

## Michael B. Kirwan

### Partner/Retired

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Michael B. Kirwan counsels business clients on securities, acquisitions, financings, corporate governance matters, and fund formations. He is a partner in the firm's Capital Markets & Public Company Advisory Practice, and the Fund Formation & Investment Management Practice.

Michael has worked on numerous public and private offerings, including IPOs and follow-on offerings, represented many companies with their periodic reporting obligations and other matters before the Securities and Exchange Commission, represented special committees of boards of directors, and handled a variety of business combinations, venture capital matters, and real estate fund formations. He has significant experience in the REIT and real estate funds industry. Michael represents a number of publicly traded companies that are listed on the NYSE, NASDAQ, and OTCQX. He is a designated advisor for disclosure for OTCQX listed companies.

Prior to joining Foley in 2006, Michael was a partner at LeBoeuf Lamb Greene & MacRae, LLP. He then became the general counsel and eventually the chief operating officer for Encore Development, Inc., a national technology consulting firm.

### Representative Experience

- Counsel to minority family members in formation of private US\$500m industrial warehouse fund
- Issuer's counsel for US\$5m offering of common stock and warrants for NASDAQ listed pharmaceutical company in 2025
- Issuer's counsel for US\$325m note offering for NASDAQ listed REIT in 2024
- Issuer's counsel for US\$500m ATM program for NASDAQ listed REIT in 2024
- Issuer's counsel for US\$2.4m ATM program for NASDAQ listed pharmaceutical company in 2024
- Issuer's counsel for US\$400m note offering for NASDAQ listed REIT in 2024
- Issuer's counsel for US\$6.5m offering of common stock and warrants for NASDAQ listed pharmaceutical company in 2024

- Fund counsel for US\$130m opportunity fund in 2023
- Fund counsel for US\$50m marina fund in 2023
- Fund counsel for US\$300m multifamily real estate fund in 2023.
- Fund counsel for US\$100m multifamily real estate fund in 2023.
- Issuer's counsel for US\$6m common stock offering under baby shelf rules for a Nasdaq-listed biopharma company in 2023.
- Issuer's counsel for US\$6.5m Series A round for a specialty finance company in 2023.
- Fund counsel for roll up of six single-asset multifamily development funds into a US\$380m income fund in 2022.
- Issuer's counsel for US\$15m equity line of credit for a Nasdaq listed biopharma company in 2022.
- Fund counsel for US\$25m GP real estate fund in 2022.
- Fund counsel for US\$100m multifamily development fund in 2022.
- Fund counsel for formation of a US\$100m Opportunity Zone fund in 2021.
- Fund counsel for formation of a US\$85m multifamily real estate fund in 2021.
- Issuer's counsel for US\$30m ATM program for Nasdaq listed pharmaceutical company in 2021.
- Fund counsel for roll-up of six single-asset multifamily development funds into a US\$460m income fund in 2021.
- Fund counsel for roll-up of eight single-asset multifamily development funds into a US\$530m income fund with a REIT feeder fund in 2021.
- Fund counsel for roll-up of 10 single asset multifamily development funds into a US\$600m income fund with a REIT feeder fund in 2021.
- Issuer's counsel for Series Seed-3 venture capital round for a specialty finance company in 2019.
- Issuer's counsel for US\$600m note offering for a Nasdaq listed REIT in 2020.
- Issuer's counsel for US\$18m common stock offering for Nasdaq listed pharmaceutical company in 2020.
- Fund counsel for formation of a US\$75m multifamily real estate fund in 2020.
- Issuer's counsel for US\$500m ATM program for a Nasdaq listed REIT in 2020.
- Fund counsel for roll-up of 11 single asset multifamily development funds into a US\$600m income fund with a REIT feeder in 2019.
- Issuer's counsel for US\$425m note offering for a Nasdaq listed REIT in 2019.
- Issuer's counsel for US\$300m note offering for a Nasdaq listed REIT in 2019.
- Issuer's counsel for Series A round for a specialty finance company in New Jersey in 2019.
- Issuer's counsel for venture capital financing for a Florida food distribution company in 2019.
- Issuer's counsel for venture capital financing for a Maryland pharmaceutical company in 2018 and 2019.
- Fund counsel for formation of a US\$100m Opportunity Zone fund in 2018.
- Fund counsel for restructuring two real estate funds (each in excess of US\$200m in assets) to convert carried interests into partnership interests among other things in 2018.
- Issuer's Counsel for US\$300m note offering for an NYSE listed REIT in 2018.
- Seller's counsel for sale of private REIT for US\$42m in 2018.

