



# **FCPA, M&A and Private Equity**

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# **Conducting FCPA Due Diligence When and Why?**

# **FCPA Due Diligence**

## **What Does It Consist Of?**

# **Contractual Protections**

# **What To Do If You Find A Problem During Due Diligence**

# **Post-Acquisition Issues**

# Speaker Biographies



**John M. Pollack**

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John M. Pollack, a partner in the New York office, practices in the areas of public and private mergers, acquisitions, divestitures, restructurings, recapitalizations and tender/exchange offers. His clients include private investment funds, as well as U.S. and foreign publicly traded companies.

John was named one of *Law360*'s Rising Stars of 2013 for Private Equity and has been recognized as a leader in his field by *Chambers USA*. He is the co-principal author of the *SRZ Large Market and Middle Market PE Buyer/Public Target M&A Deal Studies*, which detail and compare the notable trends and themes in recent mergers and acquisitions involving private equity buyers and public company targets in the large market and middle market sectors. He worked on the sale of LNR Property LLC to Starwood Property Trust and Starwood Capital Group, a transaction named *The M&A Advisor* 2013 "Real Estate Sector Deal of the Year." He also worked on the merger of Charming Shoppes Inc. with Ascena Retail Group Inc., a transaction named the 2012 "North America Corporate Deal of the Year" by Global M&A Network and the 2012 "Corporate/Strategic Acquisition Deal of the Year" by *The M&A Advisor*; and the merger of DynCorp International Inc. with an affiliate of Cerberus Capital Management LP, a transaction which was selected by *The Deal* as one of 2010's "Private Equity Deals of the Year." John graduated *magna cum laude* from The George Washington University and The George Washington Law School, the latter bestowing upon him High Honors, Order of the Coif and an award for Highest Overall Proficiency in Securities Law.



# Speaker Biographies



Lisa A. Prager

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Lisa A. Prager is a partner in both the New York and Washington, D.C. offices. Lisa represents individuals and corporations in a wide variety of federal criminal and regulatory matters. She focuses on government investigations and enforcement actions relating to the Foreign Corrupt Practices Act (FCPA), U.S. export controls and economic sanctions laws, anti-money laundering laws, the Dodd-Frank Act's whistleblower provisions, and government contracts matters. In her practice, she represents clients before multiple U.S. enforcement agencies and bodies, such as the Department of Justice (DOJ), Department of Commerce, Department of State, Department of the Treasury's Office of Foreign Assets Control (OFAC), Securities and Exchange Commission (SEC), and other authorities. Lisa conducts extensive internal investigations on behalf of multinational corporations and has represented them and their Boards in FCPA and export control matters involving issues arising around the world. In connection with these investigations, she provides advice to general counsels and senior management regarding company practices, remedial measures such as compliance program enhancements and disciplinary action for company employees, and settlement options. She also works with companies in the administration of consent decrees, monitorships and other post settlement agreements. In addition, Lisa represents individuals in white collar criminal matters, including representing senior management in FCPA and export control investigations.

Prior to entering private practice, Lisa was an Assistant U.S. Attorney for the District of Columbia and Acting Assistant Secretary and Deputy Assistant Secretary for Export Enforcement at the U.S. Department of Commerce's Bureau of Industry and Security. Her work at the Department of Commerce included managing many of the Agency's largest export control settlements and indictments to date, including criminal investigations related to Chinese exports and the freight-forwarding industry. As an Assistant U.S. Attorney, Lisa handled federal cases involving terrorism, wire and mail fraud, economic espionage, and export control violations, among many other matters. Lisa has been recognized by *The International Who's Who of Investigations Lawyers* and *The Legal 500 United States* as a leading investigations and white collar criminal defense lawyer. She is a frequent speaker on topics in the area of the FCPA and U.S. export controls. She is a member of the American Bar Association, the AUSA Association and the International Bar Association.

