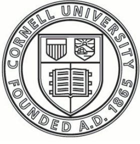

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Financial Intermediaries in the United States: Development and Impact on Firms and Employment Relations

Eileen Appelbaum
Center for Economic and Policy Research

Rosemary Batt
Cornell University, rb41@comell.edu

Jae Eun Lee
Cornell University

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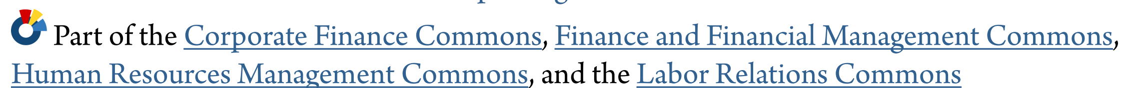

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Financial Intermediaries in the United States: Development and Impact on Firms and Employment Relations

Abstract

[Excerpt] Private equity (PE), hedge funds (HFs), sovereign wealth funds (SWFs), and other private pools of capital form part of the growing shadow banking system in the United States, where these new financial intermediaries provide an alternative investment mechanism to the traditional banking system. PE and HFs have their origins in the USA, while the first SWF was created by the Kuwaiti Government in 1953. While they have separate roots and distinct business models, these alternative investment vehicles have increasingly merged into overarching asset management funds which encompass all three alternative investments. These funds have wielded increasing power in financial and non-financial sectors—not only via direct investments but also indirectly, as their strategies—such as high use of debt to fund investments—have been increasingly adopted by investment arms of banks and by publicly-traded corporations. In this chapter we outline the changes in the US regulatory environment which have facilitated the rapid growth of alternative or new investment funds (AIFs or NIFs) and then examine the specific features of these funds, including their growth, business models, and implications for firms and employees.

Keywords

investment funds, regulation, employment relations

Disciplines

Corporate Finance | Finance and Financial Management | Human Resources Management | Labor Relations

Comments

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Financial Intermediaries in the United States: Development and Impact on Firms and Employment Relations

EILEEN APPELBAUM

ROSEMARY BATT
Cornell University

JAE EUN LEE
Cornell University

Introduction

Private equity (PE), hedge funds (HFs), sovereign wealth funds (SWFs), and other private pools of capital form part of the growing shadow banking system in the United States, where these new financial intermediaries provide an alternative investment mechanism to the traditional banking system. PE and HFs have their origins in the USA, while the first SWF was created by the Kuwaiti Government in 1953. While they have separate roots and distinct business models, these alternative investment vehicles have increasingly merged into overarching asset management funds which encompass all three alternative investments. These funds have wielded increasing power in financial and non-financial sectors—not only via direct investments but also indirectly, as their strategies—such as high use of debt to fund investments—have been increasingly adopted by investment arms of banks and by publicly-traded corporations. In this chapter we outline the changes in the US regulatory

environment which have facilitated the rapid growth of alternative or new investment funds (AIFs or NIFs) and then examine the specific features of these funds, including their growth, business models, and implications for firms and employees.

The Institutional Environment

Part of the power and dramatic growth in the activities of PE and other NIFs is related to the weak regulatory environment in the USA—particularly the financial regulatory regime, and to a lesser extent, labour market laws, and institutions.

Financial Regulation

Four laws provide the regulatory framework for US public corporations and the financial services industry: the Securities Act 1933, Securities Exchange Act 1934, Investment Company Act 1940 (Company Act), and Investment Advisers Act 1940 (Advisers Act). The Securities Act prohibits fraud, requires registration and public reporting by publicly-traded firms, and gives authority to the Federal Securities and Exchange Commission (SEC) to regulate the industry. The Company Act requires investment funds to disclose their financial policies, restricts activities such as the use of leverage and short-selling, and requires a board structure with a substantial percentage of disinterested members. The Advisers Act requires the registration of fund managers, enforces compliance with fiduciary responsibilities, and limits the performance fees they may charge (Goldberg et al. 2010).

In practice, most PE and FIFs have avoided these regulations by limiting their funds' size to that which is defined as exempt under law. This

has allowed them, in contrast to mutual funds for example, to engage in financial practices such as selling securities short, making use of substantial leverage, and adopting performance-based fees, which increase with fund gains but do not necessarily decrease with losses. Thus the funds have operated with little transparency (even to their investors) and without board oversight.

By the 1990s, deregulation of banking and financial services led to the dramatic growth of PE and other private investment pools. In the 1970s, Congress passed laws allowing pension funds and insurance companies to invest in stock and high risk bonds for the first time (Employment Retirement Income Security Acts (ERISA), 1974 and 1978). In the 1980s, it allowed savings and loan banks to invest in risky commercial activities, including bonds rated as 'high risk' ('junk bonds'), and hence more likely to default. The Reagan administration further relaxed enforcement of antitrust and securities laws, and corporate raiders grew more powerful after the Supreme Court struck down state anti-takeover laws in 1982 (Jarrell 1983). In turn, the emergence of large pools of liquid capital for junk bonds facilitated leveraged buy-outs (LBOs), in which investors bought companies with a small down payment and borrowed the rest by using the assets of the acquired company as collateral. This high leverage model, which often led to financial distress or bankruptcy, became a central building block of the PE model of the 1990s.

Banking deregulation continued with the 1999 Gramm-Leach- Bliley Act, which repealed the Glass-Steagal Act of 1933 and allowed, for the first time since 1929, the consolidation of commercial banks, investment banks, securities firms, and insurance companies. Then in 2004, the SEC allowed

investment banks to hold less capital in reserve, thereby facilitating greater use of leverage in trading activities (Lowenstein 2004). Lax regulation also aided the development of new financial instruments—commercial mortgage-backed securities (used to securitize debt which PE funds lever on the firms they acquire) as well as collateralized debt obligations, credit default swaps, and other derivatives. Congress explicitly excluded these financial instruments from regulation under the 2000 Commodity Futures Modernization Act. Taken together, these legal changes dramatically increased the pools of capital available for investment in PE and HFs and speculation, a practice which the 2011 Dodd-Frank Wall Street Reform and Consumer Protection Act is intended to curb.

Private equity and HFs also take advantage of US tax laws. By using high leverage in buying companies, for example, the interest on debt may be subtracted from taxable income, whereas retained earnings or dividends are taxable as profit. The profits from their portfolio investments are defined as 'carried interest', and this is treated as capital gains and taxed at a 15 per cent rate, rather than the top rate of 35 per cent for corporate or individual taxes (Fleischer 2008; Marples 2008; GAO 2008a: 72). In addition, most PE and HFs avoid other taxes by registering offshore (Jickling and Marples 2007: 6).

