Market Trends 2022/23: Business Development Companies

A Practical Guidance® Practice Note by
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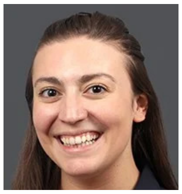

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This practice note covers recent market trends affecting business development companies (BDCs), particularly focusing on various types of securities offerings undertaken by public and private BDCs. Business development companies (BDCs) are closed-end investment management companies that elect to be registered under the Investment Company Act of 1940, as amended (the 1940 Act). For additional information on BDCs, see Business Development Company Guide for Capital Markets, Business Development Companies, and Top 10 Practice Tips: Business Development Companies.

BDCs provide capital to, and invest in, small and middle-market companies in the United States. As a result of this investment purpose, BDCs are exempt from certain regulatory constraints imposed by the 1940 Act on traditional investment companies and generally benefit from pass-through tax treatment (i.e., the entity is not taxed at the entity level and tax obligations pass to the owners of the entity). This article covers recent commercial and regulatory trends affecting BDCs, particularly focusing on various types of securities offerings undertaken by public and private BDCs.

To be regulated as a BDC, a company must elect to be subject to the provisions of Sections 55– 65 of the 1940 Act. Given the limited access to, and availability of, financing from traditional bank lenders for small and medium-sized enterprises, BDCs have played an increasingly important role since the onset of the financial crisis as a source of capital to small and mid-sized enterprises.

In addition to being subject to the 1940 Act, the securities issued by BDCs are typically also registered under the Securities Act of 1933, as amended (the Securities Act), and the Securities Exchange Act of 1934, as amended (the Exchange Act), and BDCs are subject to the registration and reporting requirements under those two regulations.

Notable Transactions

In January 2023, Oaktree Specialty Lending Corporation (NYSE: OCSL) completed a merger with Oaktree Strategic Income II, Inc. with Oaktree Specialty Lending Corporation as the surviving company. The combination resulted in an organization with more than $3.3 billion of assets. OCSL's investment objective is to generate current income and capital appreciation by providing companies with flexible and innovative financing solutions, including first and second lien loans, unsecured and mezzanine loans, and preferred equity.

In February 2022, Silver Spike Investment Corp. (Nasdaq: SSIC) announced the closing of its initial public offering (IPO), which priced at $14.00 per share and raised approximately $85 million. SSIC's investment objective is to maximize risk-adjusted returns on equity.

In October 2021, Blackstone Secured Lending Fund (NYSE: BXSL), a BDC externally managed by Blackstone Credit BDC Advisors LLC, consummated an IPO. The IPO priced at $26.15 per share raising approximately $240 million in gross proceeds. BXSL's investment objectives are to generate current income and, to a lesser extent, long-term capital appreciation.

Deal Structure and Process

Initial Public Offerings (IPOs)

In recent years, the number of BDC IPOs has stagnated and the private BDC has emerged as a popular alternative for sponsors seeking to access the BDC structure.

To undergo an IPO, a BDC must register the offering of its securities on Form N-2. The Form N-2 registration statement should describe the terms of the IPO (including the amount of shares being offered, underwriting arrangements and price); the intended use of proceeds; any risk factors associated with investing in a BDC; details about management of the BDC; and investment policies and objectives. In addition, the registration statement must include financial statements pursuant to the requirements in Regulation S-X.

In advance of its IPO, if a BDC has identified potential portfolio companies, but has not yet purchased such portfolio companies, the Form N-2 must still describe the BDCs general criteria for identifying portfolio companies and must also describe the identified portfolio companies, generally. If a BDC owns securities of a particular portfolio company at the time of the IPO, then the registration statement must identify each portfolio company and also provide the following details:

- The nature of the portfolio company's business
- The general terms as well as the amount of all loans made to the portfolio company
- The relationship of the portfolio company to the BDC – and–
- The class, title and percentage of class and value of any securities of the portfolio company in possession of the BDC

Shelf Offerings

The shelf-registration statement process has proven useful for publicly listed BDCs that trade at a premium to net asset value (NAV) for only a short, and typically unpredictable, period of time. An effective shelf registration statement enables a BDC to access the capital markets when needed or when market conditions are optimal. The shelf registration statement can be filed with the SEC and reviewed while the BDC is trading at a discount to its NAV and then can be used to conduct an offering of the BDC's shares when market conditions permit or following receipt of approval from its stockholders for below-NAV issuances. The typical SEC review process for an initial shelf registration statement takes approximately 30 to 45 days from the filing date. Takedowns from an effective shelf registration statement can then be consummated without SEC staff review or delay. For further information, see Top 10 Practice Tips: Shelf Registration Statements and Takedowns. For information on the SEC review process, see SEC Comment Letter Responses and Top 10 Practice Tips: Responding to SEC Comment Letters.

