Practices & Industries

Public Companies & Securities

Overview

The Public Companies, Securities and Capital Markets group at Day Pitney advises and represents leading public companies and financial institutions. Our skilled team draws on substantial experience and deep industry knowledge in counseling clients on matters ranging from regulatory compliance and governance to mergers and acquisitions and securities offerings. Our attorneys are recognized for providing sophisticated, insightful and innovative advice on complex securities matters and effectively representing issuers, underwriters, market participants and banks. Our clients range in size from smaller reporting companies listed on the NYSE American to Fortune 500 companies listed on the New York Stock Exchange (NYSE) and Nasdaq.

Public Companies

The lawyers in our public companies practice serve as securities and corporate counsel to a wide array of NYSE, Nasdaq, over-the-counter (OTC) and other publicly traded companies. Our experience includes securities law compliance and reporting, self-regulatory organization listing requirements, corporate governance, executive compensation, equity and benefit plans and requirements, securities offerings, state corporate law compliance, capital markets and corporate finance transactions, and mergers and acquisitions. In addition, we provide legal opinions in connection with transactions, the applicability and interpretation of securities laws, and discrete, complex legal issues.

Regulatory Compliance and SEC Reporting

We provide comprehensive regulatory compliance advice for companies subject to federal and state securities laws and national securities exchange requirements. Thoroughly understanding the intricacies of our clients' businesses and objectives is crucial to us, and we provide practical compliance advice to businesses in all industries and stages of growth. As part of this practice, we routinely assist our clients with respect to the following:

- Reviewing and advising on periodic reports and other public disclosures, including forms 10-K, 10-Q and 8-K and earnings releases, and advising with respect to non-GAAP disclosure requirements and Regulation FD matters
- Advising on disclosure obligations related to a company's executive compensation program, including the compensation discussion and analysis, say-on-pay proposal, pay ratio and other detailed executive compensation-related disclosures
- Counseling our clients in connection with matters related to annual and special meetings of shareholders, including drafting and reviewing proxy materials, and advising with respect to voting policies of institutional investors, proxy advisory firms and shareholder proposals
- Advising clients on proxy contests and shareholder activist matters
- Advising clients on Section 16 matters, short-swing profit rules and responding to Section 16 demand letters, as well as Regulation 13D-G matters and drafting of all related Securities and Exchange Commission (SEC) disclosures
- Responding to SEC comment letters and advising as to current SEC comment letter trends

- Counseling clients on insider trading questions, Rule 144 transfers and stock repurchase programs, and drafting and reviewing Rule 10b5-1 plans
- Representing clients in connection with the restatement of their financial statements and any related SEC investigations, as well as with internal control over financial reporting and disclosure controls, procedures matters, and troubled company disclosures

On behalf of our clients, we regularly interact with staff of the SEC's Division of Corporation Finance, Office of the Chief Accountant and Division of Enforcement and develop innovative solutions to unique regulatory matters. We have extensive experience in guiding companies through the management of responses to enforcement actions by the SEC and other governmental authorities. We regularly prepare SEC no-action letters and responses to SEC comment letters.

We partner with our public company clients to regularly provide education and advance planning regarding ongoing public company compliance matters, including assistance with earnings conference calls, investor presentations, webcasts, analysts conferences and meetings, and other communications with institutional shareholders and the investment community. We also team with our public company clients when it is time to prepare their regular SEC reporting documents and filings.

Because compliance with the myriad requirements applicable to public companies, including SEC rules and regulations, as well as self-regulatory organization and exchange requirements, is critically important to any public company, we also make sure that each of our public company clients has an established, set team of highly experienced public company attorneys knowledgeable about their business and available to them when needed.

Corporate Governance

Our corporate governance team acts as a trusted adviser to companies in a broad range of industries. We counsel boards of directors and their committees regarding governance best practices, board composition and structure, management succession, change-in-control situations, and conflict of interest avoidance. We advise our clients on all aspects of Sarbanes-Oxley, including audit committee responsibilities, structure and procedures.

