

## BUSINESS

**Financing | Mergers and Acquisitions | Securities and Venture Capital | Tax  
Employee Benefits and Executive Compensation**

### Business

The Attorneys in Mirick O'Connell's Business Group represent privately-held and publicly-traded corporations, limited liability companies, partnerships, limited partnerships, sole proprietorships and joint ventures in all aspects of their businesses, from planning and initial formation, to the sale, merger or acquisition of the business. Our clients include high-tech and life sciences companies, manufacturers, construction firms, service providers, nonprofits, and a full range of banking and commercial lending institutions. For new companies, we draft stockholder agreements, buy/sell agreements, operating agreements, partnership agreements and other organizational documents. For established companies, we serve as general and special counsel and advise them on a full range of matters, including licensing and development agreements, distribution, reseller and supply agreements, non-disclosure agreements, and employee benefits and stock incentive plans.

We have extensive experience in public and private equity and debt financings, joint ventures, mergers and acquisitions, securities compliance and reporting, and state and federal taxation. We advise our clients with respect to intellectual property issues, including patent filings, trademarks and copyrights. We represent second- and third-generation family-held businesses and put into place effective generational transfers for our clients.

### Financing

Our Financing Group offers a broad range of legal services to commercial lenders and borrowers, and to private and public companies with respect to debt and equity financings. From finance documentation to regulatory compliance, our attorneys have a practical approach gained from years of experience. We handle transactions efficiently and effectively, routinely resolving the problems inherent in complicated financings under strict time constraints. We document large and complex transactions involving participations, construction financing and sophisticated combinations of debt and equity.

In addition, our attorneys routinely represent commercial banks and other major lending institutions and other institutional and non-institutional lenders in structuring, documenting and negotiating all types of unsecured and secured debt funds, including real estate secured financings. We represent borrowers with loan document review and negotiations.

We represent both private and public companies in a variety of early-stage and late-stage capita-raising transactions, including angel investments through later-stage preferred stock and mezzanine financings.

### Representative Matters:

- Represented a borrower with respect to a \$48 million acquisition and mezzanine financing from three lending sources secured in part by numerous parcels of improved real estate
- Represented various lenders, including Bank of America, Sovereign Bank and Citizens Bank, in connection with loans to privately-held businesses in amounts ranging from \$10 million to \$50 million



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**Excellence in our work.  
Excellence in client service.  
Excellence in value.**

## Mergers and Acquisitions

Our Mergers and Acquisitions Group has extensive experience representing buyers and sellers in all types of domestic and cross-border acquisitions and dispositions of businesses across a wide spectrum of industries. We approach the legal, business and integration issues that arise in most transactions with a breadth and depth of experience that enables us to provide valuable advice and superior service to our clients. The group's capabilities are enhanced by the firm's overall expertise in related specialties, including tax, securities, ERISA, labor and employment, and real estate. We have extensive experience representing clients in both simple and complex private and public mergers, stock and asset acquisitions, and dispositions of companies, subsidiaries and divisions. We regularly advise clients in connection with corporate restructurings, as well as acquisitions and dispositions through bankruptcy proceedings and secured party sales.

### Representative Matters:

- Represented a French multi-national conglomerate and the parent of a major U.S. abrasives and ceramics manufacturer with respect to a number of acquisitions and divestitures
- Represented a U.S. biomedical corporation in the acquisition of a Northern Ireland medical device research and manufacturing company
- Represented a German conglomerate involved in the manufacture and distribution of fasteners in multi-state acquisitions of closely-held businesses
- Represented a New England division of a national food distribution business in the acquisition of a regional meat distributor and in the negotiation of a \$125 million, five-year supply contract
- Represented a buyer in a roll-up of closely-held PetScan facilities and businesses throughout the United States and ultimate sale to a public company

## Securities and Venture Capital

Mirick O'Connell's Securities and Venture Capital Group regularly advises private and public companies concerning Securities and Exchange Commission rules and regulations. We work closely with start-up companies that seek financing, whether through a securities private placement or through other debt or equity offering. Our clients include corporations, limited liability companies, partnerships and other business entities in all industries, including high technology, banking and manufacturing.

In addition, we serve as general counsel or as special securities counsel and advise public companies of all sizes, from Pink Sheet companies to companies on the OTCBB, Nasdaq, NYSE and foreign exchanges.