The Dodd-Frank act now requires PE and HFs with more than $150 million in assets to register with the SEC and report basic organizational and operational information, such as size, types of services, clients, employees, and potential conflicts of interest (PriceWaterhouseCoopers 2011). Legislative attempts to tax carried interest as ordinary income had failed as of

the end of 2011 (Rubin et al. 2011). These minimal requirements stand in contrast to the European Union's (EU) Alternative Investment Funds Managers Directive. The latter instructs member states to adopt much more extensive reporting requirements as well as substantive rules to limit the use of leverage and implement risk management systems (European Parliament and Council 2011).

United States regulations governing SWFs are also limited in scope and have largely encouraged SWF investment in the USA. SWFs are completely exempt from taxation (Article 892 of the US Internal Revenue Code), giving them a major advantage over other private investors. When the China Investment Corporation (CIC) invested in Morgan Stanley in response to the financial crisis, for example, it avoided the 30 per cent withholding tax which other foreign investors must pay unless they are covered by a special treaty (Fleischer 2009). The US government has focused more on SWFs as a threat to national security, leading Congress to pass the Exon-Florio Amendment to the Defense Production Act of 1950. These established the Committee on Foreign Investment in the US (CFIUS), which reviews foreign acquisitions and may stop private sector transactions (Crocker 2008), such as the 2006 attempt by state-owned Dubai Ports World to acquire six major US ports (AP News 2006).

Labour Market Regulation

The USA is also well-known for its weak labour market protection compared to its European counterparts. US employment law is based on the 'employment-at-will doctrine', which means that employers may hire or fire employees at will—although firms do worry about individual lawsuits and the

reputational effects of relying on layoffs to adjust workforce levels. At the collective level, US labour laws have established a decentralized industrial relations system in which employees may gain union representation only by winning a majority of votes in elections at the workplace or firm level. This system works to limit union power by requiring high levels of union resources, both for administering existing contracts and organizing new members. While industrial unions were successful in the post-Second World War period in organizing a large percentage of workers in manufacturing and negotiating 'pattern' contracts, which applied across firms, those patterns have largely broken down as union power has eroded and union density has fallen—now to only 7 per cent of the private sector workforce—a bit less than the estimated workforce now employed by companies owned by PE.

Two aspects of the US labour institutional environment are particularly relevant to the role of new financial intermediaries. First, unlike their European counterparts, US workers and unions have no information or consultation rights so they typically do not have advance notice, and cannot influence, the change of ownership of a corporation. Second, the US pension system is a decentralized employer-based system, though some unions control members' pension funds under the provisions of the Taft Hartley Law. Public employers also have pension funds covering the majority of public sector employees. Unions and public sector officials have a fiduciary responsibility to ensure that these multi-billion dollar funds have adequate returns, and many have invested in PE and HFs in an attempt to achieve high returns. Pension funds invest an average of 8.8 per cent of their portfolios in PE, while public pension funds invest 6.8 per cent in HFs (Ederet et al. 2011)

This system has created dilemmas for US unions. While they invest in PE to gain high returns for retired members, they also encounter PE investors who take over unionized firms and may find themselves fighting these new owners over downsizing or derogation of contract rules. The result is that the US labour movement as a whole has not developed a unified position or public approach to new financial intermediaries.

Growth and Business Models of Funds

This weak regulatory environment governing capital and labour markets has created a space for new financial intermediaries to operate with few constraints. In the following sections, we examine the LBO model of PE, which has the most direct effect on management and employment relations, before turning to HFs and SWFs.

Private Equity

Private equity firms draw on the legacy of the LBO model of the 1980s, exemplified by Kohlberg, Kravis, and Roberts' (KKR) purchase of the Houdaille Corporation in 1979 and RJR Nabisco for $31.1 billion a decade later (Anders 2002; Baker and Smith 1998). Their actions were justified by ideas developed in 'agency theory' by finance economists to explain how firms can best maximize shareholder value (Jensen and Meckling 1976). According to agency theory, the 'managerial' model of the firm is deficient because shareholder ownership is too dispersed to effectively control managerial decisions. Professional managers (the agents) are free to pursue their own agendas rather than maximizing value for shareholders (the principals). Traditionally, it is argued, managers used their power to control labour and extract value through the production process. They used some of

the company's retained earnings to induce diverse stakeholders to contribute to enterprise productivity and to finance investments in new technologies, worker skills, or labour peace and cooperation (Chandler 1990; Lazonick 1992). However, financial economists argue that in the short-term, managers did not maximize value for the company's current shareholders.

By contrast, LBOs and corporate takeovers in theory solve the principal-agent problem by concentrating ownership in a few hands so that shareholders have greater influence over managerial decisions. In addition, loading acquired companies with debt makes it necessary for managers to focus on cost-cutting and short-term profits to meet debt repayments and maximize returns to shareholders. For a time, this model collapsed in the scandals of the 1980s, with the indictment of leading figures such as Michael Milken (Akerlof et al. 1993) and the publication of scathing critiques such as *Barbarians at the Gates.* Investors became wary of these deals and the junk bond market collapsed.

Size, Scale, and Scope of Private Equity in the USA By the late 1990s, however, a second wave of LBOs emerged among investors with large pools of private capital. PE firms raised capital through funds in which investors (the so-called limited partners) commit a certain amount of money and pay management fees to the PE firm (the general partner). The limited partners provide most of the capital while the general partner manages the fund and makes all of the decisions. Limited partners include primarily pension funds (or 'workers' capital), as well as insurance companies, endowments, and wealthy individuals.

Increasing access to pension funds enabled PE firms to expand the

scale and scope of their operations and to become global in their investment activities in the 2000s. Data from PE data provider Pitchbook show that between 2003 and 2007, the number of annual PE transactions increased by 375 per cent (from 665 to 2,490 deals), while the value increased by nine fold ($66 billion to $607 billion). Deal activity fell dramatically during the financial crisis, but by 2010 the value of deals approached its 2005 level (Figure 2.1). These data are broadly consistent with estimates using Capital IQ data, reported by Stromberg (2008) and Kaplan and Stromberg (2009: Figure 2 and Table 1)

The types of PE transactions also changed in the 2000s. In the 1980s, LBOs focused primarily on large public firms in mature industries such as manufacturing and retail. By the 2000s, buy-out activity spread to a wide range of industries, including information technology, healthcare, financial services, utilities, infrastructure, business to business, and other business to consumer activities. Similarly, in the 1980s, LBOs of publicly-traded firms taken private represented almost half of the value of all transactions, but this fell to about one-third in the 2000s. By contrast, secondary transactions—in which one PE fund sells a privately-held company to another PE fund—rose from 2 per cent of transaction value in the 1980s to one-third in the 2000s (Kaplan and Stromberg 2009: Table 1).

