

Securities Law

We have an extensive knowledge of the securities laws as they relate to the offering of investment products and services to employee benefit plans and other tax-exempt investors, including how and where the federal securities laws, Employee Retirement Income Security Act (ERISA), tax, banking and insurance law intersect and overlap. In this respect, we interact with and frequently advise key securities industry trade associations and represent clients before the Securities and Exchange Commission (SEC). Examples of our relevant experience include advice with respect to:

- What constitutes a "security," including whether certain plan interests are securities and the application of Rule 3a-4 to discretionary advice programs.
- Registration requirements and exemptions from registration available to employee plans under the Securities Act of 1933 and the Investment Company Act of 1940, including corporate, governmental and church pension plans, individual retirement accounts and annuities (IRAs) as well as welfare plans and health savings arrangements.
- The requirements of federal securities registration exemptions applicable to bank common and collective trust funds, "single employer" trusts, and insurance company separate accounts under section 3(a)(2) of the Securities Act of 1933 and section 3(c)(11) of the Investment Company Act of 1940.
- Application of the exemptions from registration under the Securities Act of 1933 (e.g., private offerings and Regulation D) and the Investment Company Act of 1940 to hedge and private equity funds, real estate funds including REITs, and other commingled "alternative" investment funds.
- Application of the broker-dealer registration requirements to third party administrators of 401(k) and similar participant-directed plans and with respect to the marketing of investment products and services to ERISA-covered plans and plan participants, 403(b) plans, IRAs, and other employee plans.
- Issues arising under the Investment Advisers Act, including registration requirements, performance compensation issues, ethics policies, custody of assets, client solicitations, and investment performance reporting.

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- Registration of employer securities (including non-qualified plan interests) via Form S-8.
- Review of employee benefit plan and executive compensation disclosure on behalf of reporting companies.
- For plan investors, review of private offerings, understanding of securities law requirements and protections, and completion of subscription documents.
- For fund managers and their corporate and securities counsel, ERISA review of offering materials, disclosure documents, marketing materials, and services agreements including prime brokerage.
- Prospectus requirements applicable to employee plans, including drafting, delivery, and ERISA section 404(c) compliance.