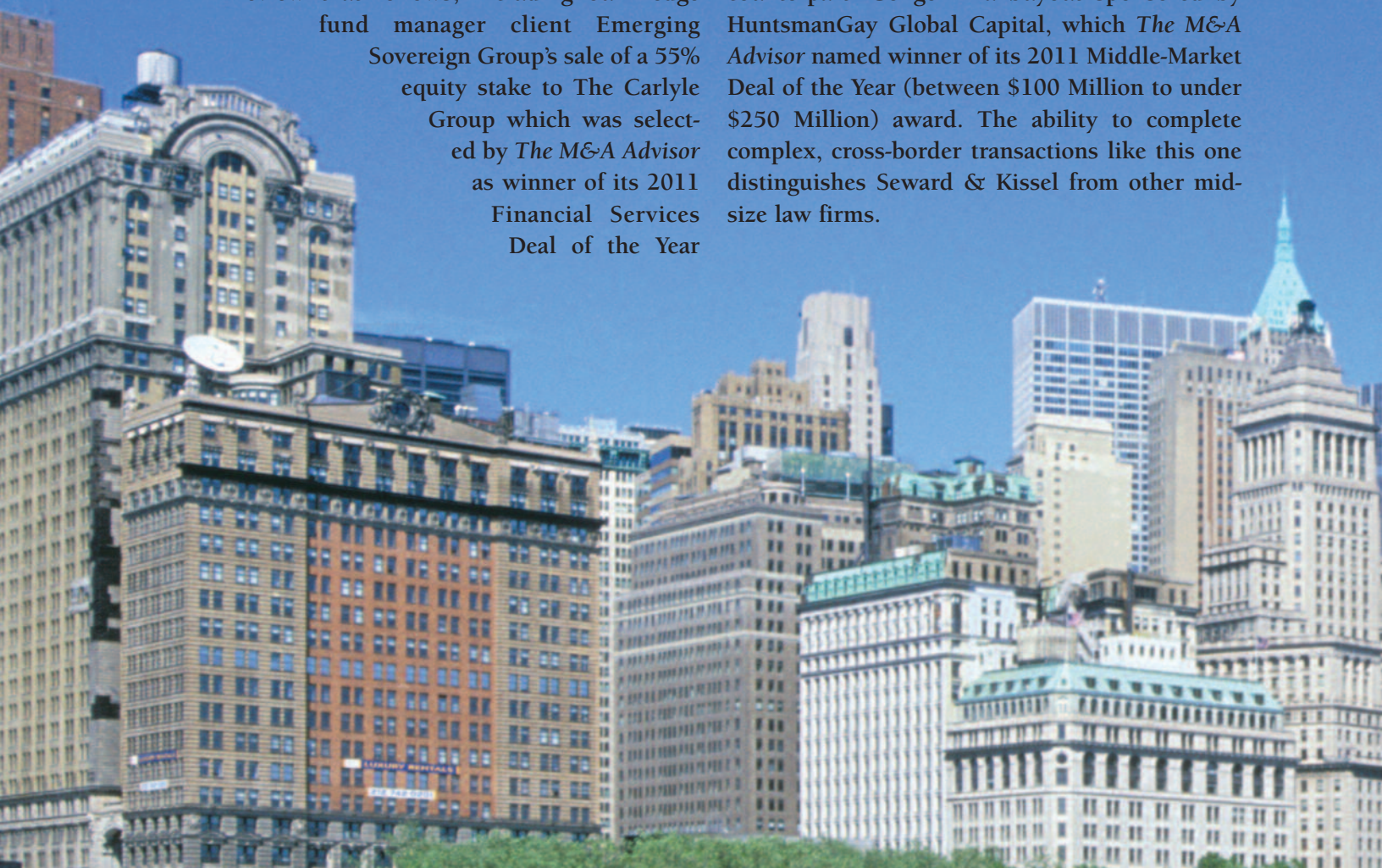
Our clients had many successes in 2011, completing a wide array of transactions, some of which were transformative for their businesses while others presented opportunities for attractive investment gains. We were pleased to facilitate so many interesting deals across different industry sectors and international borders. In the latter part of the year, market volatility made it harder to complete deals, but we will remember 2011 for the exciting results that so many of our clients achieved.

As has consistently been the case in recent years, we worked on a steady flow of deals involving the purchase or sale of investment management and broker-dealer businesses and other strategic transactions in these industries. Many of these transactions are featured on pages 4 and 5 of the

Review that follows, including our hedge fund manager client Emerging Sovereign Group's sale of a 55% equity stake to The Carlyle Group which was selected by *The M&A Advisor* as winner of its 2011 Financial Services Deal of the Year

award. Reflecting our leading position in this sector, *SNL Financial* ranked Seward & Kissel #1 in its league table for the number of asset manager M&A transactions handled in 2011, with more than twice as many deals as the second most active law firm. In addition, our *IM Deals*™ blog (www.imdealsblog.com), which follows transactions and developments involving the investment management industry, has steadily increased the number and geographic spread of its readers.