Impact on Firms, Employment, and 'Workers' Capital'

The most comprehensive analysis of the employment and productivity effects of PE in the USA draws on industry data on PE transactions (Capital IQ) and the US Census Bureau's Longitudinal Business Database, which covers the entire non-farm private sector (Davis et al. 2008; Davis et al. 2009; Davis

et al. 2011). In the 2011 paper on PE and employment, the data consist of 3,200 PE-owned firms (with 150,000 establishments), acquired in PE transactions from 1980 to 2006. The research examined employment at PE-acquired establishments for five years before and after the PE transaction and compared these with control establishments, which were comparable in age, size, and multi-establishment status.

The findings are instructive. In PE-acquired establishments, gross job destruction was substantially greater than in the control establishments. The average cumulative five-year employment difference was 6.4 per cent in favour of the controls, with half of this due to the greater pace of closings of PE establishments. The authors found modest declines in employment in PE establishments relative to controls in manufacturing, but employment fell by nearly 12 per cent in PE-owned retail establishments relative to controls. Two years post-buy-out, these negative employment effects persisted at the firm level—with PE-owned firms showing 3.62 per cent lower employment—despite the fact that PE created somewhat more jobs than the controls at greenfield sites.

With respect to productivity in manufacturing, Davis et al. (2009) found confirmation of the agency theory view that PE ownership improves performance. Labour productivity was higher in target firms than in controls. Notably, almost three-quarters (72 per cent) of this differential was due to productivity improvements in the continuing establishments of these firms, including downsizing or closing of less productive establishments and the reallocation of activity to more productive establishments. In addition, target firms were much more likely to close establishments with lower productivity

than were the controls. Unfortunately, it is not possible with these data to distinguish between productivity increases due to investments in employee skills, technology, and work organization and those due to work intensification.

For the limited partners—which are overwhelmingly the pension funds of union and public sector workers—the higher than average returns proclaimed by PE have been seriously challenged by recent evidence. A *New York Times* analysis found that pension funds with a third to over half of their money in alternative investments (PE, HFs, and real estate funds) had returns that were more than one percentage point lower than those funds that avoided these risky investments— and they paid almost four times more in management fees (Creswell 2012). Scholarly evidence also raises serious questions. An econometric study by Kaplan and Schoar (2005) of PE funds between 1980 and 2001 that had reached the end of their life found that PE returns averaged 93-97 per cent of the S&P 500. Median returns were 80 per cent of the S&P 500. Using the same data, Phalippou and Gottschalg (2009) reached similar findings but identified several features of the data, including self-selection bias, that upwardly bias the results. More importantly, the standard industry practice of measuring results using the internal rate of return (IRR) has been seriously questioned because calculations make the questionable assumption that cash proceeds from the sale of an operating company can be reinvested at the same IRR over the entire life of the PE fund. Using a modified IRR, Phalippou and Gottschalg (2007) estimated returns for the top 25 per cent of PE firms that were about half of those reported using the IRR. Moreover, the limited partners 'accept extreme illiquidity and leverage (debt) risk relative to the S&P' (Higson 2010: 7) (for

fuller discussion see Appelbaum and Batt 2012: 24-7). In sum, the stated benefits of PE investments for workers' capital and the retirement income of middle-class Americans are highly suspect.

Management and Employment Relations

The labour relations strategies of PE firms take advantage of the weak US labour laws and labour movement, which provide few constraints on managerial prerogative; but PE firms do not uniformly seek to eliminate or marginalize unions. Their attitudes vary from hostile to pragmatic to indifferent. As long as unions do not get in the way of making anticipated returns, PE firms can live with them; if not, they fight them. Where labour cost savings are not a major source of higher returns—as in the $40 billion buy-out of Texas Utility Corporation (TXU)—then union contracts are not a major obstacle. But in old-line manufacturing plants or distressed industries such as steel, layoffs and deep concessions in work rules, healthcare, and pensions have been common. Overall, however, our case evidence shows that whether or not PE is hostile or willing to negotiate, it has gained the lions' share of wealth from buy-outs while workers hold on to diminished jobs with lost income and welfare security.

The steel industry, for example, is considered a positive case of PE investment because, without it, most believe the industry would have collapsed. Between 1998 and 2003, in the context of the Asian crisis, cheap steel imports, and global over-capacity, forty-five US steel companies declared bankruptcy, shut down eighteen mills, and laid-off 55,000 steelworkers. Over 210,000 retirees and their dependants lost their retiree healthcare benefits (USWA 2004). In 2001, investment banker Wilbur Ross

approached the steelworkers to make a deal, and with their backing, created ISG as a parent company to buy the major steel companies out of bankruptcy at bargain prices (LTV, US Steel, Bethlehem, Georgetown, and Weirton). The bankruptcy proceedings allowed the pension plans covering over 250,000 employees, with $10 billion in underfunded benefits, to be terminated and turned over to the US Government's Insurance program, the Pension Benefit Guarantee Corporation.

The Steelworkers Union welcomed Ross because he was willing to save the mills and, unlike the legacy companies tainted with years of union hatred, he was straightforward and pragmatic. Negotiations were purely about money. The union accepted layoffs of 20 per cent in exchange for management layoffs of 40 per cent. Ross accepted the union's plan for reorganizing the plants, which streamlined job grades and led to large productivity gains. The contract maintained full-time work hours, overtime pay, and seniority provisions; set lower base wages plus an incentive bonus plan and profit-sharing; provided less comprehensive healthcare than previously; and retained important non-monetary clauses such as the maintenance of standard contract protections, a neutrality clause, and limits on pay for top managers. The union gained an expanded role in implementing the work redesign and running the plants, an extensive training programme, health and safety committees, a 'layoff minimization plan', and a union nominee to the ISG Board of Directors. Active union members were folded into the Steelworkers Pension Trust, a less generous multi-employer defined benefit pension plan than the one they had previously (USWA 2002).

Hardest hit were laid-off workers over fifty-five, who received

$50,000 severance pay, and retirees whose health insurance was covered by a new trust with contributions contingent on corporate profitability. In 2005, Ross sold all of the plants to Mittal Steel for $4.5 billion, making an estimated fourteen times his investment in less than three years (Gross 2005). The mills continue to operate competitively, with collective bargaining negotiations occurring in 2012. While the deal between Ross and the Steelworkers Union saved the industry, the bittersweet pill is that Ross's profits almost exactly equal the losses sustained in the pension and health care programmes for retirees.