The SEC generally limits the cumulative dilution to a BDC's current NAV per share that a BDC may incur while using a shelf registration statement to sell shares of common stock at a price below NAV. A BDC can complete multiple offerings pursuant to an effective shelf registration statement only to the extent that the cumulative dilution to the BDC's NAV per share does not exceed 15%. Once the cumulative dilution exceeds 15%, the BDC must file a post-effective amendment to the shelf registration statement or file a new shelf registration statement.

BDCs typically use shelf registration statements to issue debt and equity securities. Debt securities are issued by BDCs from time to time either in stand-alone offerings or as takedowns from a medium-term note program. For additional information on follow-on offerings and medium-term note programs, see Follow-On Offerings Resource Kit, Top 10 Practice Tips: Follow-on Offerings, Medium-Term Note (MTN) Program Overview and Medium-Term Note (MTN) Program Establishment, Updates, and Takedowns. BDCs also frequently list their debt securities on a national securities exchange (such debt securities, which are aimed at retail investors, are referred to as baby bonds due to their small face amount). Equity securities are issued by BDCs from time to time either in follow-on offerings or in at-the-market (ATM) offerings, as described in more detail below.

On November 10, 2022, Fidus Investment Corporation (Nasdaq: FDUS) completed an underwritten offering of $50 million of shares of its common stock at a public offering price of $19.41 per share.

On August 29, 2022, Stellus Capital Investment Corp. (NYSE: SCM) completed an underwritten offering of $50 million of shares of its common stock at a price of $14.32 per share.

On August 15, 2022, Trinity Capital Inc. (Nasdaq: TRIN) completed an underwritten shelf offering of $55.0 million of shares of its common stock at a public offering price of $15.33 per share.

On August 9, 2022, TriplePoint Venture Growth BDC Corp. (NYSE: TPVG) completed an underwritten shelf offering of 3,750,000 shares of its common stock at a public offering price of $13.75 per share for total gross proceeds of approximately $51,562,500.

Rights Offerings

Some BDCs have issued and sold rights pursuant to their shelf registration statement instead of pursuing the types of securities offerings mentioned above. A rights offering provides the holder of a BDC's equity securities the opportunity to receive voting securities even when the BDC's common stock is trading below NAV, subject to certain limitations. In a rights offering, the BDC's existing stockholders receive the right to purchase, on a pro rata basis, newly issued shares of the BDC's common stock at an exercise price typically set at a significant discount to the market price of the common stock. A rights offering may be a useful way of raising capital while avoiding stockholder approval requirements. Rights may be either transferable or non-transferable. A transferable rights offering permits the subsequent sale of such rights in the open market. The SEC has generally taken the position that no more than one additional share of common stock may be issued for each three shares of common stock currently outstanding in connection with a transferable rights offering below NAV. Due to the reduced dilution concern, non-transferable rights offerings are not subject to the same limitation. For further information on rights offerings, see Rights Offerings and Rights Offering Checklist.

Rights offerings for BDCs have stagnated in the past two years, with the most recent described below.

In August 2020, Great Elm Capital Corp. (Nasdaq: GECC) issued non-transferable rights to its stockholders entitling them to subscribe for up to an aggregate of 10,761,950 shares of GECC's common stock. The subscription price was 85% of the volume-weighted average of the market price of GECC's shares of common stock on the Nasdaq Global Market for five consecutive trading days prior to the expiration date of the offering. In total, GECC sold 10,761,950 shares of its common stock for aggregate gross proceeds of approximately $31.8 million.

In April 2020, Golub Capital, Inc. (Nasdaq: GBDC) issued transferable subscription rights to its stockholders entitling them to subscribe for up to 33,451,902 shares of the GBDC's common stock. The subscription price per share was 92.5% of the volume-weighted average of the market price of BCSF's shares for the five consecutive trading days prior to the expiration date of the offering. Stockholders oversubscribed and GBDC sold 33,451,902 shares of its common stock for aggregate gross proceeds of approximately $306.7 million.

