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Q&A With Pillsbury Winthrop's Kimberly Mann

Law360, New York (September 15, 2009) -- Pillsbury Winthrop Shaw Pittman LLP corporate & securities partner Kim Mann serves as head of the firm's private equity team. Based in Washington, Mann focuses her practice on investment fund formation and maintenance, and represents domestic and international fund sponsors, general partners and fund managers in structuring, organizing and negotiating the terms of private equity, venture capital, mezzanine debt and real estate funds.

A significant aspect of her practice also involves representation of large institutional investors in connection with their alternative investments. Mann has substantial experience and expertise representing clients in all aspects of private equity, venture capital, leveraged buyout, mezzanine debt, distressed asset and fund of fund investing, including restructurings and workouts.

Q: What attracted you to your practice area?

A: My work as a CPA for a large public company sparked my interest in corporate and securities law in general. When I joined Pillsbury in 1997, I began working in the area of private equity. I was intrigued by the global nature of the practice, the prowess and sophistication of our fund clients and the complexity and creativity of the transactions.

I enjoy crafting and negotiating the terms of investment funds and working with fund managers, sponsors and investors through the funds' life cycles. Each of the phases — preformation, placing, maintenance, investing and liquidation — is interesting to me and creates a different set of challenges. Because I represent fund managers, sponsors and institutional investors, I'm able to see private equity from many different perspectives.

Private equity plays a key role in the global economy and will continue to do so, particularly as banks and other financial institutions struggle with capitalization and liquidity. It's a very exciting time to be practicing in this area.

Q: What is the most challenging deal you've worked on, and why?

A: In retrospect, the restructuring of Canyon Ranch is probably the most challenging transaction that I have done. The structure of the transaction was very complex, but even more complex were the interpersonal dynamics. Striking that perfect balance among the interests of the founders, our client (Crescent Real Estate Equities Company) and outside investors that infused new capital in the enterprise was an incredibly intricate process.

Q: What are the most challenging legal problems currently facing clients in your practice area?

A: The increasing incidences of, and controversies relating to, capital commitment defaults in private equity are creating challenging legal issues for clients in private equity. Fund managers are looking for creative and definitive remedies against investors that default, and nondefaulting institutional investors are seeking new rights and entitlements when defaults occur.

In addition, as investment returns falter, realizations and distributions decline, interests between investors and fund managers become more disparate, investment allocations among asset classes become skewed, and some management teams become unstable and dysfunctional, investors are re-evaluating their relationships with fund managers. Some investors are looking for ways to redefine or sever those relationships, while fund managers are looking for ways to prevent significant disruptions to their existing funds.

Q: Where do you see the next wave of activity in your practice area coming from?

A: In addition to restructuring investor-manager relationships, I see the next wave of activity coming from government regulation or government's attempt to regulate private investment funds. It is very likely that in the near-to-intermediate term, private investment funds will be subject to some increased level of regulation.

Several bills and proposals have been put forward, including one that would require funds to register, make certain disclosures and provide specified information to investors. The SEC also has proposed a rule that would prohibit fund managers from using placement agents to obtain investments from public pension funds. Private equity practitioners will be instrumental in helping clients to navigate the new regulatory landscape and put into place new policies and procedures designed to ensure ongoing compliance.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: Howard Trust, who is the head of Schrodgers' legal team, is one of the most impressive lawyers with whom I have worked. He not only has a keen ability to reduce a convoluted business or legal issue to its essence with laser speed, he also has an uncanny ability to remember a multitude of intricate facts and other details. He is also incredibly intuitive.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: I would advise a young lawyer who is interested in private equity to become involved in the industry early in his or her career by joining trade groups and other associations in which the largest players participate.

I also would stress that, in addition to understanding the legal issues involved with private equity, it is crucial to understand the business of private equity. In order to provide the best service possible to clients, it is imperative to understand their business.