In a more hostile union case, the anti-union company Olmet Aluminum, backed by PE firm Matlin Patterson, filed for bankruptcy and gained a court order to void a steelworker union contract; but union militancy led to a nineteen-month massive corporate campaign against the company and PE firm, which ended with a satisfactory contract covering 1,500 workers (Business Wire 2005; Business Wire 2006).

These distressed buy-outs are a tiny fraction of PE activity. In other cases, PE has acquired healthy companies, and while they have negotiated decent union contracts, they have left the companies with huge debt loads that undermine the sustainability of the enterprises. For example, in 2007 a PE consortium of KKR, the Texas Pacific Group, and the PE arm of Goldman Sachs acquired the Texas utility company TXU (now Energy Future Holdings) in the largest PE buy-out in history—worth $48 billion. They negotiated with the union (the International Brotherhood of Electrical Workers), and the contract ensured union recognition and no job losses for three years (Beeferman 2009; Kosman 2009: 10-11). But their economic model failed,

and by early 2012, the company continued to owe some $20 billion of the $40 billion in debt from the original buy-out; and credit default swap traders were betting that the company would default in the next three years (Anderson and Creswell 2010; Childs and Johnsson 2012).

In another high profile case in 2006, a consortium of investors (Bain Capital Partners, KKR, LLC, Merrill Lynch Global PE, Citigroup Inc., Bank of America Corporation, and HCA Chief Executive Officer (CEO) Dr Thomas F. Frist) acquired Hospital Corporation of America (HCA), the largest for-profit healthcare organization in the USA, providing approximately 4-5 per cent of all hospital services nationwide and employing 190,000 people. The PE owners negotiated in good faith with its unions (the Service Employees International Union and the National Nurses Union) and even signed neutrality agreements allowing the unions to organize new members in typically non-union southern states. But as in the Texas utility case, the real money is not in the union contracts. PE owners have already extracted their initial investment though financial engineering while leaving the hospital chain with a huge debt overhang. The PE owners initially invested $4.5 billion in the $21 billion deal. In 2010, they repaid themselves $4.25 billion in dividends by issuing junk bonds and loading the company with additional debt. Then in March, 2011, they issued a successful initial public offering (IPO) worth $3.8 billion IPO. While the owners more than recouped their initial investment, HCA is now saddled with $26 billion in debt—$12 billion more than the company's assets (Kosman 2011; Reuters 2011; Terry 2011). More importantly, HCA is currently under investigation for Medicare fraud—billing for unnecessary and costly interventional cardiology procedures that raise profits and can endanger patient healthcare. Prior to PE ownership, HCA

had settled the largest Medicare fraud case in history ($1.7 billion) with the Justice Department in 2000. The current investigation raises serious questions about the failure of HCA under PE ownership to reign in these kinds of practices (Abelson and Creswell 2012).

In other cases, hostile PE owners have marginalized unions or fought union strikes and closed plants. In a Teamsters Union case, for example, PE firms KKR and CD&R purchased US Foodservice from Dutch supermarket chain Royal Ahold in 2007. Management- union relations were cooperative under Ahold, but the new owners refused to consider the union's offer to work together on productivity improvements. Instead, they pursued a campaign of cost-cutting and work intensification; started shifting work to non-union worksites; and launched an anti-union campaign against one organizing drive that led to over 200 violations of the National Labor Relations Act.

In another case, the PE firm Brynwood Partners bought Stella D'Oro Biscuit Company, a historic Italian-style bakery located in the Bronx, in 2006. It immediately demanded cuts in wages and benefits from the plant's 130 members of the Bakery, Confectionary, Tobacco Workers, and Grain Millers Union. After failed negotiations, the workers struck for eleven months, and won the strike in 2009 when the National Labor Relations Board ruled that the firm must reinstate workers with two months back pay. But the PE firm sold the company to Lance, Inc., a North Carolina employer with an anti-union reputation, who moved the plant to Ohio with no offer of jobs to the former workers.

In sum, the available case record shows that whether PE firms

negotiate or not with unions, the outcomes are similar, with the earnings of PE owners coming at the expense of workers rather than an increase in efficiency.

Private Equity, the Economic Crisis, and Financial Distress Private equity investments were very much affected by the financial crisis and the economic recession, which in turn had negative effects for the limited partners and led to a series of bankruptcies in portfolio companies. Practitioner accounts, corroborated by the available empirical evidence, suggest that PE is highly cyclical (Kaplan and Stromberg 2009: 137-43). The number of deals fell by more than half between the second quarter of 2007 and the second quarter of 2009 (from 737 to 302), while deal volume declined from a high of $168 billion in the fourth quarter of 2007 to a low of $7.5 billion in the second quarter of 2009. The number and volume of deals both recovered somewhat after the trough, and the value of deals in 2011 was close to its 2005 levels (Figure 2.1) (Pitchbook 2011).

The recession made it difficult to find opportunities for investment, and PE funds continued to have large amounts of 'dry powder'—funds committed by limited partners that must be invested or returned along with the relevant management fees. Estimates of dry powder as of November 2011 ranged from $376 billion (Preqin 2011: 5) to $436 billion (Pitchbook 2011: 1). PE funds have also had difficulty exiting from their mature portfolio firms (Ernst and Young 2011). Pitchbook estimated that 4,300 portfolio firms owned by PE in 2011 can be characterized as 'mature portfolio investments'. Related to this, PE funds have increased their use of secondary buy-outs (sales to other PE firms) (Preqin 2011: 3), in part to solve this problem. The PE

firm which sells the portfolio company is able to exit and pay distributions to limited partners, while the PE firm which buys the company can use up some of its dry powder. One of the largest of these deals was the 2010 LBO of MultiPlan Inc., a healthcare business which creates medical networks for major healthcare insurers. The company was acquired by PE firms BC Partners and Silver Lake Partners from Carlyle Group and Welsh, Carson, Anderson, & Stowe in a transaction which valued the company at $3.1 billion (Lattman 2010).

Secondary buy-outs are problematic for the limited partners who often partner with more than one PE firm and may find themselves on both sides of the secondary buy-out, to their disadvantage. Returns to the limited partners in most PE funds proved disappointing in 2008, 2009, and 2010, which has made raising new funds challenging. The number of funds that closed and the amount of total capital raised declined throughout 2011. Despite this tough fundraising environment, over 300 PE funds were seeking commitments in 2011, the same as in the peak year of 2007.