- Issuer's counsel for US\$300m note offering for an NYSE listed REIT in 2017.
- Issuer's counsel for US\$650m note offering for an NYSE listed REIT in 2017.
- Issuer's counsel for US\$400m common stock offering for an NYSE listed REIT in 2016.
- Issuer's counsel for private placement of US\$23m senior secured notes for an NYSE listed specialty finance company in 2016.
- Issuer's counsel for US\$233m forward sale of common stock for an NYSE listed REIT in 2016.
- Issuer's counsel for US\$50m ATM program for an NYSE listed specialty finance company in 2016.
- Seller's counsel for sale of two private REITs for US\$48m in 2016.
- Counsel to special committee of board of directors for a public, non-listed REIT's US\$4.8bn acquisition in 2015.
- Seller's counsel for sale of a private REIT for US\$30m in 2015.
- Issuer's counsel for US\$250m note offering for an NYSE listed REIT in 2015.
- Seller's counsel for sale of a private REIT for US\$21m in 2015.
- Issuer's counsel for forward sale of US\$193m of common stock for an NYSE listed REIT in 2015.
- Counsel to special committee of board of directors for a public, non-listed REIT's US\$4bn merger with two other affiliated REITs in 2014.
- Issuer's counsel for US\$70m convertible note offering pursuant to Rule 144A and Regulation D for an NYSE listed specialty finance company in 2014.
- Issuer's counsel for US\$200m ATM program for an NYSE listed REIT in 2014.
- Issuer's counsel for US\$250m "green bond" offering for an NYSE listed REIT in 2014; the second green bond issued in the United States.
- Issuer's counsel for US\$189m IPO on NYSE of specialty finance company in 2011.

### **Awards and Recognition**

- Selected by his peers for inclusion in *The Best Lawyers in America*® in the field of Securities/Capital Markets Law since 2014.
- From 2021-2026 recognized by *The Best Lawyers in America*® as a "Lawyer of the Year" for Securities/Capital Markets Law.
- Peer Review Rated as AV Preeminent®, the highest performance rating in Martindale-Hubbell® Peer Review Ratings™.

### **Affiliations**

- Former president of the North Florida Chapter of the Association for Corporate Growth
- Member of The Florida Bar
- Member of the American and Jacksonville Bar Associations

### **Community Involvement**

Michael has served on numerous civic and charitable boards, including the board of trustees for Jacksonville Episcopal High School, the board of directors of Scenic Jacksonville, Inc., and numerous Athena Powerlink advisory panels. He is a former chairman of the City of Jacksonville's Ethics Commission, a former chairman

of Scenic Jacksonville, Inc. and a member of the Leadership Jacksonville Class of 2025.

## Presentations and Publications

Michael has written numerous articles for various Florida Bar publications and trade journals. Other select articles and presentations include the following:

- Author, ESG chapter, Audit Committee Deskbook, published by the Practising Law Institute (1 November 2021)
- [The Dutch Decision on Shell’s Carbon Emissions – Should U.S. Companies Be Worried?](#), Foley Insights (24 June 2021)
- SEC Movement on ESG Disclosures: SEC and Investors Enhance Focus on Climate Change and Other ESG Disclosures, Foley Insights (26 March 2021)
- Beyond Bunny Hugging: ESG, Investor Expectations and Reporting Trends, Foley Insights (9 December 2020)
- Moderator, “Beyond Bunny Hugging- ESG, Investor Expectations and Reporting Trends National Directors Institute (13 November 2020)
- In the Shadows of the COVID-19 Pandemic – BlackRock’s ESG Expectations, Coronavirus Resource Center (1 May 2020)
- Is 2020 the Year Sustainable Means Investment-Worthy?, Foley Insights (27 January 2020)
- Moderator, “ESG Goes Mainstream: What the Board Needs to Know Now,” National Directors Institute (15 November 2019)

## Sectors

- [Energy & Infrastructure](#)
- [Energy Transition](#)
- [Environmental & Product Stewardship](#)
- [Manufacturing](#)

## Practice Areas

- [Capital Markets & Public Company Advisory](#)
- [Corporate](#)
- [Environmental, Social, and Governance \(ESG\)](#)
- [Mergers & Acquisitions](#)
- [Private Equity](#)
- [Transactions](#)

## Education

- Harvard Law School (J.D., 1988)
- Duke University (B.A., magna cum laude, 1984)

## **Admissions**

- Florida