We regularly interact with self-regulatory organizations in connection with compliance matters. We provide strategic advice regarding director and auditor independence, internal controls and risk management, shareholder communications, sensitive governance matters, best practices, and legal compliance programs. We provide director and officer education and assist companies with developing, adopting and implementing effective corporate governance policies and procedures, including those in furtherance of environmental, social, corporate governance and diversity initiatives. With experience and efficiency, we advise our clients on matters relating to virtual and in-person annual and special shareholder meetings, voting policies of institutional investors and proxy advisory firms, and shareholder proposals. Our substantial governance experience and accessibility allow us to maintain expansive relationships with our clients while also advising on specific, complex issues as they arise.

Executive Compensation

Our highly regarded executive compensation attorneys bring their extensive knowledge into the boardrooms of well-known companies, assisting boards of directors, compensation committees and individual executives in both the design and disclosure of executive officer and director stock option plans and equity-based compensation agreements. We provide advice on executive employment and separation agreements, deferred compensation, retirement benefits, and golden parachute and change-in-control arrangements. Our experienced attorneys draft and review companies' compensation discussions and analyses, say-on-pay proposals, and other detailed executive compensation-related disclosures.

The competition for executive talent is fierce, and the standards for public company executive compensation are constantly changing. We give our clients an edge by helping them structure and implement meaningful senior executive compensation arrangements that reward performance and align executive compensation with the interests of shareholders. For example, we design, draft and consult with respect to equity compensation plans, annual bonus programs and similar "pay for performance" programs, as well as non-equity-based supplemental retirement plans, severance and change-in-control plans, and other compensation arrangements.

We advise compensation committees of boards of directors and senior human resources executives to keep them up to date on changes in the securities laws that affect executive compensation arrangements and advise on related governance and disclosure matters, including applicable stock exchange listing requirements, SEC rules on proxy disclosure and disclosure in periodic reports and reports on Form 8-K, and compliance with complex federal tax rules, such as sections 162(m), 409A and 280G of the Internal Revenue Code. We also assist our clients in responding to SEC comment letters on the application of the new compensation proxy disclosure rules and other compliance matters.

State Corporate Law

We advise on issues of state corporate law. We counsel our clients on charter and bylaw issues; fiduciary duties and obligations to shareholders; best practices with respect to board and board committee actions; notice and conduct of shareholder meetings; and shareholder voting matters, including proxy and consent solicitations, share issuances, and dividends and distributions. We also assist clients with state corporate law issues related to shareholder proposals and other actions.

Capital Markets and Corporate Finance

We act as outside securities counsel for issuers and underwriters on a range of public and private offerings. We represent issuers and underwriters in initial and follow-on securities offerings, preferred stock offerings, debt offerings, private placements, recapitalizations and rights offerings. We help our clients with specialized equity financings, such as trust-preferred securities and mutual-to-stock conversions. We seek to provide our clients with dedicated, responsive, practical and efficient legal representation.

Our attorneys are pragmatic and creative in negotiating and structuring complex market transactions. We counsel clients seeking access to the capital markets, including pre-IPO companies, which we assist from the pre-offering governance structuring and corporate reorganization stage to prospectus and registration statement preparation to SEC approval, listing and issuance, and then, work with them to ensure compliance with their ongoing SEC reporting obligations. We also represent both private and publicly held companies in connection with reverse mergers and other alternative avenues to registration and stock exchange listing, including transactions with special purpose acquisition companies (SPACs).