More important for managers and employees is the pattern of distress and bankruptcies experienced by PE-owned companies. Even before the recession, bankruptcy rates of LBOs were higher than those of comparable publicly-traded firms, according to the most exhaustive study of this issue (Stromberg 2008). Stromberg found that PE firms acquired in LBOs between 1970 and 2007 had an average net debt to enterprise value of 67 per cent and an average net debt to EBITDA (earnings before interest, taxes, depreciation, and amortization) of 5.4, compared to 14 per cent and 1.1 for comparable publicly-traded firms. For the LBOs that occurred between 1970

and 2002, the rate of bankruptcy or reorganization was twice as high as it was for publicly-traded companies.

Stromberg's analysis does not cover the period of the financial crisis and its aftermath. Since then, many companies acquired by PE have been forced to seek bankruptcy protection—including Simmons, Reader's Digest, Harry and David's, and Fortunoffs Jewelry. Several restaurant chains owned by PE firm Sun Capital—Friendly's ice cream, SSI Group (Grandy's and Souper Salad restaurants), and Real Mex (El Torito Restaurant and Chevys Fresh Mex)—all entered bankruptcy in late 2011. Other major retail chains were unable to emerge from bankruptcy and were liquidated (Linens 'n Things and Mervyns). Indeed, the largest US bankruptcy of 2011 was NewPage Corporation, owned by PE firm Cerberus Capital Management (Hals et al. 2011).

The risks of financial distress associated with high levels of leverage are well-known. They include the costs of reorganization, legal and trustee fees, the loss of business, and higher future borrowing costs (Platt 2009:13). Yet, PE firms tend to ignore these costs because they are largely protected from the effects of isolated instances of financial distress or bankruptcy among operating companies in the fund's portfolio. The legal structure governing PE funds limits these partners' losses to the equity invested in the distressed portfolio company. If a portfolio company defaults on its loans, the PE owners lose only the equity that was initially used to buy that company.

While the US PE industry had not fully recovered from the recession by the end of 2011, it pointed to several positive signs of improved performance, including an increase in billion dollar LBO deals. Through

November 2011, US PE firms closed thirty-three deals over $1 billion (Pitchbook 2011). PE firms also had successfully re-financed much of the huge volume of bonds scheduled to mature in coming years. While helpful, these 'amend and extend' agreements (sometimes referred to as 'amend and pretend') have allowed some shaky companies to escape bankruptcy or restructuring, at least temporarily, but may have required them to cut employment and reduce prices and may have left them too weak to undertake new investments or projects (Hals et al. 2011).

Hedge Funds

The value of assets held by the HF industry worldwide grew massively in the last two decades—from $20 billion in 1995 to $1.92 trillion in 2007. While the financial and economic crisis led to a fall in value to $1.33 trillion by the first quarter of 2009, HFs rebounded by 2010; total assets under management in 2012 were estimated at $1.76 trillion (BarclayHedge 2012). While the industry is known for mega-funds which wield enormous power in financial markets, it is striking that the structure of the industry is relatively un-concentrated, with 25 per cent of the assets held by nineteen firms in a population of 5,000 (Fruhan 2010: 3-4).

The Rise of US Hedge Funds and their Business Models The classic model of a HF, as developed in the USA by Alfred Winslow Jones in 1949, included three characteristics: 'hedging' market investments by holding both long and short positions, using leverage (debt) to improve returns, and paying managers based on incentives tied to performance (Temple 2001: 46). Over the last twenty years, however, HFs have taken on very different forms, using dozens of portfolio strategies and asset classes. The potential for large

performance-based pay for managers has favoured the adoption of high risk and high leverage models of investment (Temple 2001: 46-7); and many HFs today take either short or long positions in any type of security or market and use leverage and performance-based pay for managers. In addition, they are typically domiciled in an offshore tax haven, have a limited number of wealthy investors, and operate in relative secrecy.

For the purposes of this study, most HFs are unlikely to have a direct effect on corporate governance or employment relations. A useful typology of funds, developed by Goldman Sachs in a 1998 guide, identified four types of funds: (a) equity funds—following the Winslow Jones model; (b) arbitrage funds, which exploit inefficiency in financial markets; (c) directional funds, which operate in a wide variety of markets, such as global macro markets; and (d) event- driven funds, which target extreme corporate events, such as mergers or bankruptcies (Temple 2001: 51). Event-driven funds also include 'activist funds', which seek to influence corporate board decisions when they believe that a firm is under-valued (Coggan 2011: 31). These funds make up a relatively small portion of the HF industry, but are the most likely to influence management decision-making because they make their returns by closing the gap between a company's stock that is under-valued and what it would be worth if the company changed its strategy, which may also involve changing its corporate governance (Fruhan 2010:15).

Implications for Firms and Workers

Recent research on HF shareholder activists suggests that they seek to influence the governance or operations of a target firm via one of two approaches: indirectly by helping to bring about the takeover of a target firm,

or directly by insisting on changes in governance or operational policies in the existing firm. Schor and Greenwood (2009), for example, analysed the demands of large shareholders of public corporations as indicated in their filings of Schedule 13D with the SEC for the period 1993-2006.[1] Schor and Greenwood found that HF activism using 13D filings was four times the level of non-HF investors, and it increased dramatically from the late 1990s onwards. The SEC filings contained nine categories of planned initiatives, which focused on capital structures, governance issues, business strategies, sales of assets, influence over merger and acquisition activity, and proxy contests (Schor and Greenwood 2009: 8).

Compared to non-HF activists, HF activists were more likely to seek ownership changes as a means of securing higher than average returns (Schor and Greenwood 2009). Activists increased the likelihood of a takeover by 11 per cent; and the firms they took over earned 26 per cent higher monthly returns compared to their counterparts that were not acquired. In sum, HFs were more likely to become activists in order to secure the takeover of a target firm and aimed to achieve their abnormal returns in this way. This approach changes the operating conditions of the target firm by inserting a new owner with a new set of governance practices and employment policies; or if ownership remains unchanged, the threat of takeover may induce changes in operating or employment policies. Another study, using the same SEC Schedule 13D data for the period 2003-05, examined changes in corporate governance and operations demanded by HFs. The authors identified a similar list of initiatives which HFs sought to implement, and 60 per cent of the 151 initiatives by HF activists were successful in achieving changes (Klein and Zur 2006).

Recent examples of successful HF activism include the industrial company Ameron International Corporation and the Barington Capital Group. James Mitarotonda, head of Barington, had attempted to get Ameron to make several strategic and operational changes, including focusing on its core business, cutting expenses and executive compensation, and buying back its own stock. When Ameron was slow to respond, Barrington ran a year-long proxy contest which resulted in his election to Ameron's Board of Directors (Barr 2011). In another case, activist HF Elliott Management, which acquired a 5 per cent ownership stake in Iron Mountain, attacked the company for its expansion strategies, which were losing money. Elliott Management demanded four new directors on Iron Mountain's board and insisted that the company maximize shareholder value by focusing on its mature real estate business and becoming an operator of a real estate investment trust (REIT), which would lower costs and US tax obligations (Mellor 2011). Iron Mountain subsequently agreed to give Elliott one board seat, commit $2.2 billion to share repurchases and dividends, explore becoming a REIT, and sell the company's digital archiving business (de la Merced 2011).