Another area of focus for the Business Transactions Group has been middle-market, sell-side M&A transactions, and in 2011 a number of clients were able to identify buyers for their businesses. The most noteworthy transaction may have been the merger of our German-based e-commerce software client hybris AG with its Canadian counterpart iCongo in a buyout sponsored by HuntsmanGay Global Capital, which *The M&A Advisor* named winner of its 2011 Middle-Market Deal of the Year (between \$100 Million to under \$250 Million) award. The ability to complete complex, cross-border transactions like this one distinguishes Seward & Kissel from other mid-size law firms.



In addition, our investment fund and other clients pursued the usual spread of private equity, private debt, venture capital and PIPE investment transactions ranging from large leveraged buy-outs to early-stage private investments in a wide variety of businesses. PIPE investments in public companies included healthcare, biotech and natural resources companies, with our activity again qualifying us for a place in *PlacementTracker's* annual rankings for legal representation of PIPE investors.

Seward & Kissel's Business Transactions Group was proud to gain independent recognition of its abilities in 2011. The *Legal 500*, in its United States 2011 edition, recommended Seward & Kissel for middle-market M&A work, stating in part that the Firm "offers great value for a New York City-based firm and its industry knowledge in the investment management space for an M&A deal is unparalleled." In addition, *The M&A Advisor* again named Seward & Kissel a Finalist for its 2011 M&A Law Firm of the Year award and *DealMakers Monthly* named Seward & Kissel a *DealMakers Global Awards* 2011 winner in the Law Firm of the Year-Private Equity and M&A-North America category.

The Business Transactions Group team continued to grow in numbers during 2011, and its senior ranks expanded with Nick Katsanos being promoted to the position of Counsel.

Seward & Kissel clients completed transactions to advance their business objectives in 2011, and Business Transactions Group attorneys were there to assist them and protect their interests. Our success depends on the achievements of our clients, and by that measure 2011 was a very good year.

Seward & Kissel LLP





Investment Manager and Broker-Dealer Transactions

Mergers and acquisitions, joint ventures, equity investments and other strategic transactions involving investment management businesses and broker-dealers again made up the largest part of our deal activity in 2011. Seward & Kissel was ranked #1 in the league tables maintained by SNL Financial for the number of investment manager M&A transactions handled in 2011, with more than twice as many deals as the second most active law firm. Some of our clients' 2011 accomplishments included:

- our client, Emerging Sovereign Group, a New York-based emerging markets equities and macroeconomic strategies investment manager with approximately \$1.6 billion of assets under management, sold a 55% ownership stake to The Carlyle Group in exchange for cash, an ownership interest in Carlyle and performance-based contingent payments. The transaction was named winner of the Financial Services Deal of the Year award at the 2011 *M&A Advisor Awards Gala*



- our client, independent global fund of funds manager Arden Asset Management, acquired the \$1.3 billion Robeco-Sage fund of hedge funds business of Dutch-based Robeco Group

- our client, Canadian asset manager Sprott Inc. (TSX:SII), acquired the California-based Global Companies, which manage or administer more than US\$1.8 billion in client assets, from natural resource investor Rick Rule in a \$170 million all-share deal. The consideration for the acquisition, which includes Global Resource Investments, Terra Resource Investment Management and Resource Capital Investment Corp., was 20 million Sprott common shares, with a contingent earnout providing up to 8 million additional Sprott shares



- our client, KGS-Alpha Capital Markets, an institutional fixed income broker-dealer, raised a total of over \$150 million from private equity investors led by Arsenal Capital Partners and Healthcare of Ontario Pension Plan

- our client, Milbank Winthrop & Co., a registered investment adviser with approximately \$500 million of assets under management, was sold to New York-based Silvercrest Asset Management Group

- our client, New York-based asset manager Visium Asset Management, absorbed the business of Catalyst Investment Management, a New York-based credit and event driven manager with over \$250 million of assets under management



- our client Inmost Partners LLC was sold to Richmond Asia Management



- our client, Coherence Capital Partners, a New York-based investment management firm, was launched by former executives of Jefferson National Asset Management in connection with the management buyout of Jefferson National's insurance business led by the Financial Partners Fund unit of Citi Capital Advisors

- our client, Saguenay Capital, a New York-based fund of funds manager, merged with London-based Strathmore Capital to form \$2 billion global fund of hedge funds manager Saguenay Strathmore Capital



