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Introduction - George A. Leet Business Law Symposium: The Future of Private Equity Financing

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INTRODUCTION

George W. Dent[†]

The world has witnessed many remarkable changes in the last twelve years, including the collapse of Communism, the ideological victory of democratic capitalism, and the economic and technological changes wrought by computers and the Internet. I think historians will recognize that another important change during this period, not separate from those I mentioned but an integral part of them, is the rise of private equity financing.

Communism fell and capitalism triumphed not so much because of moral concerns about human freedom—those were a subsidiary consideration—but because capitalism proved able to deliver material goods as Communism simply could not. The high-tech revolution was the knockout blow in this battle, and that revolution could not have occurred in anything like such lightning speed without the key contributions of venture capital. Indeed, we see now not only a global rush to embrace capitalism, but efforts by already firmly capitalist countries to emulate America's success in financing new enterprise with venture capital.

While the importance of private equity cannot be denied, its future is far from certain. The recent decline in the market for high-tech stocks raises the question of whether venture capital is overextended. Despite frequent complaints that Americans do not save enough to support adequate capital formation, we also hear complaints that venture capital now has too much money chasing too few deals.

The relationship between suppliers and users of private equity is problematic. Traditional venture capitalists are facing growing competition from industrial companies making so-called strategic investments and from so-called incubators that claim superiority because they provide entrepreneurs with key services as well as money. Venture capital is also challenged by direct offerings to investors over the Internet.

The relationship between private equity and public equity is also complex and ambiguous. The two are rivals in that capital can come from one or the other. But they are symbiotic rivals in that private equity needs exit mechanisms, and public financings, like the initial public offering, are an important exit route. How will future changes

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in public equity affect private equity? At the other end of corporate financing, the future of leveraged buyouts ("LBOs") is also hard to predict. Not long ago, finance guru Michael Jensen declared public financing passé and proclaimed the eclipse of the public corporation and the reign of the LBO.

Thereafter, we instead had a boom in public financing, but the recent problems of high-tech stocks suggest that Jensen was not wrong, only a little premature. And with American LBO firms increasingly active abroad, are we on the eve of an international LBO wave?

And what does the future of private equity hold for lawyers? The rise of venture capital, strategic investments, and LBOs stems largely from the fashioning of creative solutions to the agency problems of business financing. Will the future demand a bigger role for lawyers to create even better solutions, or will terms of private equity deals become standardized, with lawyers reduced to changing the names on boilerplate forms?

All these questions make the eve of the new millennium an ideal time to discuss the future of private equity financing. We owe this event to not only the generosity but also the vision of George Leet. He shows by example what thoughtful imaginative philanthropy can do. Thank you, Mr. Leet. In return, I think we have honored him by gathering nine outstanding participants to this symposium.