

Sale of Portfolio Companies Between Affiliated Funds: The (Legal) Road Less Traveled

“From time to time, private equity sponsors will exit a portfolio company investment by selling the portfolio company to buyers led by another fund managed by the same sponsor. Because the sponsor is essentially on both sides of the transaction, the sponsor must carefully consider and fairly address the customary business and legal issues arising in a typical private mergers and acquisitions (M&A) transaction. This note suggests a streamlined legal process that offers efficiencies of cost and timing, while still ensuring fairness to the investors in both the seller and buyer funds,” report Eitan Tabak and Abbe L. Dienstag in *Kramer Levin’s Perspectives*.

“At the outset, it should be noted that there is no shortcut to financial fairness, particularly a fair price for the asset. Achieving fair pricing of an interfund transaction is of special concern because of the sponsor’s control of both the buyer and the seller. The conflict should be addressed by outside fairness analyses and price negotiation conducted by independent committees of investors of the buy- and sell-side funds, generally outside the influence of the sponsor. It would be preferable for each of the funds to be separately advised and to receive its own fairness opinion. However, it may be possible to obtain a dual fairness opinion from a single adviser that has no relationship with either of the funds, or at least has not been preferentially engaged by one or the other of the funds.”

Read the article.