- our clients, the management team of Katonah Scott's Cove Management, reacquired the Scott's Cove business from Katonah Debt Advisors, an affiliate of Kohlberg Capital (NasdaqGS:KCAP)

- our client, global equity strategies investment manager EverKey Global Partners, was acquired by the Wells Capital Management unit of Wells Fargo Bank

- our client, New York-based institutional broker-dealer Concept Capital, was spun out from its former parent Edelman Financial Group (NasdaqGS:EF)



- our client, New York-based hedge fund manager Somerset Capital Advisors, was acquired by Toronto-based Artemis Investment Management



Seward & Kissel publishes **IM Deals**[™], a blog that follows transactions and developments relating to M&A, joint ventures, private equity and venture capital investments, financings and seed deals involving firms in the investment management industry. Visit **IM Deals**[™] and subscribe at www.imdealsblog.com

Other Mergers & Acquisitions/Buyouts/Joint Ventures

Our M&A, buyout and joint venture transactional work was again recognized by *The M&A Advisor*, which named Seward & Kissel a Finalist for its 2011 M&A Law Firm of the Year Award, and by *DealMakers Monthly*, which recognized the Firm as a *DealMakers Global Award* winner in the Law Firm of the Year–Private Equity and M&A–North America category. Some of our clients' 2011 deals included:

- German-based e-commerce software company hybris AG was merged with its Canadian counterpart iCongo Inc. in a buyout sponsored by HuntsmanGay Global Capital. The transaction was named winner of the Middle-Market Deal of the Year (between \$100 Million to under \$250 Million) award at the 2011 M&A Advisor Awards Gala



- Agrifos, which owns and operates a facility in Pasadena, Texas that produces fertilizer and sulfuric acid, entered into a joint venture with Unity Envirotech to engage in the conversion of biosolids into fertilizer



- our publicly-traded client focused on businesses in West Africa acquired a controlling interest in a vegetable oils manufacturing and trading business

- the UBM Live unit of UBM plc (London:UBM.L) acquired a 70% equity stake in the Catersource catering conference and exhibition and its sister show Event Solutions, which serves the event planning industry



- UK-based Silvergate Media acquired the media rights to *The World of Beatrix Potter* and *The Octonauts* from Chorion



- Concept Capital Fund Services acquired a well known provider of risk management and performance analytics services to institutional investors
- our Greek-based client acquired an equity interest in a private jet charter, aircraft sales and management services business based in Florida
- our French-based investor client sold its controlling equity interest in Sonoma County winery Longboard Vineyards



M&A Advisor Awards

The winners of the 2011 *M&A Advisor Awards* were revealed on December 13, 2011 at the 10th Annual *M&A Advisor Awards Gala* held at the New York Athletic Club. A panel of 11 independent M&A industry judges selected winners from 389 nominated deals across all categories. Two transactions handled by Seward & Kissel's Business Transactions Group were winners of M&A Deal of the Year in their respective categories:



FINANCIAL SERVICES DEAL OF THE YEAR

**Acquisition of Emerging Sovereign Group
by The Carlyle Group**



Seward & Kissel's Craig Sklar, Gleacher's Jeff Tepper and the Emerging Sovereign Group deal team accepting Financial Services Deal of the Year award

MIDDLE-MARKET DEAL OF THE YEAR

(between \$100 Million to under \$250 Million)

**Buyout and merger of hybris AG and iCongo Inc.
sponsored by HuntsmanGay Global Capital**



hybris COO Carsten Thoma, Seward & Kissel's Jim Abbott, Bentley Associates' Tom O'Shea and the hybris deal team accepting Middle-Market Deal of the Year award

Seward & Kissel is proud to have represented Emerging Sovereign Group and hybris AG in connection with these award-winning deals. Another Seward & Kissel transaction, Judlau Contracting's sale to Obrascon Huarte Lain S.A., was a Finalist for Cross-Border Deal of the Year (Under \$200 Million) and Seward & Kissel was a Finalist for 2011 Law Firm of the Year (having previously won Law Firm of the Year honors).



