

Walter Weinberg Quoted in Law360 on Investment Limitations for PE Funds

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Private Equity and Real Estate Fund Formation co-chair Walter Weinberg was quoted in Law360 on challenges facing private equity fund managers when limited partners become averse to investing (even indirectly) in particular industries, such as weapons, alcohol, tobacco, marijuana and gambling. While certain investment limitations are not uncommon, Walter stated, "Generic LBO (leveraged buyout) funds often do not go out and have restrictions on the kinds of industries they can invest in." He added that those types of restrictions are often added after some marketing of the fund has occurred. "Very often you're courting one or more institutional investors, and they may require some limitation on your fund investments in order for them to invest."

Walter explained that an institutional investor (such as a pension plan or university endowment) may have internal guidelines or policies on what industries it must avoid investing in. The role of the attorney in crafting the appropriate side letter is critical. "One thing you have to be careful with side letters is how you phrase the restriction. For example, it's one thing to say that the fund will not invest in gun manufacturers but it's another thing to say the fund won't invest in any gun-related industries—what about a steel manufacturer that sells steel to gunmakers? The devil is sometimes in the details as to how you describe everything."

Another challenge Walter noted includes managing the interests of diverse limited partners. He stated, "If you've already had a first closing, you might need to think carefully about going back to the other investors and saying 'we're going to impose this limitation and we'd like your consent.'" In that situation, he indicated that it may be easier if the fund separately agrees with the new investor to simply exclude them from certain investments of the fund rather than to impose a blanket restriction on the fund. ("How PE Funds Can Handle LPs Wary Of Weapon Investments," March 12, 2018)

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