Hedge funds may also affect the governance and operations of companies by investing in distressed debt—firms that are close to, or already in, bankruptcy. HFs may provide loans to companies in trouble on the assumption that they will get the company at a bargain from investors who panic and want to sell cheaply. These HFs typically have specialized knowledge in bankruptcy laws and the ability to negotiate with other classes of creditors, which allows them to position themselves with equity rights in the restructured company. HFs that purchase distressed debt play a mixed role in these companies—allowing them to return to operation and save jobs

while making large profits by preying on the most disadvantaged or powerless economic actors.

Hedge Funds since the Advent of the Financial and Economic Crisis

Since the financial crisis, investor satisfaction with returns has been low and reached its lowest levels in 2012 (Preqin 2012). HF investment in distressed debt has yielded the highest returns compared to other strategies—with average overall returns of 3.9 per cent in 2011 (Or and Barr 2011). In this way, HFs may fill a void in the supply of capital where traditional sources such as commercial banks are unwilling to take risks. Small and mid-sized companies, unable to compete in bond markets for credit, have turned to HFs to borrow billions for needs ranging from on-going operations to new strategies and innovations. While filling a needed role in the post-crisis period, HFs charge high interest rates—of 12.5 per cent or more. Moreover, they are known for their short time horizons, raising questions about whether they will quickly foreclose on loans which fall in arrears—a strategy referred to as loan to own' (Ahmed 2011).

An important example of a distressed investment is Yellow Roadway Worldwide, one of the key remaining companies in the long-haul trucking industry. The case is illustrative of the role of PE and HF investment in avoiding bankruptcy and the difficult situation that the Teamsters Union faced in negotiating agreements to keep the company alive over five years. Ironically, the company faced bankruptcy to begin with because its owner copied the high leverage strategies of PE firms before the financial crisis to buy two other companies; and then the recession hit. The company's share price fell from $60 to $0.37.

The Teamsters Union represented 25,000 of the company's work-force in 2011, down from 45,000 in 2008. The union saved the company by agreeing to three rounds of contract concessions. In 2009, the union took a 10 per cent wage cut and suspension of cost-of-living increases in exchange for an option of a 15 per cent stake in the company. The resulting savings of $250 million annually were not enough to convince the company's lenders (a group of traditional institutions led by J.P. Morgan Stanley) to refinance. The union then agreed to the suspension of pension payments for eighteen months and an extra 5 per cent wage cut, which saved Yellow Roadway an estimated $50 million a month through 2010. These concessions were contingent upon the company gaining a better deal with its banks and a conversion of a $450 million bond debt to equity (interview with Teamsters' Strategic Research & Campaigns Department).

Hedge funds entered the picture in early 2010 when they purchased the company's distressed debt and demanded a third concession package if the company was to undergo a comprehensive restructuring which included a resolution of the union pension liability issue, a new injection of capital, and a debt reduction. Because the union could not obtain the identity of any of the investors it had little leverage in negotiating, and it was only through third party actors that a negotiated agreement was finally reached.

After a third union concession was accepted by Yellow Roadway Board in September, 2010, the company finally turned a corner. In exchange for the concessions, the union insisted on a new management team and board of directors, which the HF investors supported. Subsequently, the union played a key role in the recruitment, interviewing, and hiring of a new

CEO; and it chose two members of the nine-person board of directors. By 2011, the company was out of immediate danger of collapse and able to focus on operations. The union was cautiously optimistic about the future. This represents another example of a bittersweet experience of unions and alternative investors—while PE and HF funds saved the company, workers ended up with substantial losses in wages and pensions.

Sovereign Wealth Funds

Sovereign wealth funds are viewed as passive, long-term, stable investors; and since the 2007 recession many US firms—especially distressed ones—have sought out SWF funds (McCormick 2008; Rose 2008). SWFs have appeared to save several large troubled American banks, including Citigroup, Merrill Lynch, and Morgan Stanley, which received more than $32 billion in investment from SWFs from China, Korea, Singapore, and United Arab Emirates (Langford et al. 2009). In 2011, the US government and AIG were allegedly seeking SWFs to take over a large portion of the US Treasury's 92 per cent stake in AIG (Guerrera and Braithwaite 2011); and SWFs from Kuwait and Singapore expressed interest in the deal (Kansas 2011).

The size of the SWF global market rose sharply before the financial crisis in 2007, and then fell precipitously in 2008-09 (TheCityUK 2011). Assets under management (AUM) of all SWFs increased by 11 per cent in 2010 to a record $4.2 trillion, with an additional $6.8 trillion held in other sovereign investment vehicles, such as pension reserve funds and development funds. While the number of transactions increased by 50 per cent from 2010, the average value of transactions decreased by 23 per cent, which suggests that SWFs are now making more, but smaller, deals. Investments in the USA are

largely concentrated in financial institutions (81 per cent) and real estate companies and properties (10 per cent) (Monitor Group 2011; Bortolotti et al. 2009). Overall, however, the data available on the size and investments of SWFs are very limited and uneven (GAO 2008b).

Estimates of the size and influence of SWFs expand greatly when these estimates include government-sponsored corporations or entities. For instance, the government of the United Arab Emirates manages the Abu Dhabi Investment Authority (ADIA) as a sovereign saving fund. ADIA holds minority stakes in Citigroup Inc. (4.9 per cent), Apollo Management (9 per cent), and Hyatt Hotels Corporation (10.9 per cent). Similarly, Istithmar World, the PE arm of Dubai World, controls a 100 per cent stake in Barneys New York, a 100 per cent stake in Loehmann's, a 10 per cent stake in Perella Weinberg Partners (a financial services boutique), and a 33.3 per cent stake in Education Media and Publishing Group International (Butt et al. 2007).

Evolving Nature of Sovereign Wealth Fund Strategies and Post-Crisis Activity

Similar to other types of funds, SWFs engage in diverse investment strategies and tactics.[2] Kunzel et al. (2011) identify three types of SWFs with distinct objectives and investment horizons: savings (designed for long-term objectives), stabilization (to insulate the national budget), and pension reserve funds (for unspecified pension liabilities). Dyck and Morse (2011) distinguished two objectives of SWF investment: financial portfolio versus domestic developmental agendas, with the latter particularly important for Middle Eastern and Asian SWFs. Political objectives and cultural differences also influence SWF investment behaviour (Johan et al. 2011).

