



Capital Markets: A Primer for Lawyers[©]

Understanding the Basics to Add Value for Your Clients

Presented by: Chaka Patterson, Founder & CEO, Chaka Strategy

Background – Chaka Patterson



- Partner at Alston & Bird (and former Partner at Jenner & Block and Jones Day)
- Professor at University of Chicago Law School
- Former General Counsel of a Fortune 1000 Global Education Company
- Former Treasurer & VP for Investor Relations of a Fortune 100 Energy Company
- JD from Harvard Law School
- MBA from University of Chicago Booth School of Business

HARVARD
LAW SCHOOL

CHICAGO BOOTH
The University of Chicago Booth School of Business

THE UNIVERSITY OF
CHICAGO
THE LAW SCHOOL

Why Capital Markets Matter for Lawyers

- Capital markets underpin global finance, enabling businesses to grow, governments to fund projects, and investors to achieve returns.
- Why Lawyers Need to Understand Capital Markets:
 - Legal Issues Span Multiple Disciplines
 - Transactional Support:
 - Regulatory Navigation
 - Dispute Resolution

— What Are Capital Markets?

Definition:

Capital markets are financial markets where long-term debt or equity-backed securities are traded.

Key Features:

Primary Market
Secondary Market

Types of Capital Markets:

Equity Markets
Debt Markets
Private Markets

— Key Players in Capital Markets

- Issuers
- Investors
- Intermediaries
- Regulators
- Exchanges and Platforms

Common Legal Issues in Capital Markets

Key Areas:

- Securities Regulation
- Disclosure Obligations
- Fraud and Insider Trading
- Corporate Governance

— Role of Lawyers in Capital Market Transactions

Responsibilities:

- Structuring Transactions
- Drafting Documents
- Due Diligence
- Regulatory Compliance

— Risks and Challenges in Capital Markets

Key Risks:

- Market Volatility
- Regulatory Scrutiny
- Litigation Risks
- Cross-Border Issues

— Emerging Trends

Trends:

- ESG Investing
- Technology Disruption
- Globalization
- Regulatory Reform

Capital Markets Example 1

Advising on Initial Public Offerings (IPO):

Scenario:

A tech startup, like Airbnb, plans to go public to raise capital for expansion.

Lawyer's Role:

Drafting Prospectus: Preparing the registration statement and prospectus that disclose financial and operational details to potential investors.

Compliance: Ensuring adherence to SEC requirements under the Securities Act of 1933.

Negotiating Terms: Working with underwriters and the company's board to structure the offering.

Capital Markets Example 2

Structuring Cross-Border Transactions:

Scenario:

Alibaba's dual listing in New York and Hong Kong.

Outcome:

Lawyers enabled Alibaba to execute one of the largest IPOs in history, raising \$25 billion while adhering to cross-border regulations.

Lawyer's Role:

Navigating Regulatory Regimes: Advising on compliance with U.S. SEC rules and Hong Kong Stock Exchange requirements.

Tax and Corporate Structuring: Structuring the holding company to maximize tax efficiency and comply with local laws.

Drafting and Reviewing Agreements: Preparing the prospectus, underwriting agreements, and corporate governance documents.

Capital Markets Example 3

Handling Mergers and Acquisitions (M&A):

Scenario:

A public company acquires another company using stock as consideration.

Example:

In Disney's \$71 billion acquisition of 21st Century Fox, lawyers structured the deal, addressed antitrust concerns, and ensured compliance with capital markets regulations for stock issuance.

Lawyer's Role:

Due Diligence: Reviewing the financial and operational health of the target company to identify risks.

Structuring the Transaction: Drafting agreements for stock issuance and advising on SEC filing requirements.

Disclosure Obligations: Ensuring both parties meet ongoing reporting obligations under the Securities Exchange Act of 1934.

Capital Markets Example 4

Mitigating Insider Trading Risks:

Scenario:

A company executive unintentionally shares non-public information about an earnings report.

Example:

Shortly before Equifax publicly announced its massive data breach in 2017, several senior executives sold shares of the company. The breach affected approximately 147 million people, making it a highly sensitive and impactful event.

Lawyer's Role:

Internal Investigation: Conducting an internal review to determine if insider trading laws were violated.

Policy Updates: Revising corporate policies on material non-public information (MNPI).

Representation: Defending the executive or company in SEC investigations or enforcement actions.

Capital Markets Example 5

Assisting During Financial Crises:

Scenario:

A company faces liquidity challenges during an economic downturn and seeks to issue debt securities to raise capital.

Example:

During the 2008 financial crisis, lawyers advised banks and corporations on issuing new securities, restructuring existing debt, and navigating TARP (Troubled Asset Relief Program) compliance.

Lawyer's Role:

Expedited Offerings: Structuring quick-turnaround securities offerings under SEC Rule 144A or Regulation S.

Risk Mitigation: Ensuring accurate risk disclosures to minimize litigation risks.

Bankruptcy Protections: Advising on potential restructuring if the company's financial health worsens.

Capital Markets Example 6

Resolving Securities Litigation and Class Actions:

Scenario:

Investors file a lawsuit alleging misstatements in a company's earnings reports.

Example:

Lawyers played a central role in defending Tesla against shareholder lawsuits after CEO Elon Musk tweeted about taking the company private, highlighting the importance of precise and compliant public communications.

Lawyer's Role:

Defense Strategy: Building a defense under Rule 10b-5 of the Exchange Act, arguing that the alleged misstatements were immaterial or unintentional.

Settlement Negotiations: Negotiating settlements to minimize financial and reputational damage.

Compliance Remediation: Advising on enhanced internal controls to prevent future issues.

Capital Markets Example 7

Assisting in Shareholder Activism Campaigns:

Scenario:

Activist investors push for changes in a public company's governance or strategy.

Example:

Lawyers advised Procter & Gamble during its proxy battle with Trian Partners, ensuring legal compliance and successful shareholder engagement.

Lawyer's Role:

Proxy Battles: Advising on proxy fights and compliance with SEC rules for shareholder proposals.

Negotiation: Mediating between management and activist investors to avoid litigation.

Defense Preparation: Ensuring the board's actions comply with fiduciary duties.

Key Takeaways

Knowledge of capital markets and the laws and regulations governing capital markets is essential for lawyers to be effective in:



Driving successful M&A Transactions



Raising money from the capital markets



Protecting the company from risks such as insider trading



Representing the company in shareholder activism and litigation



Capital Markets: A Primer for Lawyers[®]

Visit chakastrategy.com to learn more