Transportation Industry Deals

Seward & Kissel's leading position with shipping industry clients in connection with all types of M&A, joint venture, capital markets and lending transactions and the Firm's expertise in aviation finance led to substantial activity in the transportation sector during 2011, including:

- our client, drybulk vessel operator OceanFreight Inc. (NasdaqGS:OCNF), merged with DryShips Inc. (NasdaqGS:DRYS) in a \$239 million transaction with consideration consisting of cash and shares of DryShips' offshore drilling services subsidiary Ocean Rig UDW Inc. (NasdaqGS:ORIG)
- our client Diamond S Shipping, the private equity backed (Wilbur Ross/First Reserve) tanker company managed by former senior officers of OMI Corp., acquired 30 medium-range refined product carriers for approximately \$1 billion
- a private equity fund client established investment vehicles to make a \$40 million sale-leaseback co-investment in three Handymax tankers owned by General Maritime Corporation
- investment funds managed by our client Brigade Capital Management entered into an Irish joint venture with Aergo Capital which then acquired a group of Irish and South African companies engaged in the business of owning, financing and leasing aircraft
- a Greek-based ship manager client entered into an \$80 million shipping private equity venture with a US-based private equity investment fund
- a private equity fund manager established a private investment vehicle to make an investment in three Aframax tankers



Private Equity and Venture Capital Investments by Fund Clients

Seward & Kissel's private investment fund clients continued in 2011 to make private equity, venture capital, private debt and similar private investment transactions. Some of the interesting private investment transactions completed by our clients included:

- several clients made private purchases, directly and through investment fund structures, of shares of common stock in Facebook
- our investment fund client purchased convertible preferred stock and warrants in Power Solutions International, Inc. (OTC BB:PSIX:OB) from an existing investor
- our investment fund client made a mezzanine loan and warrants investment in video eyewear manufacturer Vuzix Corporation (OTC BB:VUZI.OB)
- our investment fund client formed a special purpose vehicle with other investors to establish a well drilling services business in Poland and other European countries
- our clients were the equity capital providers for the secondary buyout of a regional barbeque restaurant chain
- our investment fund client made a private investment in common stock of oil and gas exploration company Carrao Energy Ltd.
- our client Kelso & Company made a private equity investment in Third Point Re, a recently launched Bermuda specialty property and casualty reinsurance company
- our investment fund client made a private equity investment in the leveraged buyout of sports nutrition company Maximum Human Performance (MHP)
- our clients were minority investors in the going private transaction of SOKO Fitness & Spa Group, Inc.
- our investment fund client established a special purpose vehicle with other private equity investors to build and operate a ceramics proppants plant
- our investment fund client made a Series A venture capital investment in social media company UQ, Inc.
- our investment fund client made a private purchase of outstanding shares of common stock in Perion Network Ltd. (NasdaqGM:PERI), an Israeli digital media company



Legal 500 Recognition

The *Legal 500*, in its United States 2011 edition, included Seward & Kissel as a recommended firm (as well as Craig Sklar, Jim Abbott and Nick Katsanos as recommended attorneys) in the M&A: middle-market (sub-\$500m) category, offering the following analysis as a result of its independent research:

Seward & Kissel LLP's transactional practice is particularly well recognized within the two industries where the firm has an international reputation for excellence, namely investment management and shipping. The firm 'knows the middle-market and its odd nuances very well,' say clients, 'but it is equally comfortable and able in transactions involving corporate and financial buyers. It offers great value for a New York City-based firm and its industry knowledge in the investment management space for an M&A deal is unparalleled. For other clients, the practice's 'dedication to the client is what makes the difference.' Co-business transactions group leader Craig Sklar 'has earned my trust and confidence. From my perspective, the highest

compliment that a lawyer can receive is to be viewed as practical, not tangled in theory, but caring about the client's objectives, understanding where they fit in relation to the law, and achieving a working union between the two. Craig is that kind of lawyer, one that I would, and have, recommended to colleagues and friends'. Co-business transactions group leader Jim Abbott is 'very helpful with the overall strategic advice and guidance he provides. Jim gets actively engaged in the entire process, providing superior service, and not only is he personable and affable, but he can subtly drive a very hard bargain'. Associate Nick Katsanos 'is very effective at guiding us through issues that arise and crafting potential resolutions'.

Private Investments in Public Equity (PIPEs)

PlacementTracker ranked Seward & Kissel the 7th most active legal counsel to investors in the PIPE market in 2011 based on the number of transactions we handled. Some of our PIPE transactions included representing private investment funds in connection with their investments in:

- a \$22.2 million common stock and warrant PIPE offering by Insite Vision Inc. (OTC BB:INSV.OB)
- a \$23.5 million common stock and warrant PIPE offering by Cleveland BioLabs, Inc. (NasdaqCM: CBLI)
- a \$5 million common stock and warrant PIPE offering by American Manganese Inc. (TSX.V: AMY)
- a \$30.2 million common stock and warrant PIPE offering by Trius Therapeutics, Inc. (NasdaqGM: TSRX)
- a \$29.7 million common stock and warrant PIPE offering in RPT Resources Ltd. (TSX.V: RPT)
- a \$2.2 million common stock PIPE offering by Crown Point Ventures Ltd. (TSX.V: CWV)
- a \$1.73 million common stock and warrant PIPE offering by Divine Skin, Inc. (OTC BB: DSKX.OB)



Contact Us

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