



2020 PRACTICE GROUP OF THE YEAR

Capital Markets

Kirkland & Ellis LLP represented several cash-strapped companies amid the economic downturn started by the COVID-19 pandemic, lending a hand to Macy's and United Airlines and earning it a place among Law360's 2020 Capital Markets Groups of the Year.

For the group, the year was defined in part by the economic impact from the ongoing pandemic as companies of all sizes scrambled to raise money from the capital markets in reaction to the sudden loss of revenue amid the coronavirus outbreak, partner Josh Korff said.

Working on capital raises early in the pandemic was especially stressful, as Korff said he was advising clients on "bet-the-company"-type offerings meant to keep businesses afloat.

"I had senior executives of companies on the phone with me literally sobbing about the potential that, because of this massive dislocation that occurred in March and April, their company could go under," Korff said.

However, he said that not only did the Kirkland group help its clients with fundraisings at a critical time, but

it also used creative, novel structures to do so, tapping into what he said were sometimes misunderstood or underutilized assets.

For instance, Korff helped represent Macy's as it faced a pandemic-induced budget crunch and closed in June on about \$4.5 billion in new financing.

The debt in that transaction was secured by transferring the retailer's physical inventory and certain real estate assets to a new corporate structure inside the Macy's organization, Korff said.

The retailer's iconic location on 34th Street in Manhattan was not transferred to the new entity, but it did back the offering in part with distribution centers and stores in Brooklyn, Chicago and San Francisco, he added.

While analogous deals were done previously, before this offering no company had ever transferred all their inventory to a special purpose vehicle like Macy's, Korff said.

And though he doesn't downplay the work required for things like initial public offerings and high-yield debt,

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the methods for those transactions are well-established, while working for Macy's and on other similar projects required outside the box solutions, all during the pandemic, Korff said.

"It might have been the most stressful few months of my career, it also might have been the most interesting few months of my career, just because of the novel issues we had to deal with," he said.

The challenge Kirkland faced there was figuring out how to transfer Macy's assets outside of the existing corporate structure — which was limited in its ability to take on substantially more debt — and transfer it to a new, separate entity that was allowed to raise capital, all while abiding by the retailer's previous agreements on how it secured its existing \$4 billion to \$5 billion of debt, Korff said.

"This allowed the company to show investors it had a way through the pandemic and basically gave it the needed liquidity to confidently invest in the reopening plan," he said.

In a similar transaction, United Airlines in July announced the closing of \$6.8 billion in financing,

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including \$3 billion in loans backed by the company's rewards program, MileagePlus, which was also the first such structuring of its kind, Korff said.

Especially in a time when many people aren't traveling, rewards programs are one of the more valuable assets of an airline, he said. Points there can still be used for things that aren't flying, and by pledging its MileagePlus program United was able to obtain terms far better than it would have otherwise, he said.

"That program had tremendous value that was unencumbered," Korff said. "All these deals have a slightly different complexity, but they have the same goal and the same overall theme, which is finding a way to optimize a company's ability to finance itself during times of crisis."

Looking forward, Korff said he expects the capital markets team to continue expanding, adding that

it's still catching up to the growth of its complementary deals groups at Kirkland such as private equity and mergers and acquisitions.

Just from August through November, the firm added 10 attorneys to its main capital markets practice in New York where it's growing the fastest, and another five in Houston and four in Chicago, he said.

Of Kirkland's more than 2,800 attorneys worldwide, its capital markets group has about 150 people overall and mainly works out of New York, Los Angeles, Houston and Chicago.

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