

# VALUATION observations



## DOL Cracking Down on Private Equity Fair Value Estimates

**By Kelly Curtin  
and Brian Bornino, CPA/ABV, CFA, CBA**

As market liquidity has declined, the percentage of pension plan assets invested in instruments with no generally recognized market has increased. These hard-to-value assets, such as private equity investments, create significant challenges for pension plan managers and participants; perhaps most specifically, for the plan fiduciaries who have an ongoing obligation to evaluate whether investments remain prudent for the plan. Whereas a key component to prudence is establishing fair market value, regulatory agencies have become increasingly interested in ensuring that investments are being carried at fair market value, taking action against those fiduciaries who fail to properly establish a defensible fair market value. Over the past several years, the Financial Accounting Standards Board ("FASB") and the Private Equity Industry Guidelines Group ("PEIGG") have pressed for most robust mark-to-market accounting; however, now private equity

firms may have another issue... the Department of Labor.

### The DOL's Involvement

In mid-2008, the Department of Labor ("DOL") began an investigation into how corporate pension plan fiduciaries are valuing hard-to-value investments (such as private equity), recently establishing a working group to "identify the concerns, potential associated risks, and the roles of fiduciaries, trustees, plan administrators, custodians, investment managers, accountants/auditors and participants, when employee benefit plans invest in hard-to-value assets".<sup>1</sup> "It would be difficult, if not impossible, for a fiduciary to fulfill these fiduciary responsibilities if the fiduciary lacked correct information concerning the value of a plan's assets", explained Virginia C. Smith, the director of enforcement for the DOL Employee Benefits Security Administration, in a September 11, 2008 testimony before an ERISA Advisory Council working group.

***"It would be difficult, if not impossible, for a fiduciary to fulfill their fiduciary responsibilities if the fiduciary lacked correct information concerning the value of a plan's assets" - Virginia C. Smith, Department of Labor***

*(Continued on page 2)*

---

## DOL Cracking Down on Private Equity Fair Value Estimates (continued)

---

Director Smith's testimony does not speak to how plan fiduciaries should approach the valuation of hard-to-value assets; however, according to a July 1, 2008 letter to an unnamed pension plan from the DOL's Boston regional office, plans subject to ERISA guidelines should have a contingency plan in place to properly value hard-to-value assets. This July 1 letter alleged that the unnamed plan's fiduciaries violated their duties under ERISA by relying on financial information received from its investment advisor and/or the general partner of the underlying alternative investment entity, ***suggesting that plans may be required to independently value hard-to-value assets.***

<sup>1</sup> U.S. Department of Labor, ERISA Advisory Council.

### Conclusion

As a result, private equity firms will either be forced to produce independent valuations to support fair values included in reported figures or subject their records to the inspection of independent valuation specialists contracted by investors in order to properly comply with the increasingly stringent regulatory environment. While most investors will be pleased leaving these hard-to-value assets to a qualified, independent practice, for pension plan managers, this stands to add considerable cost in an already difficult market. However, the benefit of conducting a thorough analysis of each investment's fair value not only encourages prudent investing, but for private equity funds, reduces the threat of a loss of pension fund dollars. 

---

## DOL Cracking Down on Private Equity Fair Value Estimates (continued)

---

### ABOUT US

GBQ Consulting specializes in Business Valuation, Mergers and Acquisitions, and Dispute Advisory and Forensic Services. Our Business Valuation group is one of the largest and most experienced in the Midwest. Professionals at our offices in Columbus (OH) and Indianapolis (IN) provide the following services:

- Transaction Support & Opinions
- ESOP & ERISA Advisory
- Succession & Wealth Planning
- Financial Reporting Services
- Corporate Planning & Assistance
- Expert Opinion Valuations

### CONTACT

**Brian D. Bornino, CPA/ABV, CFA, CBA**  
Director of Valuation Services  
bbornino@gbq.com  
614.947.5412

**Shaun P. Duffin, CPA/ABV, CMA, CFM**  
Manager  
sduffin@gbqgoelzer.com  
317.423.0150

**Kelly N. Curtin**  
Financial Analyst  
kcurtin@gbq.com  
614.947.5227

**Visit our websites**

[www.gbqconsulting.com](http://www.gbqconsulting.com)

[www.gbqgoelzer.com](http://www.gbqgoelzer.com)