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PEOPLE MOVES

Private Funds Lawyer Ivana K. Rouse Joins Latham & Watkins in Houston

By Robin L. Barton, *Hedge Fund Law Report*

Latham & Watkins welcomed Ivana K. Rouse to its Houston office as partner in the firm's corporate department and investment funds practice. Rouse advises a wide range of private funds, including oil, gas and other energy funds; blockchain and cryptocurrency funds; credit funds; and real estate funds. She has also represented and worked on various types of fund vehicles and structures, including funds of funds, hedge funds, special purpose vehicles, funds of one, special situation funds, hybrid funds and co-investment vehicles.

For insights from other Latham & Watkins attorneys, see "Anatomy of a Private Equity Fund Startup" (Jun. 22, 2017); and our three-part series on how fund managers can mitigate prime broker risk: "Preliminary Considerations When Selecting Firms and Brokerage Arrangements" (Dec. 1, 2016); "Structural Considerations of Multi-Prime or Split Custodian-Broker Arrangements" (Dec. 8, 2016); and "Legal Considerations When Negotiating Prime Brokerage Agreements" (Dec. 15, 2016).

Representing both established managers and emerging managers in the U.S. and internationally, Rouse advises fund sponsors on their fundraising activities, as well as on operational and compliance matters, including organizing, forming and launching private investment funds, managed accounts and customized investment solutions. She also assists management companies with internal structuring issues, such as mergers, spin-offs, profit-sharing arrangements and seeding transactions.

See our two-part series on key terms in seed deals: "Structuring the Seeder's Interest, Key Person Covenants and Lock-Ups" (Oct. 12, 2017); and "Consent Rights, Indemnification and Manager Buyout Rights" (Oct. 19, 2017).

"Probably the biggest challenge for private funds right now is the super-competitive deal market. The last figure I saw reflected an unprecedented amount of dry powder in the industry: $1.1 trillion," observed Rouse. "There are a large number of private funds looking to deploy capital, and they are all competing for the same deals. Emerging managers, however, are having a harder time raising capital compared to more well-established fund managers that have longer track records."

See "How Emerging Hedge Fund Managers Can Raise Capital in a Challenging Market Without Overstepping Legal Bounds" (Aug. 4, 2016).

To make themselves stand out from the competition, Rouse said that fund managers have turned to specialization. "We're not seeing as many generalized, opportunistic funds being launched anymore. Now, there are very targeted strategies that often involve assets that are not correlated with the general equities market," she explained. "For example, there has been a huge uptick in litigation finance funds, life settlement funds, infrastructure funds and even blockchain funds. As the asset classes themselves continue to be more tailored, unique and outside the box, so will the fund structures."

See "Opportunities and Challenges Posed by Three Asset Classes on the Frontier of Alternative Investing: Blockchain, Cannabis and Litigation Finance" (Dec. 14, 2017).

In this vein, Rouse's experience with cryptocurrency funds began in 2016 when a client wanted to start a cryptocurrency hedge fund. "The managers that got into this space then – and that are still in it – are evolving. Their strategies are changing from a buy-and-hold cryptocurrency approach to more activist activities, such as buying, selling and lending bitcoin to exchange platforms; creating their own exchange platforms; and engaging in mining," she remarked. "They are diversifying their strategies, which is important in order for them to continue chasing returns in this market."

See "Business and Legal Issues in Raising Capital for Cryptocurrency Funds" (Apr. 19, 2018).

"I am optimistic that crypto funds will continue to thrive in the ongoing evolution of the space and that they will continue to find creative ways to get returns for their investors," said Rouse, who added that consolidation will happen. "A lot of blockchain or crypto funds that were launched in early 2017 have shut down. The managers that are launching these funds in 2019 are more sophisticated and have deeper understanding of the space, as well as more resources to pull through this bear market."

See "Best Practices for Funds That Invest in Digital Assets" (Feb. 21, 2019).

Regulatory uncertainty as to cryptocurrencies, tokens and the like creates a barrier to entry, noted Rouse. "Uncertainty means fund managers must rely on legal counsel to guide them through the minefield and the gray zone," she explained. "If managers must reach out to counsel every time they want to invest in a particular digital asset to determine which laws apply and whether they will be governed by the CFTC or the SEC, they are going to pay a lot of legal fees."

"Once regulatory certainty is provided, not only will the cost of entry go down, but also service providers such as custodians will be more prevalent. Thus, fund managers will have an easier time finding appropriate counterparties," continued Rouse. "In addition, the fees associated with those counterparties will dramatically decrease. There aren't that many custodians or administrators to provide services for digital assets, so they are able to charge higher fees, which results in much higher expense ratios for crypto funds than for other funds."

See "HFLR Cryptocurrency Webinar Examines Regulatory Developments, ICOs, Cryptocurrency Sweep, Custody and Other Compliance Issues" (May 3, 2018).

In the private funds space in general, Rouse noted that "there has been a lot of mergers and acquisitions activity over the last 18 months, more so than ever. Another trend is general partner-led secondaries or fund restructurings and consequently the rise of large secondary funds that are buying the assets of private equity funds whose terms have ended."

See "An Examination of Exit Rights for Hedge Funds Making Non-Controlling Private Equity Investments" (Jul. 18, 2013).

In addition to representing fund sponsors, Rouse represents money managers and institutional investors that acquire and sell investments in private funds and establish co-investment arrangements.

See "Investor Survey Finds Growing Interest in Private Market Vehicles, Lower Return Expectations and Continuing Fee Pressures" (Feb. 7, 2019).

"I have noticed recently that investors are not as concerned with fees. They're fine paying performance and carry. What investors are really looking at is: Who is the management team? What is their track record? What have they done together or separately, and can they recreate it for this fund?" observed Rouse. "Yes, a lot of diligence is on the fund terms, economics and rights, but those are just table stakes. More focus is on the members of the team and the key person trigger events should that team change."

See our three-part series on succession planning: "Why Fund Managers Must Review Their Positions on Succession Planning and CCO Outsourcing" (Jun. 7, 2018); "What Fund Managers Should Consider When Hiring and Onboarding CCOs; Determining CCO Governance Structures; and Evaluating Risks of CCO Turnover" (Jun. 14, 2018); and "A Succession-Planning Roadmap for Fund Managers" (Jun. 21, 2018).

Finally, Rouse noted that she is seeing more investors ask questions about sexual and other kinds of harassment, as well as diversity issues. "It is definitely on the checklist. These institutional investors have all gotten on the same page, and these are questions that they now ask," she added.

See "IMDDA Offers Fund Managers a Blueprint for Conducting Sexual Harassment Due Diligence" (Aug. 2, 2018).