

message from partner in charge

As winter moves into spring, Pepper is moving into a new Orange County office, but you won't need to look further than across the parking lot to find our new home.

As of April 7, our new address is:

Suite 1200
4 Park Plaza
Irvine, CA 92614-5955

Our phone and fax numbers will NOT change.

These new offices allow us to serve our clients better and provide for our continued growth.

In this update, we hope you will pay special attention to Pepper's new Fund Watch under the direction of Len Schneidman. This service will generate "real time" information sent to subscribers interested in the latest hedge and private-equity fund legal news.

You also will find employment law featured in this update, specifically related to workplace investigations. As a sidebar to this printed article, we have provided information regarding our online employment law content. A quick glance at www.pepperlaw.com will bring a bounty of relevant information.

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Pepper Launches New Fund Watch Service

Developments in 2007 – both legislative and administrative – are casting a long shadow over the tax treatment of private investment funds, their managers and sponsors. These include:

- The introduction in 2007 of a number of tax bills in Congress, including proposals relating to fund manager's "carried interests;" offshore deferred compensation; unrelated trade or business income for exempt fund investors, and publicly traded investment partnerships. Although none of these proposals were enacted in 2007, most, if not all of them, can be expected to reappear in 2008.
- An IRS inquiry into suspected tax abuses at hedge and private-equity funds focused on a number of areas of potential abuse, including:
 - proper filing of tax and information returns
 - proper payment of tax by fund managers
 - the flow of funds between onshore and offshore entities
 - improper classification of items of ordinary income such as capital gains
 - use of improper accounting methods.

In light of these developments and the fact that these issues will take months or years to final resolution, Pepper has established a complimentary "Fund Watch" service for hedge and private-equity funds. This service will endeavor to closely monitor these and any other legislative, judicial or regulatory developments relating to the taxation of private investment funds and their managers and sponsors.

I will personally lead the effort. I am a Pepper attorney with more than 30 years of experience in the area of hedge and private-equity fund taxation and the author of a recent treatise on *U.S. Taxation of Foreign Portfolio Investors – A Practical Guide to Taxation in the U.S. Capital Market*.

The objective of the Fund Watch is to closely monitor all relevant developments in the area of fund taxation and to make this information available on a “real-time” basis. Pepper will provide timely e-mail alerts as significant developments occur and establish a fund “hotline” to answer your questions. In addition, Pepper posts relevant items on its Web site for easy reference. You can reach the fund hotline by calling 866.333.0648 or e-mailing fundwatch@pepperlaw.com.

If you are interested in receiving the Fund Watch electronic alerts, please contact Brian Dolan with your e-mail address at dolanb@pepperlaw.com or 215.981.4568.

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Upcoming Event

Pepper Partner, **Gregory J. Nowak**, will be a panelist at “A Closer Look at FAS 157: Examining the New Standards for Measuring Fair Value” hosted by Deloitte and Houlihan Lokey on Thursday, May 1, 2008 at the W Hotel in Los Angeles.

The seminar will include an in-depth discussion of fair value and how the new rules will affect existing accounting and disclosure practices.

To register, visit www.regonline.com/FAS_157.

For questions contact Jordan Franklin at 213.593.3681.



Peppercast: Renewable Energy Developers, Investors Gain Tax Certainty

As concerns for the nation’s energy supply rise, the federal government periodically provides various incentives to encourage the use of renewable energy sources. Listen to a podcast with **Todd B. Reinstein**, partner with Pepper Hamilton’s Tax Practice Group in our Washington D.C. office, as he describes quality energy resources and the effect of Section 45 and Revenue Procedure 2007-65 on investors of renewable energy.

If you are interested in the latest updates in the world of tax, you can request to receive an electronic copy of our monthly *Tax Update* newsletter by e-mailing podcasts@pepperlaw.com.

Listen today by visiting the tax section of Pepper’s podcenter at www.pepperpodcasts.com.

What to Do If an Employee Is Stealing from the Company

Watch for the Warning Signs and Conduct a Diligent Investigation

Employers who suspect that an employee may be stealing from the company need to proceed cautiously to ensure they don't expose themselves to legal liability.

Companies should be on the lookout for possible warning signs that an employee is stealing, such as:

- frequent variances in cash balances
- inventory shortages
- noticeable changes in employee behavior, such as buying a new car or expensive clothing
- other employees' complaints about missing items.

An employer can choose to investigate theft claims with internal or external resources. Although an internal investigation will generally be less expensive, it will need to be conducted fairly by someone with the necessary expertise.

Whether the investigation is performed in-house or through an outside investigator, it should include the following steps:

- Prepare an outline for interviews with suspected employees and witnesses, anticipate difficult issues, and know the company's position if a worker refuses to cooperate – such as, whether refusal will subject an employee to discipline.
- In a unionized workplace, an employee has the right to have a union representative or co-worker present – but not a lawyer – during any interview that he or she reasonably expects would result in disciplinary action. Also, use of recording surveillance devices will need union approval and federal and state laws applying to wiretapping must be followed.
- Evaluate whether a polygraph will be required. The Employee Polygraph Protection Act allows the use of polygraph exams in the workplace to assist in an ongoing investigation.

Trends in Employment Law Webinar Recording

On February 14, 2008, Pepper Hamilton hosted a complimentary government contracts webinar to discuss the latest trends in employment law.

Topics included:

- how changes in the workforce, care giving responsibilities and attitudes toward work/life balance have contributed to claims for family responsibilities discrimination
- how the increased influence of evangelicals and the backlash against Muslims from the war on terror have led to a rise in the desire to express religion in the workplace
- how employers' concern about spikes in health care costs and employee productivity have led to an increased attempt to control conduct outside of the workplace or on non-work time.

Case studies were reviewed from recent Pepper litigation matters on behalf of government contractors:

- change in law applicable to paying departing employees for accrued leave
- interpretation of anti-solicitation clause in a subcontract
- enforcement of a non-compete in the government contracts context.

Visit Pepper's webinar section at www.pepperlaw.com to view the webinar recording and download the PowerPoint slides from this online event.

- Audit computer and financial records, and preserve documents and evidence such as computerized records, e-mails, and videos.
- Document all investigative steps taken, and make summaries of all interviews. The investigative report will be a key document if further legal action is considered.
- Maintain the chain of custody to restrict the handling of evidence, and to document the movement of physical evidence.

If the investigation leads to employee discipline or corrective action, review past disciplinary records and performance evaluations to see whether there are other incidents and warnings related to this employee. Research past disciplinary actions taken against other employees for the same or similar conduct to avoid claims of unfair treatment.

Finally, whether this is a first-time occurrence for a company or an ongoing problem, it is best to review – or, if necessary, create – policies and procedures to focus on loss prevention. Let employees know that acts of dishonesty are serious infractions. Advise workers that failure to report another employee’s dishonesty also can be subject to discipline.

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