

message from partners in charge

In this update, we hope you will pay special attention to Pepper's new Fund Watch, a service being offered 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 employee theft.

And finally, we are pleased to share with you news of a recent award bestowed on our office by the Mercer County Bar Association.

We hope you enjoy this update.

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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 has established 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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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**, a 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 pod center at www.pepperpodcasts.com.

Pepper Hamilton Receives Community Partner Award

The Princeton office of Pepper Hamilton is the 2008 recipient of the Mercer County Bar Association (MCBA) Community Partner Award. Each year the MCBA selects the law firm, business or group that has demonstrated significant support and participation in bar association activities.

“We are very pleased to add Pepper Hamilton to the list of distinguished honorees. Partners, associates and staff of the firm devote countless hours of volunteer time to the bar and to the community,” said Antonio Martinez, president of the MCBA.

Several Pepper attorneys volunteer their time to work with the MCBA and its activities. **Stephanie L. Merk** sits on the Mercer County Bar Foundation Board and heads the scholarship committee. **Marissa L. Quigley** and **Taryn C. Luciani** chaired the association’s 2007 Casino Night, which benefited the Tabor House of Trenton, a rehabilitation center for young men suffering from various addictions. **Rebecca N. Oliver-Remshifski** is active on the Young Lawyers Committee, which organizes various fundraising activities for the community.

The MCBA recognizes the importance of partnering with local law firms and encourages participation in a wide array of bar and community activities that offer a broad perspective. “The leadership at Pepper Hamilton has worked hard to implement active participation by its partners, associates and staff. We are pleased to give this award to long-time supporters of the bar and community and a law firm that stands for excellence and integrity. Pepper Hamilton is a deserving recipient of the Community Partner Award,” said Martinez.

The MCBA is a nonprofit organization based in Mercer County, NJ. Incorporated in 1901, the MCBA boasts membership of more than 1,200 members who live or practice in Mercer County. The association is committed to active involvement in the community through a variety of programs for both MCBA members and the public.

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.

- 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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Upcoming Events

New Jersey League of Community Bankers and the New Jersey Bankers Association

April 15, 2008
8:30 a.m. to 12 noon
Forsgate Country Club
Monroe Township, New Jersey

Pepper partners **Jeffrey A. Carr** and **Dennis R. Casale** will be presenters at “Records Retention Workshop: What to Keep, What to Throw Away and When.” Topics to be covered include federal and state statutory and regulatory record retention requirements, practical steps that institutions can take to manage data and reduce liability risks, anticipated litigation, and the need to alter or interrupt document retention policies.

For more information and to register, visit www.njleague.com.

New Jersey Bar Association’s Banking Law Section and Class Action Committee

“Class Action Issues Facing Banks and the Financial Services Industry”

April 23, 2008
6:00 to 8:00 p.m.
New Jersey Law Center
New Brunswick, New Jersey

Partner **Angelo A. Stio, III** will be on a panel that will address topics including subprime lending, unfair lending, consumer privacy, bankruptcy and foreclosures, bank fees, gift and credit cards, and state protection laws.

The program is co-sponsored by the New Jersey Bankers Association, the New Jersey League of Community Bankers and the Mortgage Bankers Association of New Jersey.

For more information and to register, visit www.njsba.com.

New Jersey League of Community Bankers’ 10th Annual Convention

May 28 – June 1, 2008
The Fairmont
Southampton, Bermuda

Pepper associate **Travis P. Nelson** will be serving as a panelist during the Attorneys Session on May 30, speaking on “Unfair or Deceptive Acts or Practices.”

Visit <http://www.njleague.com/Convention%202008/menu.htm> for more information.

Pepper Hamilton LLP

Attorneys at Law

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