In recent years, SWFs have shifted from low-risk to higher-risk/

higher-return strategies (Weiss 2008). In addition, dissatisfied with fund performance during the financial crisis, they have begun to take more direct and proactive roles as investors. The investments of Qatar Investment Authority, for example, earned it a seat on the board of Veolia Environment and director-level representation at Harrods in the UK (Monitor Group 2011: 23). SWFs have also expanded their involvement in PE firms, from investors in funds to minority owners in the firms themselves. The ADIA bought a 9 per cent stake in Apollo Management and a 7.5 per cent stake in the Carlyle Group. The Kuwait Investment Authority and the Government of Singapore Investment Corporation have gained a 5 per cent stake in the Texas Pacific Group (Zuckerman 2011); and China Development Bank was seeking a minority stake in the same PE fund (Sender 2011).

Sovereign wealth funds also invest in private companies through innovative arrangements such as Exchange Traded Funds. BlackRock is the largest money manager in the world, with $3.35 trillion in AUM. As of 2011, BlackRock owned 5 per cent or more of over 42 per cent of all traded companies. Also, it is the largest shareholder of one in five US corporations, including AT&T, Chevron, ExxonMobil, GE, IBM, and JP Morgan Chase (Davis 2012). Several SWFs hold a significant minority stake in BlackRock, including CIC, Kuwait Investment Authority, the Government Pension Fund of Norway, and the Singapore Government Investment Corporation and Temasek (Martin 2010; Sender 2010).

While SWFs appear to be expanding their influence over their investment targets in the USA, they are constrained by the Exon- Florio Amendments and CFIUS described earlier (Rose 2008). To shun political

attention, SWFs have avoided acquiring more than 10 per cent of a company or have willingly forgone voting rights as the CIC did when it bought shares of the Blackstone Group (de Swann 2010). A recent Government Accountability Office report (2009) concluded that, although there are no laws that specifically target SWFs, certain sectors are tightly regulated and monitored for foreign ownership— banking, communications, transportation, natural resources and energy, agriculture, and defence. Nonetheless, SWFs have invested in sensitive industries via their investments in PE. One example is the investment of the Mubadala Development Company (Abu Dhabi) in the Carlyle Group, which has extensive holdings in defence-related firms and firms with government contracts. In 2007, Carlyle sold a 7.5 per cent stake in its general partnership to Mubadala, and in 2010 Mubadala made an additional $500 million investment. Around the time of Mubadala's initial investment, the Carlyle Group bought Kinder Morgan (one of the largest pipeline transportation and energy storage companies in North America), ARINC (a leading provider of communications and integration systems to government agencies and transportation networks), and Allison Transmission (provider of all vehicle suppliers to the Pentagon). None of these transactions had been reviewed under CFIUS, suggesting the inadequacy of US laws to regulate SWF activity (SEIU 2008).

The China Investment Corporation (CIC)

The CIC provides a case in point of increased SWF activity in the US economy and, in particular, investment in PE and HF intermediaries. With a total of $374.3 billion AUM, CIC is one of the most active and powerful SWFs worldwide. Around 21 per cent of its portfolio was invested in alternative

funds in 2010 and, of that, 42 per cent was invested in North America (CIC 2010). CIC's investment in US PE and HFs includes $3 billion in Blackstone Group with non-voting rights in 2007 and $5 billion in Morgan Stanley in the same year (Singh 2008). In early 2008, CIC contributed $3.2 billion to a $4 billion PE fund with JC Flowers & Co. primarily focused on the US financial sector.

CIC investment in PE and HFs has accelerated in the post-crisis period, including a $1 billion investment in Oaktree Capital Management LP, which was one of the firms involved in the Public-Private Investment Partnership—the government programme designed to rid banks of toxic assets (Strasburg and Carew 2009). This investment aims at distressed debt and other fixed-income assets. With this investment and an additional $2 billion in funding, CIC is expected to increase its HF portfolio (Strasburg and Carew 2009). In addition to alternative investments, CIC is investing directly, although as a minority shareholder, in corporate shares. In February, 2011, CIC filed its full list of investments in publicly-traded US stocks with the SEC for the first time.[3] According to the filing, CIC owns $9.6 billion worth of shares in a variety of companies ranging from Bank of America and Citigroup to Apple, Coca-Cola, and Johnson & Johnson.

Although CIC seems to be interested in non-voting stakes or straightforward investment opportunities, how much influence it may have on the investment strategies or investment targets is an open question due to the complexity of deal structures and limited data disclosure. CIC uses its PE firms to act on its behalf as when it used Blackstone to buy Morgan Stanley's troubled property loan portfolio in Japan in 2011 (Sender and

Anderlini 2011). PE firms, such as JC Flowers & Co. and Oaktree Capital Management LP, have no obligation or motivation to reveal their investment targets. Hence, as Jeffrey Garten, Yale professor and former Commerce Department official, said, 'It's going to be harder to trace, and harder to decide whether the (SWFs') investments are worth worrying about' (Rugaber 2008).

Impact on Firms and Workers

At a global level, a few studies have investigated the impact of SWFs on firm performance, as measured by the effect on the target firm's share price. The general conclusion is that the involvement of SWFs had a positive influence on the target firm's performance over a short-term horizon, but a negative, or neutral at best, effect on longer-term share price performance (Goncalves and Fernandes 2011; Bortolotti et al. 2009). None of these studies provide breakdowns by country.

We were unable to identify studies of the impact of SWFs on labour and employment relations. However, two studies of global SWFs examined governance changes at target firms and came to two different, almost opposite, conclusions. Kotter and Lei (2008) found that the target firm's governance, including CEO turnover, do not change significantly in the three-year period following a SWF investment, thus concluding that SWFs are passive investors. By contrast, Dewenter et al. (2009) found that target firms experience one or more events indicative of SWFs monitoring or influence. They concluded that SWFs are often active investors monitoring firm management, influencing firm decisions, engaging in network transactions, and influencing government decisions related to the target firm.

Conclusions

In this chapter, we examined the features of the US regulatory framework which have shaped the behaviour of financial intermediaries. PE, HFs, and SWFs have been exempt from registration and reporting requirements, have not been required—as banks are—to hold reserves, and have faced no limits on their use of leverage. US financial market regulations have allowed these intermediaries to operate with virtually no public oversight or transparency to investors. Deregulation of financial services from the 1970s onwards made possible the growth of large pools of private capital. The preferential tax treatment of debt relative to equity and of carried interest further encouraged the expansion of PE, HFs, and SWFs. While the Dodd-Frank financial reforms of 2010 instituted registration and reporting requirements for PE and HFs (but not SWFs), the law did not change the tax code or limit business practices such as the use of high leverage on which the industry has relied. The lax financial regulatory environment is coupled with a weak union movement and labour laws that provide few mechanisms for labour to challenge or negotiate over new forms of management introduced by PE and activist HFs.