*Private Placements and Venture Capital.* We work with private and public companies and investors with equity financings, from private placements and subscription documentation for start-ups and early-stage companies to private investments in public equity ("PIPEs") for public companies. We work to ensure SEC and state blue sky compliance with respect to these securities offerings. We also represent placement agents who work with public and private companies to place securities. We assist clients with due diligence review, including a review of patent and other intellectual property as part of a venture capital investment.

*SEC Disclosure and Reporting.* We regularly assist public companies, shareholders and executives with their reporting requirements, including public company quarterly, annual, and current reports on Forms 10-K, 10-Q and 8-K, as well as Proxy Statements; Form 3, 4 and 5 filings; and Schedules 13D and 13G. We also advise companies and shareholders with respect to insider trading issues, 10b-5 plans, Regulation FD requirements, website disclosures, press releases and other investor communications, Rule 144 opinions, corporate governance and Sarbanes-Oxley compliance. Further, we work with companies with stock exchange listing matters.

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## Securities and Venture Capital (continued)

*Public Offerings.* We prepare registration documents for companies that are issuing debt or equity securities, whether on Form S-1, S-2 or S-3. In addition, we prepare dividend reinvestment plans and shelf registrations.

*Employee Benefits.* We work closely with public and private companies with respect to their employee benefit plans, including tax-qualified pensions, profit sharing, 401(k), health and welfare, cafeteria and employee stock ownership plans. We also help public companies prepare their Compensation Discussion and Analysis ("CD&A") as part of their annual filing requirements. We prepare stock option and stock award plans and agreements, and ensure compliance under federal and state tax and securities law.

*White Collar Defense and Government Investigations.* We represent clients involved in SEC, FBI and other regulatory investigations involving alleged securities fraud. We have represented both investors and brokerage firms in FINRA arbitrations involving allegations of account mismanagement, and have conducted internal investigations on behalf of boards of directors and committees of independent directors.

### Representative Matters:

- Represented a technology company in connection with a \$6 million venture capital financing
- Served as general and SEC counsel to a public company that offers online and VIP concert ticketing services to celebrities
- Represented a placement agent with respect to a \$6 million PIPE transaction for a public company
- Served as lead counsel in connection with \$73 million initial public offerings
- Served as lead counsel with a roll-up of eight companies simultaneous with a \$75 million bond financing and subsequent private/public debt swap, followed by a roll-up of two additional companies simultaneously with a \$38 million initial public offering
- Represented a client with respect to SEC and grand jury investigations involving alleged violations of federal securities laws
- Performed an internal investigation for the audit committee of a public company involving allegations of corporate fraud

## Tax

Our Tax Group provides clients with sophisticated federal, state and local tax advice designed to promote their business goals while mitigating their tax burden. We advise new ventures on choice of entity, executive compensation arrangements and the tax implications of traditional and alternative financing arrangements. We advise established businesses on how to structure a variety of business transactions in a tax-efficient manner, ranging from advice on how to structure the sale of the business to advice on how to structure mergers and acquisitions, debt and equity financing transactions and the funding and structure of buy-sell agreements. We work closely with our Estate Planning Group to advise business clients on succession planning and individual clients on strategies for passing their wealth to the next generation while minimizing wealth-transfer taxes. We provide our clients with practical advice regarding the tax implications associated with long- and short-term business strategies.

We also have extensive experience forming new non-profit organizations. We regularly advise a number of established tax-exempt organizations on the tax aspects of proposed transactions, including unrelated business ventures, tax-exempt financings, mergers and acquisitions among non-profit entities, and intermediate sanction issues associated with various compensation arrangements.

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## Employee Benefits and Executive Compensation

The Employee Benefits and Executive Compensation Group advises clients with respect to designing and implementing the following:

- Executive compensation plans including SERPs, top-hat plans, and 457(b) and 457(f) plans, as well as counseling regarding Section 409A compliance and executive compensation disclosure under the new proxy rules
- Tax-qualified retirement plans, including 401(k), 403(b) and 457 plan, defined benefit plans and ESOPs
- Welfare benefit plans, including health reimbursement arrangements, section 125 cafeteria plans, Health FSAs, DCAPs and “wrap” plans, as well as counseling regarding the implementation of HSAs, wellness plans, severance plans and claim administration
- Fringe benefit plans, including transportation and educational assistance plans

We also advise clients with respect to the day-to-day administration, operation and interpretation of executive compensation and workforce benefit plans; the legal compliance, reporting and disclosure requirements related to such plans; and the administrative procedures required to administer such plans.