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Gary Stein is a partner in the New York office, where he focuses on white-collar criminal defense and securities regulatory matters, complex commercial litigation, internal investigations, anti-money laundering issues, civil and criminal forfeiture proceedings and appellate litigation. He represents public companies, financial institutions, hedge funds, other entities and individuals as subjects, victims and witnesses in federal and state criminal investigations and regulatory investigations by the SEC, SROs and state attorneys general. He has conducted numerous internal investigations involving potential violations of the Foreign Corrupt Practices Act, financial statement fraud, money laundering and other matters, and advises companies on compliance with the FCPA and anti-money laundering and OFAC regulations. As a former assistant U.S. attorney and chief appellate attorney in the Southern District of New York, Gary investigated, prosecuted, tried and represented the government on appeal in numerous white-collar criminal cases involving money laundering, fraudulent investment schemes, bank fraud, insider trading, art theft, illegal kickbacks, terrorist financing and other financial crimes. His civil litigation experience includes claims of fraud and breach of contract, securities class actions and derivative actions, contests over corporate control, and disputes arising from the sale of a business. He has handled more than 150 appeals in federal and state courts involving issues of both criminal law and procedure and complex commercial law. He successfully argued 15 appeals in the U.S. Court of Appeals for the Second Circuit.

An accomplished public speaker and writer, he has presented on FCPA, insider trading, risk management and crisis management issues at a number of conferences and spoke on “FCPA Issues for Fund Managers” at SRZ’s 22nd Annual Private Investment Funds Seminar. In 2008, he was presented with a Burton Award for Achievement in Legal Writing for co-authoring “The Foreign Corrupt Practices Act: Recent Cases and Enforcement Trends,” which appeared in the *Journal of Investment Compliance*. Gary serves on the Board of Directors of The Legal Aid Society and the Board of Editors of the *Business Crimes Bulletin*. He obtained his B.A. from New York University in 1983 and his J.D. from New York University School of Law, where he was senior articles editor of the *New York University Law Review*, in 1986.

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**Sung-Hee Suh**

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Sung-Hee Suh, a partner in the New York office, practices in the areas of white-collar criminal defense, regulatory enforcement, internal investigations, anti-money laundering (“AML”) and Foreign Corrupt Practices Act (“FCPA”) compliance, and complex commercial litigation. Her white-collar criminal and regulatory matters include representing a global financial institution in a bank regulatory examination involving possible unlicensed money transmitting activity; defending a leading retail brokerage firm and a large commercial bank in FINRA investigations into alleged AML violations; representing an inter-dealer brokerage firm in multinational investigations into the setting of LIBOR and other benchmark interest rates; defending a foreign bank in a DOJ forfeiture action against the bank’s correspondent accounts; conducting an internal investigation into possible insider trading by a former employee of a private equity firm; defending a brokerage firm in SEC and CFTC investigations of an alleged whistleblower complaint; and conducting an internal investigation on behalf of the audit committee of a leading telecommunications company into possible FCPA violations. She also defended a former in-house attorney at Hollinger International Inc. against federal criminal fraud charges based on an “honest services” theory that was ultimately rejected by the U.S. Supreme Court. Her work in civil cases includes representing Merck’s former chief scientist in numerous Vioxx-related securities, products liability, ERISA and shareholder derivative actions throughout the country, and defending the former general partner of a private equity co-investment fund against claims for clawbacks of incentive fees.

Prior to joining SRZ, Sung-Hee was a law clerk to the Honorable Robert L. Carter, U.S. District Judge of the Southern District of New York, and served as an Assistant U.S. Attorney in the Eastern District of New York, including as Deputy Chief of the Organized Crime and Racketeering Section. She received her A.B., *cum laude*, from Harvard/Radcliffe College, her A.M. from Harvard Graduate School of Arts and Sciences and her J.D., *cum laude*, from Harvard Law School. She currently serves on the Federal Bar Council’s Program Committee and is also a member of the New York Council of Defense Lawyers. The New York chapter of the National Organization for Women honored Sung-Hee with its annual Women of Power & Influence Award in 2011. In 2012, she was recognized in *Benchmark Litigation’s* inaugural edition of the *Top 250 Women in Litigation*, and she continues to be recognized in the 2013 edition as well. Sung-Hee has also been listed in *The Legal 500 United States* and *Benchmark Litigation: The Definitive Guide to America’s Leading Litigation Firms and Attorneys*.