In May 2020, Bain Capital Specialty Finance, Inc. (NYSE: BCSF) issued transferable subscription rights to its stockholders entitling them to subscribe for up to an aggregate of 12,912,453 shares of BCSF's common stock. The subscription price per share was 92.5% of the volume-weighted average of the market price of BCSF's shares for the five consecutive trading days prior to the expiration date of the offering. Stockholders who fully exercised their rights were entitled to subscribe for additional shares that remain unsubscribed as a result of unexercised rights. Certain affiliates of BCSF's adviser fully exercised their rights to over-subscribe in order to make an aggregate investment of up to $50 million in shares of BCSF's common stock. The BCSF rights offering represented immediate dilution of approximately $1.62 per share to its existing stockholders.

ATM Offerings

Given the recent securities offering reforms detailed below, ATM offerings have become a more cost-efficient alternative for BDCs seeking to raise capital. An ATM offering is an offering of securities into a BDC's existing trading market for outstanding shares of the same class at other than a fixed price (1) executed on, or through the facilities of, a national securities exchange or (2) to or through a market-maker. Therefore, the price at which securities are sold in an ATM offering will vary because it is based on the price of the securities in the BDC's trading market. An equity distribution program provides a means for a BDC to conduct offerings from time to time using a shelf registration statement to or through a broker-dealer acting either on a principal or agency basis. Each ATM offering then is a takedown from the related shelf registration statement. For further information, see At-the-Market Offerings and Equity Distribution Agreements for At-the-Market Offerings.

Private BDC Trends

Recently, as discussed above, the number of IPOs consummated by BDCs has been limited and the private BDC has emerged as a popular alternative for sponsors seeking to access permanent capital. A private BDC offers and sells its securities in a private placement to accredited third-party investors without registering its securities under the Securities Act. Since 2016, the majority of newly formed BDCs have been structured as private BDCs, with 13 of the 16 BDCs formed in that time commencing operations as private BDCs. For additional information on private placements, see Private Placements Resource Kit and Top 10 Practice Tips: Private Placements.

Private BDCs are usually sponsored or formed by parent private equity firms or financial institutions that already have the necessary preexisting relationships with the needed accredited third-party investors. Notwithstanding the lack of a public securities offering, the private BDC must still comply with the Exchange Act reporting requirements similar to its public company BDC peers because it is required to register under the 1940 Act.

This private BDC structure provides sponsors an alternative that combines elements of a private fund with elements of a traditional BDC. For instance, the private BDC must still comply with the 1940 Act governance and investment limitations and restrictions applicable to traditional BDCs. However, the private BDC has the flexibility to build committed capital calls into its structure similar to other private funds in order to allocate capital as investment opportunities arise and provide investors with a defined liquidity event.

Another advantage to the private BDC structure is that, instead of using a Form N-2 for an IPO, private BDCs may file a Form 10 under the Exchange Act that is typically subject to a shorter review period by the SEC. For additional information on Form 10, see Form 10 Drafting. A private BDC has the option of conducting an exchange offer pursuant to which BDC investors, including directors and officers of the BDC, may elect to exchange their BDC shares for shares in a new split-off extension fund. The new split-off extension fund would receive a pro rata portion of the BDC's assets and liabilities, including each of the BDC's portfolio investments, in proportion to the percentage of the BDC shares exchanged. As private BDCs do not have publicly traded shares, this new exchange option provides private BDC investors with a potentially liquid opportunity following the extension fund's IPO.

Recently, investors in private BDCs have emphasized the inclusion of environmental, social and governance (ESG) restrictions and provisions. BDC investors are following global trends in their desires to restrict investments into business sectors that have the potential for negative environmental impact, such as fracking, coal development and other similar industries or acknowledgement of investors' ESG policies and procedures.