These intermediaries have had differential effects on the management and employment practices of the firms in which they have invested. SWFs generally have had long time horizons, have taken a passive approach to investment, and have stayed out of the limelight to avoid political attention. By contrast, HFs have had a much shorter time horizon, typically turning over investments in eighteen months or less. Most HFs do not appear to have a direct effect on the internal operations of their target firms, with

the exception of activist HFs, which have grown in the 2000s but still represent a small share of all HF investments. PE is still not able to take over the largest US firms—a Microsoft or Johnson & Johnson, for example—but HFs can take positions in such companies that enable them to exert influence on business strategy. Activist HFs have primarily affected the corporate governance structures and strategic direction of the companies they target; and they significantly increase the probability that those companies will be taken over by another corporation, yielding substantially higher returns for HF investors. These takeovers clearly lead to changes in management strategies and operations, but exactly how these changes affect employment levels and labour conditions in unknown. Notably, where unions exist, HF investors undermine existing norms of collective bargaining because they hold considerable power but their identities are not revealed to the union.

Compared to HFs and SWFs, PE intermediaries clearly have the most direct impact on management decision-making, operations, and employment relations in portfolio firms. They restructure the operations of acquired companies without oversight from outside investors, regulators, or the public. While much of PE activity continues to focus on financial engineering, some PE managers have used consultants with specific industry expertise who are then deployed to work in portfolio companies in those industries. More importantly, as HFs and SWFs are increasingly incorporated into large multi-purpose asset management firms, often headed by PE firms, the funds available for activist intervention in portfolio firms has increased.

The outcomes for managers and employees in PE-owned portfolio companies are highly diverse and depend on a range of contingent factors,

including industry conditions, the size and strategy of the PE firm, the assets of the portfolio company itself, the direction of the stock market, and general economic conditions that influence interest rates at which funds for LBOs can be borrowed and the market success of portfolio firms. At one extreme, a handful of PE firms specialize in turning around companies and have a reasonable record of negotiating with unions. The more powerful players in the industry have undertaken large LBOs, which have saddled healthy companies with high levels of debt and have resulted in bankruptcies, and losses to creditors, suppliers, and workers. Still pending are a series of LBOs from the 2005-07 period, which have huge debt loads, much of which PE has been able to refinance. But slow economic growth persists, and the future of investments made at the height of the real estate boom is uncertain. Some analysts anticipate high rates of financial distress and bankruptcy for portfolio companies although the effects on the large PE firms are likely to be muted. The most reliable econometric analyses show net employment losses are much higher in PE-owned establishments and firms compared to similar enterprises not owned by PE, and they are concentrated in services, finance, insurance, and real estate. Related research shows that higher productivity found in PE-owned firms is due primarily to the closing of less productive units and reallocation of workers to more productive sites. It is unclear whether productivity improvements are achieved via investments in skills and technology or the compliance of employees, afraid for their jobs, with work intensification. The evidence on PE's track record with unions is mixed, with some negotiating with them and others marginalizing them. In both cases, however, workers have usually lost wages and health and pension benefits, while PE owners have gained via financial engineering and the use of leverage

that often threaten the overall viability of an enterprise.

One of the key lessons from the US experience is that the regulatory environment does not constrain the kind of financial engineering and risky behaviour of PE firms which results in bankruptcy or the extraction of high levels of value even as the organization struggles to exist. Indeed, PE owners may resort to dividend recapitalizations, in which more debt is piled onto the portfolio company in order to pay the PE owners a large dividend and help them recoup their original investment, despite the increased risk of distress for the firm. Not only do such actions undermine the argument that PE returns are due to improvements in firm performance, but in several instances PE firms have been accused by creditors of 'bleeding-out' the company and causing it to become insolvent. Among others, Sun Capital faces such an accusation in relation to the bankruptcy of the Mervyn's department store chain, and Apax Partners and TPG Capital face a similar complaint in the case of TIM Hellas (Appelbaum et al. 2013; Primack 2011).

The evidence we have reviewed suggests that several regulatory changes are needed to curb the destructive outcomes associated with some types of financial intermediary activity. Beyond the recently-enacted reporting requirements, two substantive reforms are particularly warranted: one, elimination of preferential tax treatment for debt relative to equity which would reduce the incentives for excessive use of leverage and, two, treatment of the carried interest earned by principals in some financial intermediaries as ordinary income for taxation liabilities.

In the cases we reviewed, the excessive use of debt is a primary cause of PE's short-term focus on cost-cutting and work intensification, and in

some cases of financial distress and even bankruptcy. The threat of bankruptcy did not appear particularly worrisome in the bubble economy of the 2000s, when credit was readily available, stock prices were generally rising, and the higher risks faced by highly leveraged firms were more than offset by the very high payoffs from successful portfolio companies. In the period since the advent of the financial and economic crisis—and the instability and uncertainty of markets in at least the intermediate term—analysts expect many firms, highly leveraged in the pre-crisis years, to face distress, restructuring of their debts, and bankruptcy when that is not possible.

One approach to reducing the excessive use of debt is to reduce the preferential treatment which debt receives in the US tax code. Another solution, adopted by the EU in its reforms for NIFs, is to limit the amount of leverage which can be used, although there is on-going discussion over what that limit will be. Proposed legislation to limit the preferential tax treatment given to financial intermediaries has repeatedly failed to pass one or both houses of Congress. The Obama administration's proposal would redefine the carried interest that PE and HF managers receive as ordinary income subject to higher tax rates. While this is unlikely to modify the risky behaviour adopted by financial intermediaries, it would begin to redress the serious problem of inequality in compensation between the highly- paid executives employed by financial intermediaries and ordinary Americans. These tax proposals are modest reforms in the context of an economy in which median family income has been stagnant since 1995 while financial sector incomes have massively increased.

NOTES

1. Investors who buy 5 per cent of the shares of a corporation are required to file this report and typically become activist shareholders soon thereafter.
2. For detailed asset allocations of each SWF, see Monitor Group's SWF database <http:/ / www.monitor.com/tabid/202/L/en-US/Default.aspx>, which covers investment activities of 33 SWFs from 1981 to the present.
3. A full list of CIC investment is available at <http://www.sec.gov/ Archives/edgar / data/1468702/000095012310009135/c95690el3fvhr. txt>).

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