Our team has extensive experience and sophistication in capital markets transactions, including the following:

- Universal shelf registrations and takedowns for both well-known seasoned issuers (WKSIs) and non-WKSIs, including offerings subject to "baby shelf" limitations
- Equity offerings
- Convertible and nonconvertible debt offerings
- Rule 144A and Regulation S equity offerings
- Private placements
- IPOs
- Confidentially marketed public offerings
- At-the-market offerings
- Private investments in public equity (PIPE) offerings
- Registered direct offerings

Mergers, Acquisitions and Joint Ventures

Our clients say Day Pitney's Mergers, Acquisitions and Joint Ventures team is "unmatched in their dedication and responsiveness" and they have told *Chambers USA* that we pride ourselves on maintaining "a deep understanding of their business." We serve as counsel on all aspects of middle-market transactions. We advise targets, acquirers and investment

banks in both the fast-paced public company mergers and acquisitions practice and private M&A that include the often hotly disputed working capital adjustment and indemnification caps. As one example in the public M&A field, we have historically received top rankings in *SNL Financial League Tables for Bank & Thrift Legal Advisers*, including a top 10 ranking in deal value in a year in which we completed deals worth more than $1.1 billion.

The M&A team has handled significant and multiple transactions in the energy, financial services and banking, investment management, retail, manufacturing, and technology sectors throughout the United States and abroad.

We have depth and sophistication in the intricacies of the nondisclosure agreement that precede a deal, the exclusivity agreement that may start the clock ticking and halt interlopers, and the merger or asset purchase or sale agreement that leads to a closing.

Our M&A team includes attorneys with substantial experience in counseling privately and publicly held companies in acquiring other companies and in selling themselves and their assets, including with respect to international and domestic taxation, financial institution regulation, SEC compliance and disclosure, public and private tender offers, corporate governance in business transactions, labor, the Employee Retirement Income Security Act (ERISA), employee benefits, and executive compensation. In addition, we work with our colleagues who focus on real estate, environmental, intellectual property, bankruptcy and antitrust law. We also work with our litigation attorneys to defend clients against plaintiffs' attorneys who bring shareholder class actions following public company mergers and some private company sales. Day Pitney's Corporate department also includes a team of lawyers who practice in the area of joint ventures and strategic alliances in their different forms.

Our attorneys are recognized for providing sophisticated, insightful and innovative advice on complex transactional, corporate governance and taxation matters and effectively representing private and publicly held companies, investment banks, and private equity and venture capital funds.

Our experience provides clients with a number of advantages:

- We can give clients immediate, high-level and sustained attention, with the judgment and maturity that come with many years of experience.
- We bring to bear the full scope of the firm's numerous legal resources to help ensure that the many important details of a transaction are covered and thereby contribute to the success of a client's business strategy.
- We have contacts with, and credibility among, significant investment banking firms and private equity and venture capital funds.

Experience

No aspect of this advertisement has been approved by the highest court of any state. Prior results do not guarantee a similar outcome.

We routinely represent our public company clients with their offerings of equity and debt, ranging up to $1 billion in value. We also routinely serve as underwriters for boutique investment firms with offerings ranging in value from $50 million to $500 million. The following are some recent representative matters:

- Represented a major regional bank holding company (NYSE) in an $800 million public company merger and simultaneous offering of $100 million in perpetual preferred stock; Both the signing of the merger agreement and the commencement of the offering were announced the same morning, within minutes of each other, necessitating around-the-clock efforts and coordination across practice groups and offices
- Represented a NYSE issuer in a concurrent offering of subordinated debt and preferred stock with an aggregate value of $200 million; demonstrating the depth and breadth of our team in closing two simultaneous transactions
- Represented a large insurance company (NYSE) in senior debt offerings of $400 million and $600 million

- Represented a bank holding company in three separate offerings of common stock and subordinated debt with an aggregate value of more than $250 million
- Represented an issuer in a $400 million public offering of senior notes
- Represented a bank holding company in four separate offerings of common stock, preferred stock and subordinated debt, with an aggregate value of more than $500 million
- Represented an insurance company in two senior debt offerings with an aggregate deal value of more than $1 billion
- Represented underwriter's counsel in a $42 million offering of common stock
- Represented an issuer in a $50 million at-the-market public offering
- Represented underwriters in a public offering of $100 million in equity securities of a specialty finance company
- Represented a bank holding company in concurrent subordinated debt and preferred stock offerings totaling more than $200 million
- Represented an insurance company in senior debt public offerings totaling $750 million
- Represented a regional community bank holding company in concurrent offerings of preferred stock and subordinated debt aggregating $210 million