

PUBLIC COMPANY TRANSACTIONS

Practice

PRIMARY CONTACTS

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Our Public Company Transactions team has substantial experience in transactions in which a public company is a participant either as a target or as an acquirer where the transaction involves significant SEC reporting obligations. The lawyers on this team have broad experience in M&A transactions, as well as securities knowledge developed from representing public companies as lead outside securities counsel advising on day-to-day securities registration and compliance matters.

Public company M&A transactions present unique considerations, from negotiating appropriate deal protection measures (e.g., no-shop/go-shop/fiduciary duty outs) to utilizing the most advantageous structure (one-step versus two-step mergers). We handle all types and sizes of public company transactions and our team brings the same strategy and focus on achieving the optimal business result for our client to each transaction.

Our public company M&A experience includes transactions of all sizes. We regularly handle public company transactions with transaction values ranging from \$100 million to more than \$1 billion.

The types of transactions include:

- Negotiated transactions in which the buyer is a public company
- Negotiated transactions in which a public company is the target
- Going-private and leveraged buyout transactions
- Special committee representation and advising boards of directors/management on fiduciary duties
- Hostile takeovers, involving both proxy contests involving conflicts of interest and tender offers
- Restructurings, including spin-offs, and recapitalizations
- Distressed transactions, including sales out of bankruptcy and 363 transactions

Negotiated Transactions

We represent public clients in a host of complex mergers, acquisitions, divestitures and other negotiated deals. Our team has experience representing both buyers and sellers in such transactions and understands the unique needs and issues that may arise. We also handle joint ventures, strategic investments and other collaborative transactions for our public company clients.

Going-Private Transactions

In this environment of increasing regulation and focus on short-term results, remaining a public company has become more expensive and more challenging than ever. Our team

has experience advising both public companies (and their management) and acquirors (often private equity funds) in going-private transactions where a public company's shareholders are cashed out and the company terminates its SEC reporting obligations. Additionally, our significant private M&A work with private equity funds allows our team to represent private equity buyers as well as help prepare our public company clients for negotiating and working with private equity sponsors.

In addition, our team has successfully guided parties through going private transactions that are subject to the additional and more rigorous requirements under SEC Rule 13e-3, including transactions with controlling stockholders and those where management is part of the buyout group. Transactions subject to Rule 13e-3 are subject to increased scrutiny (including with respect to the transaction process) and heightened disclosure requirements. We have assisted buyers and targets in navigating the unique considerations that must be taken into account in any going-private transaction, including those subject to SEC 13e-3.

Special Committees and Boards of Directors

In all public company mergers and acquisitions, the board of directors and management of the company have unique issues and considerations, especially where there are significant conflicts of interest. Conflict of interest transactions are extremely sensitive, often complex and carry an increased risk of liability. These transactions require skilled legal counsel who can address the directors' legal obligations, risks and potential solutions to issues that arise.

Our lawyers are strategically positioned to help our clients' special committee realize the benefits of using a special committee, which include mitigating the increased litigation risk associated with affiliate transactions and can include shifting the burden of proof to the plaintiffs in transaction related litigation, as well as reducing the standard of review by a court. Our lawyers counsel clients on important aspects of special committee representation, including the scope of authority delegated to the committee, which directors should be members of the committee, documentation as to the special committee process, what advisors the committee should engage, as well as general advice on compliance with fiduciary duty.

Our team has served as special counsel to a variety of public companies' boards of directors, special committees and management teams in connection with transactions relating to:

- Interested party transaction committees
- Internal investigation committees
- Derivative litigation disposition committees
- Other conflict of interest transactions

Hostile Takeovers

Our team has experience representing target companies, their boards of directors, bidders and other strategic parties in unsolicited transactions and contests for control of publicly listed companies (aka "hostile takeovers"). Hostile takeovers can take the form of a tender offer or proxy contest and from either the target's or bidder's perspective require strategies that can be quite different from negotiated transactions. Clients have specifically brought our team into transactions as special counsel to a target's board of directors or special committee. We also have been brought in by a target's outside counsel to advise on the multitude of securities law issues that are unique to hostile takeovers.

Restructurings

Haynes and Boone has advised our public company clients in a number of restructuring transactions, from spin-offs and split-offs to recapitalizations. Because there is no true acquiror in such restructurings, the transactions involve issues different from any transaction in which there is a buyer and a seller. Our team has assisted many of our clients in utilizing such restructuring transactions to structure and consummate a transaction that maximizes their shareholders' value while helping to properly position the business in order to most efficiently and effectively move forward.

Distressed Transactions

We have represented public company and private equity fund clients in connection with acquiring or disposing of companies and assets through bankruptcies and restructurings. Our team of bankruptcy lawyers works hand-in-hand with our M&A lawyers on such deals to ensure our client achieves the best outcome possible, whether through bankruptcy contests, pre-packaged negotiated transactions or Section 363 transactions.