

Commodities

Practices and Industries

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Haynes Boone has built a large and diversified commodities group known for providing innovative solutions in a complex and fast-moving world. In response to client needs, we have bolstered our group in recent years to a team of more than 20 commodities lawyers, who are supported by 100 lawyers and landmen that make up our larger energy practice (for example, we coordinate frequently with our experienced upstream finance and development lawyers). We not only understand the financial side of commodities, but also all aspects associated with physical commodities and trading. We also offer clients access to our Commodities University, an inhouse program that provides training on key commodities topics. We are deeply committed to the energy and natural resources industry, and provide full-service capabilities to cover all of your commodity trading, derivatives, financing, and regulatory compliance needs.

Our team serves clients from key global energy and financial hubs, including Houston, Denver, London, Mexico City, New York, and Washington, D.C. We have a solid track record of providing clients with practical solutions tailored to specific needs, and we can commit to you the resources you need, when you need them and where you need them. We will work with you, the client, to staff projects efficiently and accomplish your objectives on time and on budget.

We cover a broad spectrum of commodities business, which we divide into four distinct sub-specialty areas as follows:

COMMODITIES – TRADING AND DERIVATIVES

Our team routinely assists energy companies, private equity firms, investment banks, trading companies, and other stakeholders with all aspects of physical and financial trading. We cover the full spectrum of commodities, including natural gas, LNG, landfill gas, crude oil, refined products, NGLs, ethanol, biodiesel, biomass, coal, electricity (capacity, energy, renewable, RMR, and various ancillary services), precious metals, base metals, soft commodities, and all related transportation and storage. We advise on a wide variety of topics, including:

- Master agreements, including ISDA, EEI, NAESB, and LEAP
- Generation, transmission, marketing, energy management, and tolling agreements
- Transportation (pipeline, vessel, rail, truck and utility) and storage
- GTCs, import and export requirements, Incoterms, UCC, UCP 600, and other physical trading terms
- RECs, RINs, RGGIs, carbon credits, and other environmental attributes
- Credit-related issues, such as guarantees, letters of credit, master netting agreements, liens on real and personal property, and intercreditor arrangements
- Energy trading instruments, including Congestion Revenue Rights, Point-to-Point Options and Obligations, and Flowgate Rights
- Swaps, futures, options, trade options, and various structured hedging transactions

COMMODITIES – TRADE AND COMMODITY FINANCE

We advise banks and other financial services companies on a variety of trade and commodity financing matters. We regularly advise on transactions that are secured and unsecured. Our team has in depth experience with:

- Borrowing base-secured financing, including reserve based lending and specialty products that allow lenders to give downstream marketing and trading entities value to the forward book
- Supply chain and vendor finance structures, including bills of exchange and letters of credit
- Pre-export financings and red clause letters of credit
- Project and export credit agency financings
- Workouts and restructuring

COMMODITIES – STRUCTURED TRANSACTIONS

We advise financial institutions, project developers, utilities, power generators, project sponsors, private equity, and energy companies on a variety of complex structured transactions. Our counsel may begin at the structuring phase and continue through all stages of a transaction. Our team assists clients on matters including:

- Production payment financing, including volumetric production payments (VPP)
- Prepay financing structures
- Inventory monetization transactions, including true sale, flash title, tolling, and other intermediation structures for refineries and liquids storage facilities
- Hedging, off-take, supply, transportation and transmission in conjunction with the development and financing of mining projects, power plants, transmission lines, storage facilities, pipelines, LNG liquefaction, and re-gasification facilities

COMMODITIES – REGULATORY AUTHORIZATION AND COMPLIANCE

Regulatory authorization for commodities transactions can mean registration, recordkeeping, reporting, licensing, permitting, tariffs, and filing requirements at the federal, state, and local level, while regulatory compliance can mean compliance policies, personnel training, stress-testing, enforcement-investigations, litigation, arbitration, complaint resolution, and settlement negotiations. Our familiarity in this space allows us to routinely advise clients on traditional regulatory requirements and the latest proposed rules from both a business and legal perspective.

Our regulatory services include:

- Licensing, permitting, registration and bonding requirements at the local, state, and federal levels (e.g., U.S. Customs, Commerce, Coast Guard, and various taxing authorities)
- Reporting and recordkeeping requirements, including RINs, EPA fuels programs, Dodd-Frank/CFTC, FERC, Texas Railroad Commission, state public utility commissions, ISOs/RTOs, ERCOT, NERC, and others
- Regulatory compliance programs and training offerings
- Sanctions and embargo compliance
- Internal investigations and voluntary disclosures
- Representation in regulatory enforcement investigations before the Texas Public Utility Commission, FERC and CFTC in the United States and the Energy Regulatory Commission (CFE) and Ministry of Energy in Mexico, plus judicial appeals