

## Securities & Capital Markets

Our Securities & Capital Markets team advises public as well as private companies in securities offerings and private placements. For publicly traded companies, we handle a full range of securities reporting and compliance matters, M&A transactions, and securities litigation. In addition, we provide counsel on broker-dealer and investment adviser regulatory issues.

We represent clients in many industries, including manufacturing, technology, banking, healthcare, life sciences, retail sales, and energy. We have strong professional relationships with investment companies, small business investment companies, investment advisers, insurance companies, bank holding companies, and trust companies. This diverse experience uniquely enables us to collaborate efficiently with other key deal participants, because we understand their perspectives and their businesses.

## Service Areas

### Public & Private Company Financings

We assist clients in a wide range of securities transactions — from IPOs, Reg A+, and other public offerings to crowdfunding offerings and private placements. Our experience encompasses equity and debt offerings for public and private companies, high-yield offerings, securitization, derivatives, fund formation, and more. We also help clients manage securities compliance and reporting. We represent and have built relationships with issuers, underwriters, placement agents, broker-dealers, all types of investment funds, exchanges, commodities/futures merchants, insurance companies, investment advisers, and other financial market participants.

- Represented Huntsman and Venator in Venator's initial public offering of its ordinary shares.
- Represented Celectar Biosciences in its registered offering under an effective shelf registration and a concurrent private placement.

### Primary Contacts

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## **Public Company Reporting & Compliance**

We represent public companies in securities reporting and compliance matters involving the Securities Exchange Act of 1934, including provisions added by the Sarbanes-Oxley Act and the Dodd-Frank Act; rules and regulations of the NYSE, Nasdaq, and other securities exchanges and markets; and cross-border laws such as the Foreign Corrupt Practices Act (FCPA) and U.K. Bribery Act.

Our services include:

- preparing and filing Exchange Act registrations and periodic reports (10-Ks, 10-Qs, and other reports);
- preparing and/or reviewing proxy/information statements and annual reports to stockholders;
- reviewing earnings and other current event releases and investor materials;
- drafting responses to SEC staff comments and seeking “no-action” letters or interpretations;
- structuring executive compensation packages and insider trading policies; and
- advising on disclosure obligations, stock exchange requirements, officer and director responsibilities (including reports of beneficial ownership), trading restrictions (short-swing profit recapture, short-sale prohibition, etc.), and anti-money laundering and anti-corruption provisions.

We represent clients like Huntsman, Venator, and Cellerar Biosciences in their ongoing SEC filings and compliance, including advising on NYSE/Nasdaq matters and corporate governance.

## **Mergers & Acquisitions for Public Companies**

We understand the unique complications of mergers and acquisitions involving public companies. Our team helps maintain confidentiality during negotiations, craft public disclosures to mitigate potential liability to stockholders, and draft and file definitive M&A agreements to comply with securities laws. For matters submitted to stockholders for consideration, we prepare proxy or information statements, file them with SEC staff, and circulate the statements when SEC staff comments are cleared. If securities are to be issued as part of the acquisition, we assist with filing, clearing, and circulating registration statements. We help clients coordinate all of these steps with applicable stock exchange requirements, and coordinate the transaction closing so that market trading is not interrupted.

In addition, mergers and acquisitions trigger special, complicated fiduciary duties for directors of public companies. We counsel clients on these heightened fiduciary duties, on conflicts of interest between a transaction party and its directors or committees, and on the implementation of special procedures. We also represent clients in transaction-related litigation filed by minority stockholders challenging the adequacy of the consideration to be received by stockholders, and asserting that directors have breached their fiduciary duties.

## **Broker-Dealer/FINRA Matters**

We advise broker-dealer clients on formation and transfer, registration, licensing, and membership applications; transactional matters; and compliance with applicable federal, state, and self-regulatory organization laws and regulations. Our proactive guidance on compliance and risk mitigation strategies

covers issues such as securities registration requirements; due diligence procedures; and anti-manipulation, anti-fraud, and anti-money laundering (AML) measures. We also represent clients in internal and government investigations, examinations, litigation, and enforcement actions before the SEC, the Financial Industry Regulatory Authority (FINRA), the Commodity Futures Trading Commission (CFTC), and state regulators. Our team includes a former general counsel for a brokerage and clearing firm, giving us an inside perspective.

### **Investment Adviser**

Michael Best represents a wide range of advisory firms and dually registered investment adviser/broker-dealers, providing counsel on their operations and on various investment advisory products and services. We advise on compliance with federal and state regulations, as well as banking rules and regulations that apply to advisers affiliated or doing business with banks. Our work includes assisting with licensing and registration; preparing disclosure documents; reviewing marketing materials; conducting compliance audits and internal investigations; developing compliance and remediation programs; and responding to inquiries, examinations, and enforcement actions by regulatory agencies.

### **Securities Enforcement & Litigation**

Clients value our extensive experience in the financial industry when it comes to handling securities-related litigation, arbitrations, and regulatory actions. We represent clients from the time of first contact with authorities through the investigation and, if proceedings are initiated, through administrative or court proceedings. Our Securities team helps clients respond to and defend regulatory inquiries, examinations, and enforcement actions before the SEC (including Exchange Act accountant and attorney disciplinary proceedings), DOJ, FINRA, PCAOB, CFTC, and state agencies. In addition to representing clients in securities class actions, derivative suits, and M&A/takeover litigation, we have a team of litigators focused on corporate criminal defense, government investigations, and internal investigations.

### **Derivatives**

Our attorneys provide derivatives expertise to banks of all sizes, including those with established capital markets practices and those launching new product lines. We draft and negotiate swap documentation on behalf of our clients, which may include ISDA Master Agreements, Schedule and Credit Support Annexes, swap guaranties, risk participations, novations, and trade confirmations. We also counsel clients on regulatory compliance, particularly related to the Dodd-Frank Act and on the legal implications of the LIBOR phase-out.”

To learn more about our full Derivatives practice, please [click here](#).

### **Experience**

We represent clients in corporate finance and securities matters such as:

- Private placements of securities, including 144A debt offerings and other unregistered offerings (representing issuers, investors, and lenders)
- Public offerings of securities, including IPOs, secondary offerings, and debt registration (representing issuers and underwriters)
- Initial coin offerings and digital token sales, including presales carried out via Simple Agreement for Future Tokens (SAFT) and other alternative approaches.

- Preparing companies for initial public offerings, including corporate restructuring, management incentive plans, composition of boards of directors, and other corporate governance issues
- Structuring executive compensation packages
- Preparing and reviewing Securities Act registration statements
- Reviewing drafts of earnings releases and investor materials
- Annual, quarterly, and current reports and proxy statements
- Drafting no-action letter requests and other requests to SEC staff
- Counseling management, boards of directors, and board committees on their fiduciary duties and obligations, in particular under Dodd-Frank
- Advising on regulatory matters related to M&A transactions
- Serving as borrower, underwriter, and bond counsel in bond and public finance
- Representing mutual funds in the formation of new funds and ongoing SEC reporting and compliance
- Registrations under the Investment Company Act of 1940 and the Investment Advisers Act
- Structuring hedging arrangements for private investment funds, including “zero-cost collar” arrangements
- Drafting and negotiating swap documentation, including ISDA Master Agreements, Schedules and Credit Support Annexes, and any ancillary swap-related documents
- Counseling end-users on compliance with Title VII of Dodd-Frank, including the eligible contract participant requirement, reporting and recordkeeping, and the end-user exception from clearing