We provide counsel regarding HIPAA's portability, privacy and security rules; COBRA; USERRA; FMLA; Medicare and other group health plan federal mandates, as well as new legislation affecting welfare plans, including the Genetic Information Nondiscrimination Act of 2008, Michelle's Law and the Children's Health Insurance Program Reauthorization Act of 2009. We also provide counseling regarding the Massachusetts Health Care Reform Act and the related federal tax implications of extended health coverage for those who are not “dependents” under federal tax law.

We also advise clients with respect to the following:

- Designing a fiduciary governance structure to manage ERISA fiduciary liability risk and counseling fiduciaries regarding their ERISA duties and the prohibited transaction rules
- Planning audits for legal compliance
- Correcting plan failures under the IRS and DOL voluntary correction programs
- Periodically reviewing of management compensation arrangements and compliance with the intermediate sanctions
- Conducting negotiations and due diligence related to executive compensation and workforce benefit plans in business mergers, initial public offerings, acquisitions and dispositions, including multiemployer withdrawal liability
- Handling executive compensation and workforce benefits issues arising in bankruptcy transactions

We have extensive experience practicing before federal agencies, including the IRS, the DOL and the Pension Benefit Guaranty Corporation, as well as in state and federal courts. We have served as special counsel for companies, other law firms and accounting firms providing executive compensation and workforce benefits advice, and we work with our Trusts and Estates Group, advising clients on the complex income, excise and estate tax rules governing plan distribution to estates and individuals.

### Representative Matters:

- Counseled for-profit and not-for-profit employers regarding the new COBRA premium assistance subsidy rules under The American Recovery and Reinvestment Act of 2009 and the expansion of the HIPAA privacy and security rules; developed a legal compliance strategy, drafted documents and designed compliance practices and procedures
- Counseled for-profit and not-for-profit employers regarding the impact of the Children's Health Insurance Program Reauthorization Act of 2009 on their welfare benefits plans; developed a legal compliance strategy and drafted amendments of health care and section 125 cafeteria plans for board approval

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## Employee Benefits and Executive Compensation (continued)

### Representative Matters:

- Counseled for-profit employers regarding their claims procedures for handling claims of breach of fiduciary duty related to their tax-qualified retirement plan, including an ESOP
- Counseled for-profit and not-for-profit employers regarding the impact of IRC 409A on their non-qualified deferred compensation arrangements, separation pay agreements and change of control agreements; developed a legal compliance strategy and drafted related documentation for board approval
- Counseled for-profit and not-for-profit employers regarding the Massachusetts Health Care Reform Act, including counseling related to the employer “fair share” contribution, the “free rider surcharge” and the employer and employee HIRD forms; developed a legal compliance strategy and drafted related documentation for board approval
- Counseled for-profit and not-for-profit employers regarding operational or plan defects related to their tax-qualified retirement plans, developed a legal compliance strategy and submitted voluntary compliance filings to the IRS under its Employee Plan Compliance Resolution System
- Counseled for-profit and not-for-profit employers regarding failure to file Annual Return/Report (Form 5500) on time, developed a legal compliance strategy and submitted filings to the DOL under its Delinquent Filer Voluntary Compliance Program
- Counseled a for-profit plan sponsor regarding action required to “freeze” its defined benefit pension plan; drafted documents and submitted the plan to the IRS for a determination letter
- Counseled for-profit plan sponsors regarding action required to terminate 401(k) plans and terminate defined benefit pension plans, drafted documents and submitted plan to the IRS for a determination letter
- Counseled for-profit and not-for-profit employers with respect to the amendments required to conform their tax-qualified retirement plans to the Heroes Earnings and Assistance and Relief Act of 2008, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007; and the Pension Protection Act of 2006; also developed a legal compliance strategy, drafted related amendments for board approval and submitted for-profit tax-qualified retirement plans to the IRS for a determination letter
- Developed and implemented a fiduciary governance structure for a for-profit employer to manage ERISA fiduciary liability risk

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