



*Creating Value For Our Clients*

## Pension Fund and Institutional Investor Representation

As a historically significant percentage of the population approaches retirement, economic and demographic factors are poised to strain traditional sources of retirement income. During this time, pension funds, foundations and endowments are seeking sources of revenue that will maintain the diversity of their portfolios, stabilize their cash flow and further the long-term appreciation of their investments. These investors also are revising their investment strategies and reallocating a greater portion of their portfolios to alternative investments (private equity, hedge funds and real estate). An increasingly popular option for institutional investors is the use of pooled funds and funds of funds, which provides a number of benefits for investors including professional management, diversification and convenience. Many institutional investors also look to pooled funds to satisfy the real estate and private equity allocations of their portfolios.

## Pooled Investments

A public pension fund wanted to diversify its real estate and private equity holdings internationally. We represented the fund in a number of pooled fund investments targeting (i) global and Asian-based real estate portfolios, and (ii) private equity investments in resort and hotel companies internationally. Our familiarity with the special concerns of public pension funds, including statutory restrictions, information disclosure requirements and tax concerns, coupled with our industry knowledge, allowed us to negotiate favorable terms and ensure that the transactions were consistent with the fund's statutory and internal requirements, as well as its Board's fiduciary obligations.

## Hedge Funds

A public pension fund was considering an investment in a hedge fund in a Cayman Island exempted limited partnership initially targeting securities and other financial instruments of US and Non-US entities. Our analysis of the transaction disclosed that the fees and other charges proposed by the General Partner were substantially in excess of the market terms then prevailing. Working with our client's internal and external investment advisors, we were able to confirm the excess fees and that the return on investment would have been substantially below that originally suggested by the Fund. Based on that determination, and the refusal of the Fund to adopt modified terms, our client elected not to proceed with the transaction.

Institutions and pension funds must choose among a variety of investment vehicles to deliver the best returns for their investors. They need advisors who understand the special tax, regulatory, fiduciary and other needs of these institutional investors, and can help structure their investments in a way that meets these needs.

## Seyfarth Shaw Service Capabilities

Attorneys in Seyfarth Shaw's Real Estate, Corporate, ERISA and Tax practice groups are regularly engaged in national and international matters on behalf of funds, fund managers and institutional investors such as:

- Investment in private equity, domestic and foreign pooled funds, funds of funds and hedge funds
- Real estate investment, acquisition and management
- Fiduciary counseling regarding state pension codes and ERISA
- UBTI, Section 115 and state and local tax structuring advice
- Formation and structuring of joint ventures and club deals
- Representation of borrowers and lenders in the financing of ventures and acquisitions
- Formation of "private" funds where the investor and industry expert use the structure of a private equity fund to pursue specific opportunities
- Identification, creation and management of various investment vehicles

## Benefit to You

Seyfarth Shaw has a cross-disciplinary team of attorneys focused on representing the institutional investor. The team includes business, real estate, fiduciary, tax, securities, litigation and bankruptcy counsel. Its members communicate regularly so that they can stay on top of the latest developments and innovations in this area, and can add value to our client's transactions.

We provide innovative counseling to pension funds, investment advisors, governmental retirement systems and other institutional investors across the country, handling virtually every type of investment on behalf of public and private institutional investors, as well as investment advisors who work with these investors. Whether investing in a fund, acquiring real estate or forming a joint venture, our attorneys have the experience to navigate our clients through the complicated business, tax, regulatory and fiduciary issues

facing the institutional investing world. Our extensive experience with both public and private investors, coupled with the regular exchanges among our institutional investor team, provides us with invaluable insights into the structure and operation of funds.

## *Transactions*

**Private Equity and Pooled Funds:** Many of our institutional clients invest in pooled funds to meet their private equity and real estate needs. Our attorneys (i) counsel institutional investors regarding the latest trends in fund structure and terms, (ii) review the private placement memoranda and partnership/operating agreements, (iii) negotiate side letters and appropriate amendments to the underlying documents, and (iv) if necessary, assist our clients in establishing off-shore affiliates for a particular transaction to minimize unrelated business taxable income (UBTI) issues.

We have experience with U.S., foreign and international funds, including funds of funds, commodity pools, master-feeders, guaranteed funds, segregated portfolio companies and passive foreign investment companies.