In the past year, there has been an increased interest in perpetual non-traded BDCs, since the launch of Blackstone Private Credit Fund (BCRED) in January 2021, which focuses primarily on private credit through U.S. senior secured private loans. In its first year, Blackstone Private Credit Fund reported a net return of 12.4% with an 8.5% distribution yield. The difference between finite and perpetual non-traded BDCs lies in the liquidity event and exit risk proposed to the investor. A perpetual non-traded BDC does not contemplate a liquidity event and therefore, investor liquidity is subject to the terms of a share repurchase program. Additionally, there is increased exit risk as a share repurchase program is subject to the BDC's board of directors and therefore, may be suspended, modified or discontinued at the discretion of its board.

Commercial Trends

BDCs have faced a significant amount of investor activism in recent years. There have been a number of questions raised as to whether management fees and management interests generally align with shareholder interests. There has also been a recent increase in consolidation in the BDC sector. This has been driven by the shares of many listed BDCs trading below the NAV, an increased interest in filling gaps in the kinds of assets under management and BDC activism pushing for the maximization of shareholder value.

There also has been an increased interest in joint ventures throughout the BDC sector in recent years. This is primarily driven by the goal of increasing portfolio yields. Many BDCs have entered into Senior Loan Fund (SLF) Joint Ventures. SLFs are investment vehicles whereby the BDC and a third party (typically an insurance company or asset manager) commit capital to invest in unitranche and first lien secured loans. Ares Capital Corporation, Capitala Finance Corporation and New Mountain Finance Corporation have all recently entered into these types of arrangements. These SLFs have faced scrutiny by some in the sector, especially before the reduction in the asset coverage ratio. This is because the implicit leverage in the SLF is not counted towards the BDC's overall asset coverage ratio.

Legal and Regulatory Updates

On May 25, 2022, the SEC proposed enhanced disclosure requirements regarding the ESG practices of BDCs. This proposal was issued concurrently with proposed amendments to Rule 35d-1, known as the "Name Rule," which would prohibit the use of ESG terminology in the names of funds that consider ESG factors, as well as other factors when making investment decisions, but in which those considerations are no more dominant than non-ESG factors in the selection process.

On February 9, 2022, the SEC proposed cybersecurity rules applicable to BDCs. If adopted, Rule 206(4)-9 and Rule 38a-2 would require investment advisers and funds, including BDCs, to implement written policies and procedures to address cybersecurity risks. The proposed rules would also create new reporting, disclosure and record keeping obligations.

On February 19, 2021, Rule 17 CFR 270.18f-4 took effect, allowing BDCs to enter into derivative transactions, exempting them from restrictions under sections 18 and 61 of the Investment Company Act. The rule was promulgated to address investor protection concerns and provide updated, comprehensive guidance for funds' use of derivatives. The SEC is adopting new reporting requirements designed to facilitate oversight and enforcement of the rule.

On July 6, 2020, the SEC adopted rule amendments (i) establishing an expedited review process for exempted applications under the 1940 Act that are substantially similar to other recently approved applications and (ii) introducing a new informal process for applications that do not qualify for the new expedited process. The amendments are expected to make the application process more efficient and transparent. Expedited review would be available if an application is substantially similar to two other applications for which an order granting relief has been issued within three years of the date of the application's initial filing.

On January 23, 2020, the SEC declined to exempt BDCs from the Acquired Fund Fees and Expenses (AFFE) disclosure requirement included in a BDC's prospectus fee table. Pushing back on this disclosure requirement, BDCs cite that the calculation of AFFE typically results in an overstated expense ratio because an acquiring fund's indirect expenses are often significantly greater than the expense ratio of the BDC. The SEC's decision to decline this exemption to BDCs garnered attention outside the BDC industry. In a March 5, 2020 letter to the SEC, a bipartisan group of Congress members joined the effort to exempt BDCs from AFFE restrictions. The letter outlines the opinion that the SEC's application of the AFFE disclosure requirements to BDCs is inconsistent with statutory mandates and SEC objectives for AFFE disclosure. Pointing to the decline in institutional ownership of BDC stocks since the adoption of AFFE, which in turn has reduced liquidity in the market, these lawmakers see the AFFE disclosure requirement as threatening the ability of BDCs to serve as vehicles for providing capital to small- and mid-sized businesses. The letter encourages the SEC to tailor AFFE rules to better align with the unique nature of BDCs and alleviate the harm already caused.

