

## PUBLIC COMPANIES/SECURITIES AND CORPORATE FINANCE

A public company has a unique status in both domestic and global commerce. Public company business affairs achieve a degree of prominence and visibility that private companies seldom reach. Public company status does, however, bring with it significant responsibilities.

The Corporate practice of Sheppard, Mullin, Richter & Hampton LLP includes a seasoned team of securities attorneys who represent a wide range of public companies. Our attorneys have significant experience in all areas of regulatory compliance and disclosure under the Securities Exchange Act of 1934 and capital formation under the Securities Act of 1933. Although our securities practice is grounded on these two important Federal Acts, we also have the capability to address the various legal issues in which the modern public company is frequently involved, including executive compensation, change in control provisions, mergers and acquisitions and partnering, joint ventures and strategic alliances.

### Corporate Disclosure and Governance

The primary regulator of public companies is the United States Securities and Exchange Commission. State securities commissioners and self-regulatory organizations ("SROs") such as the New York Stock Exchange and the Financial Industry Regulatory Authority can also be involved in overseeing the activities of public companies. The Securities Exchange Act of 1934 and its accompanying regulations impose a comprehensive reporting and disclosure regimen on public companies. The adoption of the Sarbanes-Oxley Act of 2002 has not only significantly increased the disclosure obligations of public companies and their officers and directors, but has also expanded the role of the SEC and SROs.

Sheppard Mullin attorneys have substantial experience in all aspects of federal, state and SRO filing, disclosure and reporting obligations. Our Corporate attorneys are experienced in addressing the wide range of disclosure issues that confront a public company, as well as its board of directors, management and shareholders, including:

- Periodic company reports under the 1934 Act
- Insider trading reports
- Proxy statements
- Shareholder communications and Regulation FD
- Other 1934 Act disclosure and reporting obligations related to contested elections, going private and tender offers

The Sarbanes-Oxley Act of 2002 and related NYSE and FINRA regulations have introduced a number of important changes, including:

- Creation of new internal control regulations
- Acceleration of filing deadlines under the 1934 Act
- Making the CEO and CFO more responsible for the veracity of public filings
- A revamping of the historical relationship between senior management and the board of directors
- New substantive audit, compensation and nominating committee requirements
- Prohibition of long standing corporate practices such as loans to officers
- Expansion of criminal, civil and SRO penalties

Our lawyers have monitored Sarbanes-Oxley and other more recent legislation. In the course of this effort, we have and will continue to provide our clients with timely updates on the newest developments involving SEC, NYSE and FINRA initiatives.

The effective representation of a public company requires more than an understanding of securities laws and regulations. It requires a broad familiarity with the business and operational issues confronting the modern corporate enterprise. Sheppard Mullin attorneys combine their securities expertise with practical legal advice, which enables management to focus on running the company's business with the confidence that their decisions are based on a solid legal and regulatory foundation.

## **Public Securities Offerings**

The public offering process often involves substantial interaction with the Securities and Exchange Commission. This federal agency is charged with overseeing virtually all aspects of public corporate finance. Its broad mandate under the Securities Act of 1933 reaches nearly every stage of capital formation. From the contents of the registration statement to the mechanics of the sale, the SEC has a significant presence in the capital markets.

Sheppard Mullin has experienced practitioners in all areas of corporate finance, including the public sale of securities. Our experience ranges from traditional registration of securities under the Securities Act of 1933 to alternative financing vehicles such as "PIPEs", equity lines and Regulation S offerings. Sheppard Mullin attorneys have represented issuers and investment bankers, as well as selling shareholders and investors, in a wide range of financing activities.

Our attorneys have substantial experience in dealing with the SEC staff and other regulators involved in the public sale of securities. We have experience at every stage of the public offering process, including:

- Performing corporate "clean up"
- Organizing due diligence and information gathering
- Structuring and documenting financing terms
- Drafting and preparation of registration statements
- Interacting with the SEC staff
- Processing filings through the FINRA Corporate Finance Department
- Listing with the FINRA and New York Stock Exchange
- Dealing with various state "Blue Sky" regulators
- Trading and distribution of securities in the secondary market
- Follow on public offerings

We also advise on the structuring and documenting of the terms and conditions of the securities sold, including:

- Initial and secondary public offerings
- Offerings of convertible securities
- Debt offerings
- Flow through securities (limited partnership and limited liability company offerings)
- Merger and acquisition transactions involving the issuance of publicly registered securities
- Hybrid financings (Regulation S, PIPEs and equity lines offerings)

A public offering of securities involves many moving parts. Frequently, the terms and conditions are subject to further change. The issuer's and investors' interests may not coincide. The SEC and the other regulators may raise unexpected issues. Timing is always an issue. Management of these multiple issues requires more than a strong understanding of securities law; it requires experience with all aspects of the corporate finance process. The attorneys of Sheppard Mullin's Corporate practice have the necessary knowledge and experience to bring any public financing to a timely and successful conclusion.

Sheppard Mullin has an active securities and corporate finance practice involving the issuance of securities in registered public offerings and private placements, including venture capital investments and other exempt transactions. We have served as counsel to a variety of issuers/securities underwriting firms and investment banking firms in connection with initial and other public and private offerings of securities. Our attorneys have participated in all aspects of the private placement of securities, representing issuers, private placement agents, equity funds, institutional investors and venture capital firms in every type of private financing transaction, including seed financing angel investments, venture capital financing, later stage equity or mezzanine financing, PIPEs and private debt financing. The hands-on experience of our attorneys in a wide variety of offerings gives us the ability to develop creative solutions to problems encountered in the course of any securities transaction.

## **Investigations and Enforcement**

We represent clients in investigations undertaken by the SEC, state securities administrators and stock exchanges, as well as in internal investigations undertaken by committees of the board of directors. We also provide technical support to the firm's litigation practice group in lawsuits involving financial and securities issues.