**Hedge Funds:** Seyfarth regularly represents institutional investors in connection with domestic and international hedge funds employing various strategies. Recent funds have focused on hedging strategies pertaining to (i) securities, including contracts for future or forward delivery of any security, commodity or currency, (ii) equity and equity related securities of global financial services companies, (iii) domestic and international currencies, bonds and notes; and (iv) fixed income securities, including inflation linked bonds. In reviewing the transaction documents, we work with our client to identify both the legal risks and any material non-market terms. If the client elects to go forward with the transaction, we then negotiate an appropriate side letter and, where possible, modifications to the other transaction documents.

**Tax:** A significant number of institutional investors are particularly concerned with UBTI and other tax-related issues specific to tax-exempt entities. When it comes to making decisions concerning the formation or investment of a fund, choice of the investment vehicle, the jurisdiction of its formation, the structure of the investment, and issues involving taxation, control and transferability of interests, our attorneys work side by side with clients to provide strategic counsel. We help clients draft and negotiate agreements, including partnership and joint venture agreements, structure entities to minimize any UBTI issues, issue opinion letters regarding UBTI, and create sophisticated, preferred

## Real Estate Portfolio Acquisition

We represented a partnership consisting of an affiliation of a pension investment advisor and a separate *Fortune* 500 company pension fund in the acquisition of a portfolio of industrial properties comprising seven separate business parks in California, Arizona, and Oregon. The transaction involved lengthy negotiations with the financial group acting as agent for the sellers, overcoming difficult environmental issues, the assumption of a Real Estate Mortgage Investment Conduit (REMIC) loan, and other concerns. The transaction, which involved four parties, required our attorneys to review over 250 leases and tenant estoppel letters. Our attorneys prepared a partnership agreement; a purchase contract and all amendments; closing conveyance documents; an authority opinion; escrow instructions; a post-closing agreement and closing statement; an opinion with regard to REMIC loan assumption; and various due diligence memoranda.

## Fund of Funds

The pension fund of a NYSE listed international company was considering participating in a fund of funds being established by an affiliate of one of its outside investment advisors. The fund of funds was focused on private equity in non-core real estate assets. As of the date of the offering, the fund's general partner already had made four investments on behalf of the fund. We were very familiar with three of the investments, as we previously had represented lead investors in each. Given our familiarity with the existing investments, we were able to provide added value to our client in its analysis of the proposed participation. Once the client made the decision to proceed, we successfully negotiated a side letter and other transaction documents for our client.

returns or other tax structures to avoid the creation of UBTI. Our attorneys also have substantial experience in all aspects of the taxation of REITs, and can counsel tax exempt entities of the particular tax concerns which investment in a REIT raises for those clients.

**Real Estate:** We represent clients in the acquisition, disposition, financing and leasing of commercial, office, industrial, retail, multi-family and residential properties from coast to coast. Our attorneys work closely with our clients to structure and implement the transactions as well as undertake standard real estate activities such as drafting letters of intent, title review, due diligence, closing documents, and resolving management and leasing issues. We regularly are involved in both single asset and portfolio transactions.

### *ERISA and Fiduciary Issues*

In conjunction with our Employee Benefits practice group, we provide guidance regarding the responsibilities of pension fund fiduciaries. We identify the boundaries of fiduciary responsibility and the circumstances under which non-fiduciaries may be liable for breaches of duty.

Our attorneys are adept at providing counsel on:

- Prohibited transactions and alternative investment structures
- Regulatory issues
- State pension codes and administrative review statutes
- The exercise of interpretive or discretionary powers
- Funding obligations and contractual matters
- Conflicts of interest
- Public access to meetings, documents and records
- Litigation

Our Employee Benefits/Fiduciary group regularly works with our Real Estate, Corporate and Tax groups to structure transactions so that they will not be prohibited transactions.

## About Seyfarth Shaw

Seyfarth Shaw was founded in 1945 in Chicago by three lawyers and has grown to more than 750 lawyers across ten offices. Our practice spans the United States and, through our affiliations and European office, provides our clients with a global presence. We handle issues for our clients in all key areas: real estate, corporate and finance, litigation, construction, intellectual property, employee benefits, and labor and employment, among others.



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