Small Business Credit Availability Act

The Small Business Credit Availability Act reduced the asset coverage requirement applicable to electing BDCs from 200% to 150%. This reduction allows electing BDCs to maintain a maximum 2:1 debt-to-equity leverage ratio. Increasing the leverage limit may allow BDCs to deploy additional (possibly lower-risk senior) capital to borrowers and potentially increase their total returns without needing to deploy higher-risk junior capital in order to obtain higher yields. In order to elect to reduce the asset coverage requirement, the Small Business Credit Availability Act requires either one of the following be true:

- A majority of the BDC's board of directors and a majority of its disinterested directors (as defined under the 1940 Act) approve the decreased asset coverage ratio, effectiveness of which would be delayed one year following the approval.
- A majority of the BDC's stockholders approve the decreased asset coverage ratio, which would be immediately effective following the approval.

In either scenario, a BDC that opts to rely on the reduced asset coverage requirement must publicly disclose within five business days its election to do so and provide the market with the BDC's existing leverage ratio and risks associated with increasing the leverage ratio. Further, a BDC that is not traded on a national securities exchange is required to offer its stockholders an opportunity to have their shares repurchased by the BDC following the approval to increase the leverage ratio.

The board of directors or shareholders of numerous BDCs, including Ares Capital, Apollo Investment, Blackrock Capital Investment Corp., CION Investment Corporation, Crescent Capital BDC, Inc. Goldman Sachs BDC, Hercules Capital, New Mountain Finance, Owl Rock Capital Corporation, PennantPark Floating Rate Capital, Solar Capital and Carlyle Secured Lending have approved the reduced 150% asset coverage level.

Certain BDCs are contractually limited in their ability to reduce their asset coverage ratio because negative financial covenants included in their credit facilities require maintenance of the 200% asset coverage threshold notwithstanding the change in law. As a result, many BDCs entered into new financing arrangements to increase the availability of debt relative to equity.

Several credit rating agencies, including Standard & Poor's, Fitch Ratings and Kroll Bond Rating Agency, view the adoption of a lower asset coverage ratio by BDCs as a negative development and believe that it generally increases credit risk in the industry. Standard & Poor's provided public guidance that it would likely downgrade any BDC that obtains or seeks approval to reduce its asset coverage ratio.

The 2022 Fitch Ratings report had a neutral outlook for BDCs; an improvement from a negative outlook in 2020 and a worsening outlook for 2021. The improved outlook reflects the expectation that BDCs will demonstrate relatively stable asset quality metrics, on average, and maintain appropriate asset coverage cushions, strong funding flexibility and solid liquidity. Fitch indicates that significant competition across the middle market, fueled by strong fundraising, remains a challenge for the sector, but believes most rated BDCs are well-positioned to navigate the competitive environment.

Securities Offering Reforms

On April 8, 2020, the SEC adopted final rule amendments, which became effective August 1, 2020, that modernize the offering-related provisions of the Securities Act and the communications safe harbors available to BDCs. The SEC also adopted accompanying amendments to Form N-2. The SEC was required to undertake rulemaking by the Small Business Credit Availability Act. These rules allow BDCs to avail themselves of the securities offering and communication rules that are available to operating companies.

Among the most important changes are (i) the ability for BDCs to qualify as well-known seasoned issuers (WKSIs) to the extent that the BDC meets the reporting history and public float requirements and to benefit as WKSIs from the ability to engage in certain communications and rely on expedited shelf registration provisions; (ii) the ability for other BDCs to use more streamlined shelf registration statement procedures; and (iii) the ability for BDCs to rely on a number of important communications safe harbors.

WKSI Status

A BDC is no longer considered an ineligible issuer and, as a result, will be able to qualify as a WKSI, file an automatically effective shelf registration statement, and use free writing prospectuses. Many BDCs already meet the public float requirement ($700 million) for WKSI status. For further information, see WKSIs and Seasoned Issuers.

Incorporation by Reference

Amended Form N-2 allows for incorporation by reference in the same manner as Form S-3. A BDC that meets the Form S-3 eligibility requirements is able to backward incorporate and forward incorporate subsequently filed Exchange Act documents. BDCs meeting the Form S-3 eligibility requirements may also rely on Rule 430B in order to omit certain information from their registration statements and rely on the prospectus to provide the omitted information. Rule 497 has also been amended by the SEC to allow BDCs to file form prospectus supplements in a process resembling that available to operating companies relying on Rule 424. For further information, see Rule 424 Prospectus Supplements Filing and Rule 424 Prospectus Filings Checklist.

