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**RELATED PRACTICES**

Corporate and Business Transactions  
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Distressed Debt and Claims Trading  
Investment Management  
Lending Transactions  
Mergers and Acquisitions  
Private Equity  
Restructuring and Bankruptcy  
Securities Regulation Advice and Training  
Tax

## Securities Transactions

RK&O's securities transactions practice focuses on serving buy-side capital market participants, including hedge funds and investment bank trading desks. We advise on a range of matters, including investments in primary offerings, secondary market trading and liquidity management, short-selling and tender and exchange offers.

RK&O's securities transactions practice is closely connected to our securities regulatory practice.

### HEDGING & SHORT SELLING

Hedging transactions implicate a variety of securities law concerns and have become subject to increased SEC scrutiny. We help our clients understand and manage the legal risks associated with hedging, including specific risks concerning the eventual exit transaction. We have particular expertise in legal issues associated with short selling.

### INVESTMENTS, TRADING AND LIQUIDITY MANAGEMENT

We frequently assist our clients in the purchase of securities from issuers in primary offerings, including negotiated private placements and issuances under Rule 144A and Regulation S. We also advise our clients on investments in alternative capital-raising transactions such as PIPE, registered direct and at-the-market offerings. Our advice focuses not merely on the investment transaction itself, but also on evaluating the client's post-investment liquidity needs and options. We are familiar with the terms of, and tradability and regulatory issues relating to, debt, preferred stock, warrants, debt/equity units, convertible debt and other hybrid instruments.

We regularly counsel clients on the issues an investor confronts when maintaining or exiting an equity position in a U.S. issuer. We help our clients understand and plan for reporting and other obligations under Sections 13 and 16 of the Exchange Act; "affiliate" issues under the Securities Act; Rule 10b-5 concerns; and public and private options for the resale of securities. We routinely counsel on the availability and structure of exit transactions, including registered resales and unregistered dispositions under Rule 144, Section 4(1-½), Rule 144A and Regulation S.

### SECURITIES LAW ISSUES AND BANKRUPTCY

We often counsel hedge funds and other investors on the securities law aspects of owning interests in or claims against a bankrupt issuer. Working with our colleagues in the Firm's restructuring and distressed debt practices, we have special experience with issues concerning the resale of plan securities under Section 1145 of the Bankruptcy Code, and the possible Rule 10b-5 implications of participation on creditors' committees.

### TENDER OFFERS AND EXCHANGE OFFERS

We often provide guidance to clients considering participation in tender and exchange offers. We are especially experienced with the issues surrounding

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## SECURITIES TRANSACTIONS (Cont.)

privately negotiated exchanges under Section 3(a)(9) of the Securities Act, and with issues concerning transactions in the when-issued market.

### EXPERIENCE

Matters on which we have worked include representations of or advice to:

- A hedge fund in its contribution of side pocket real estate assets to a newly formed REIT expected to conduct its initial public offering in 2010.
- Numerous hedge funds and broker-dealer trading desks in private secondary market purchases and sales of corporate securities.
- Large hedge funds as selling shareholders of publicly traded corporations, including negotiation of registration rights, advice on block sales and Section 13 and Section 16 compliance issues.
- Debt investors in privately negotiated Section 3(a)(9) equity swaps with corporate issuers.
- Hedge funds with public company equity positions on "affiliate" issues and Rule 144 resales.
- Distressed debt trading desks on liquidity options for securities issued by the debtor in a Chapter 11 reorganization or other restructuring.

### PUBLICATIONS

"Buyers Beware: Delaware Bankruptcy Court Finds that Avoidance Risk Travels with Debt Purchases" by Paul B. Haskel and Keith Sambur

"Puncturing a finance myth of the digital age" by Craig Newman published by *The Deal*

"Municipal Securities Rulemaking Board Notice Raises Questions Whether Certain Loans to Municipal Governments are Securities" by Brian Fraser featured in *Law360*

"Municipal Securities Rulemaking Board Notice Raises Questions Whether Certain Loans to Municipal Governments are Securities" by Brian Fraser

"Buying a Majority Interest in a Hedge Fund Manager: An Acquirer's Primer on Key Structuring and Negotiating Issues" by Scott Budlong, Eva Marie Carney, Thao Do, Eric O'Meara, William Orbe and Kenneth Werner published in *The Hedge Fund Law Report*

"Security-Based Swaps under Section 13 Beneficial Ownership Rules: SEC Proposes (for Now) to Preserve the Status Quo" by Scott Budlong and Selina Tay

"Credibly Defending Against Insider Trading Allegations: *SEC v. Rorech*" by Eva Marie Carney

"Regulation of Short Sales: SEC Adopts Alternative Uptick Rule Triggered By 10 Percent Circuit Breaker" by Scott Budlong, Selina Tay and Gianna Quach

### PRESENTATIONS

James Walker presents "LinkedIn, Facebook and Twitter, Oh My! Ethics & Privacy in Social Media" hosted by the LSTA

RK&O partners participate in the panel discussion "Receiving Information, Managing Risk, and Preserving Liquidity: Strategies for the Current Regulatory Landscape" at the Financial Services General Counsel Luncheon in San Francisco



#### SECURITIES TRANSACTIONS (Cont.)

RK&O partners present "Receiving Information, Managing Risk and Preserving Liquidity: Strategies for the Current Regulatory Landscape" at the Alternative Asset Management General Counsel Luncheon in New York City

Jon Kibbe speaks at the 15th Annual Conference of The Loan Syndications and Trading Association

RK&O partners co-host "From Creditor to Equity Holder: How to Make Your Post-Reorganization Equity Work Harder for You"

#### NEWS & ANNOUNCEMENTS

Craig Newman quoted in *Law360* article "With More Investor Safeguards, JOBS Bill Heads To Obama"

Craig Newman quoted in *Adweek* article "How to Get Equity Without Really Trying"

Richards Kibbe & Orbe LLP names Jeffrey Lehtman a partner and Catherine Turgeon and Ryan Jackson counsel

RK&O's representation of ORIX USA on agreement to acquire a majority interest in Mariner Investment Group mentioned in *The Am Law Daily*