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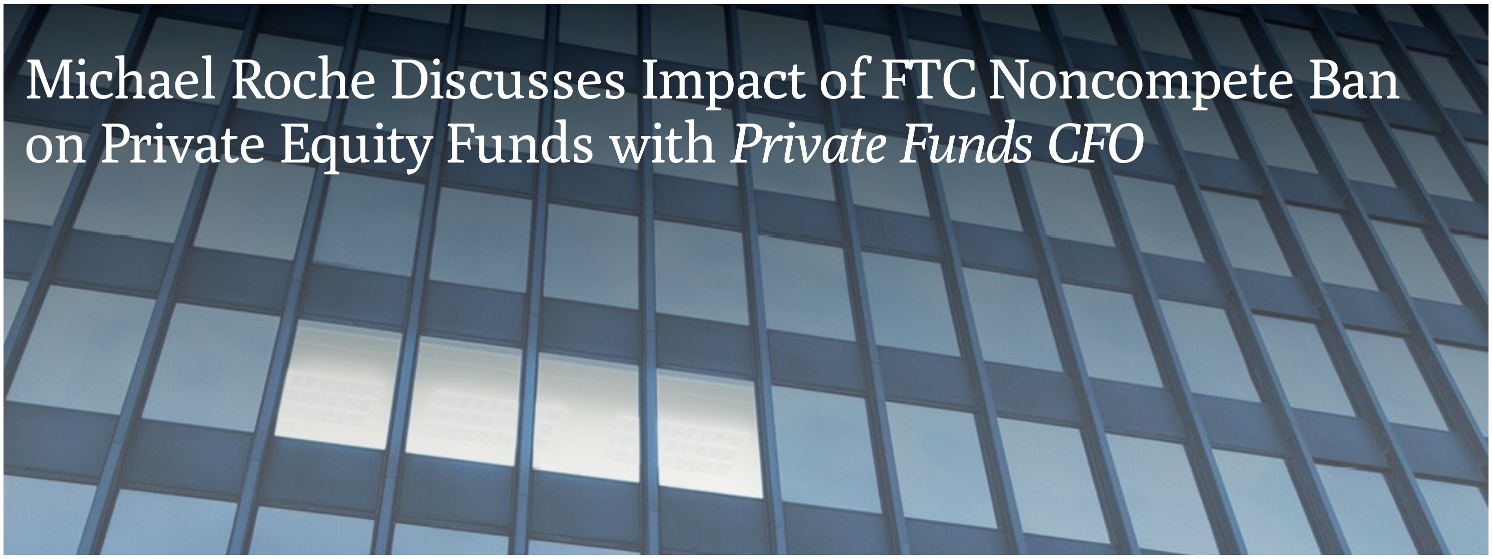
Michael Roche Discusses Impact of FTC Noncompete Ban on Private Equity Funds with *Private Funds CFO*



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Winston & Strawn partner Michael Roche discussed the impact of the Federal Trade Commission's ban on noncompete agreements on private equity funds with *Private Funds CFO*. The regulation from the FTC would prohibit companies from enforcing existing noncompete agreements, nullifying millions of existing agreements with exceptions for those covering senior executives. If the rule goes into effect, industry turnover could accelerate and retention costs may increase with managers using higher salaries, stay bonuses, and garden leave agreements to retain employees.

The FTC explained that garden leave provisions fall outside the scope of the ban because workers are still employees and being paid during the garden leave, meaning those the provisions can still be enforced. But the FTC also included a new requirement for compensation that would render the process of paying employees on garden leave more expensive and difficult to administer in the first place.

Typically, an employee on garden leave would be paid their base salary, which, in PE, is often a small percentage of their total compensation. The FTC now requires that permissible garden leave provisions include payment of "total annual compensation" on a pro rata basis, which will typically be much higher than base salary, said Michael.

There is still the question of how to calculate the size of that large remaining slice of "total annual compensation." Michael noted that, private markets firm employees' total compensation can vary from year to year, but if an employee starts garden leave mid-year it is unclear if the employer needs to pay the employee their prior year's total annual compensation, pay the current year's expected total compensation, or if some other method of calculation would apply.

Read the full article (subscription required).

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