Access Equals Delivery

Rules 172 and 173 under the Securities Act, which permit access equals delivery, became applicable to BDCs. The prospectus and incorporated materials are required to be made available on a website. This eliminates the outdated process of having to print prospectuses and deliver physical copies of prospectuses to investors in BDC offerings.

Communications Safe Harbors

BDCs are able to rely on Rules 168 and 169 under the Securities Act, which allow companies to disseminate regularly released factual business and forward-looking information even around the time of a securities offering without having such information considered an offer, so long as no reference is made to any potential offering and the other conditions of the safe harbors are met.

BDCs are also able to rely on the safe harbors under Rules 134, 163A and 163 under the Securities Act. Rule 134 provides a safe harbor that allows issuers to make certain written statements regarding an offer after a prospectus is filed, provided certain conditions are met. Rule 163A provides a safe harbor from the Section 5(c) prohibition on pre-filing offers for communications that do not reference an offering, and that are made more than 30 days prior to the filing of a registration statement, provided certain conditions are met. Rule 163 provides a safe harbor from the Section 5(c) prohibition on pre-filing offers for WKSIs to engage in unrestricted oral and written communications before the filing of a registration statement, if certain conditions are met.

Rule 139b establishes a nonexclusive research report safe harbor under the Securities Act for unaffiliated brokers or dealers that publish or distribute research reports regarding

BDCs. The safe harbor is available even if the broker-dealer is participating in, or may participate in, a registered offering of the BDC's securities. This safe harbor reduces obstacles that previously prevented investors from accessing research reports on BDCs. Prior to these changes, research safe harbors were not available to BDCs, and broker-dealers generally refrained from publishing research reports about BDCs in proximity to securities offerings for such entities.

Market Outlook

The landscape of BDCs is perpetually changing, including with the introduction of perpetual non-traded BDCs. Despite the negative outlook on the overall market, the number of BDCs has continued to grow over the past two years. While rising interest rates could raise some issues at the portfolio company level by increased pressure on certain portions of BDCs portfolios, these increases have increased BDC net investment income, as well as BDC stock prces. Despite market volatility, the sector continues to grow.

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Anna Pinedo is a partner in Mayer Brown's New York office and co-leader of the Global Capital Markets practice. She concentrates her practice on securities and derivatives. Anna represents issuers, investment banks/financial intermediaries and investors in financing transactions, including public offerings and private placements of equity and debt securities, as well as structured notes and other hybrid and structured products.

She works closely with financial institutions to create and structure innovative financing techniques, including new securities distribution methodologies and financial products. She has particular financing experience in certain industries, including technology, telecommunications, healthcare, financial institutions, REITs and consumer and specialty finance. Anna has worked closely with foreign private issuers in their securities offerings in the United States and in the Euro markets. She also works with financial institutions in connection with international offerings of equity and debt securities, equity- and credit-linked notes, and hybrid and structured products, as well as medium term note and other continuous offering programs.

In the derivatives area, Anna counsels a number of major financial institutions acting as dealers and participants in the commodities and derivatives markets. She advises on structuring issues as well as on regulatory issues, including those arising under the Dodd-Frank Act. Her work focuses on foreign exchange, equity and credit derivatives products, and structured derivatives transactions. Anna has experience with a wide range of transactions and structures, including collars, swaps, forward and accelerated repurchases, forward sales, hybrid preferred stock and off-balance sheet structures. She also has advised derivatives dealers regarding their Internet sites and other Internet and electronic signature/delivery issues, as well as on compliance matters.

Anna regularly speaks at conferences and participates in panel discussions addressing securities law issues, as well as the securities issues arising in connection with derivatives and other financial products. She is the co-author of the leading capital markets treatise, *Corporate Finance and the Securities Laws*, published by *Wolters Kluwer* (6th Ed., updated 2020); co-author of *A Deep Dive Into Capital Raising Transactions*, published by the International Financial Law Review (2020); co-author of *JOBS Act Quick Start* (International Financial Law Review, 2013; updated 2014, 2016); contributor to *OTC Derivatives Regulation Under Dodd-Frank: A Guide to Registration, Reporting, Business Conduct, and Clearing* (Thomson Reuters, first ed. 2014, second ed. 2015, third ed. 2016, fourth ed. 2017); co-author of *Considerations for Foreign Banks Financing in the US* (International Financial Law Review, 2012; updated 2014, 2016); co-author of *Liability Management: An Overview* (International Financial Law Review, 2011, updated 2015); co-author of *Structuring Liability Management Transactions* (International Financial Law Review, 2018); co-author of *Covered Bonds Handbook*, published by Practising Law Institute (2010, updated 2012-2014); co-author of the treatise *Exempt and Hybrid Securities Offerings*, published by Practising Law Institute (2009, second ed. 2011, updated 2014, third ed. 2017); and co-author of *BNA Tax and Accounting Portfolio: SEC Reporting Issues for Foreign Private Issuers* (BNA Accounting Policy and Practice Series, 2009, second ed. 2012, third ed. 2016, fourth ed. 2020). Anna is also a contributing author to *Broker-Dealer Regulation* (2011, second ed. 2012, updated 2020), published by Practising Law Institute. She co-authored "The Approaches to Bank Resolution," a chapter in *Bank Resolution: The European Regime* (Oxford University Press, 2016). Anna contributed to *The Future of Bank Funding and Capital: Solutions for Issuers, Opportunities for Investors* (IFR Market Intelligence, 2009). Additionally, Anna co-authored "The Ties that Bind: The Prime-Brokerage Regulation," a chapter in *Global Financial Crisis* (Globe Law and Business, 2009); "The Law: Legal and Regulatory Framework," a chapter in *PIPEs: A Guide to Private Investments in Public Equity* (Bloomberg, 2006); and "The Impact Security: Reimagining the Nonprofit Capital Market," a chapter in *What Matters: Investing in Results to Build Strong, Vibrant Communities* (Federal Reserve Bank of San Francisco and Nonprofit Finance Fund, 2017). Anna is a contributor to Practising Law Institute's "BD/IA: Regulation in Focus" blog.

Anna is a member of the American Bar Association's (ABA) Committee on the Federal Regulation of Securities, a member of the subcommittee on Disclosure and Continuous Reporting, chair of the subcommittee on Securities Registration, chair of the subcommittee on Annual Review, and a member of the task force on the future of securities regulation.

She has participated in the drafting committee for the ABA's comment letters on such topics as securities offering reform, revisions to the definition of accelerated filer and smaller reporting company, amendments to the accredited investor definition; amendments to the exempt offering framework; and various JOBS Act-related and disclosure effectiveness related matters. Anna also is a member of the ABA Committee on the Regulation of Futures and Derivatives Instruments. Anna is a chair of the Structured Products Association Legal, Regulatory and Compliance Executive Committee. She is a member of the Mortgage Bankers Association's Mortgage REIT Council and a member of the MBA's Secondary & Capital Markets Committee.

Anna is an adjunct professor at the George Washington University School of Law and member of the George Washington University Center for Law, Economics & Finance Advisory Board. She is a member of the Visiting Committee of the Law School of the University of Chicago. Anna was a member of the University of Chicago Legal Forum during her time at the University of Chicago Law School.

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Brian Hirshberg is a partner in Mayer Brown's New York office and a member of the Capital Markets practice. He focuses on representing US and foreign private issuers, sponsors, and investment banks in registered and unregistered securities offerings, including initial public offerings, follow-on offerings, private placements (including Rule 144A and PIPE transactions), at-the-market offerings, registered direct offerings, liability management transactions, preferred stock and debt offerings, and secondary offerings on behalf of issuers in a variety of industries. Brian has particular experience working on specialty finance, real estate and real estate investment trusts (REITs), business development companies (BDCs), and life sciences company deals. He also assists public company clients with ongoing securities law compliance requirements, listing standards of the major US stock exchanges, SEC public reporting obligations, shareholder-related disputes, and governance matters.

Brian is a thought leader and frequently authors articles relating to capital markets trends and topics published by *Thomson Reuters' Practical Law Company, the Practicing Law Institute, Bloomberg and LexisNexis*. The IFLR1000 2022 guide ranks Brian as a "Rising Star Partner" in the United States for Capital Markets: Equity, and he is also a recommended lawyer by *The Legal 500 US*.

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