

## New York State – Law Firms

# New York – Home To Our Nation's Capital Markets

The Editor interviews **Kenneth Fisher** and **William Rosoff**, members of the business law department at Cozen O'Connor.

**Editor:** Cozen O'Connor has been traditionally known as a litigation firm, but recently announced the formation of a Capital Markets Group. Tell us about that.

**Fisher:** We have a national litigation practice with 23 offices across two continents, but we also have about 200 business lawyers with a growing corporate and transactional practice concentrated in the mid-Atlantic region, although deals can involve any part of the country. We are one of the few national firms that has been adding lawyers, about 80 so far this year alone. Many of them have deep experience in project finance, sophisticated insurance-linked securities and major real estate transactions.

**Editor:** What is the focus of the Capital Markets Group?

**Rosoff:** Our multidisciplinary team has experience in securities offerings and regulation, tax, derivatives and restructurings, the full range of financing options, from debt to equity and the whole alphabet of IPOs, PIPES and SPACS. We have a substantial public finance practice and were just named by Thomson Reuters among the top ten underwriter's counsel nationally for the first half of 2009. We also have a very deep real estate development and finance group, which focuses on New York, New Jersey and Pennsylvania, but which handles deals across the country.

**Editor:** Given the turmoil on Wall Street and the slow economic scene, why focus on the capital markets now?

**Rosoff:** The Capital Markets Group is a natural extension of the momentum Cozen has been building for the past decade, but it is also based on a recognition that with the Great Recession clients are looking for new ways of addressing problems, and that often means seeking out new advisors.

**Editor:** What do you mean by new ways of addressing problems?

**Rosoff:** The growth of securitization over the past 20 years fueled the economic boom, but contributed substantially to the financial crisis of the last two years. Bankers and investors alike are now exploring new financing techniques to provide badly needed credit and liquidity, but with a greater ability to evaluate and price risk. Covered bonds are one old technique that's had new life breathed into it because one can look to the issuer as well as a pool. And recently, attention has been focused on another structured finance technique, the securitization of life insurance policies, or life settlements. We have some real expertise in that area. We are actively exploring with our clients whether and how these securities can play a role in the re-emergence of the financial markets.



**Kenneth Fisher**



**William Rosoff**

**Editor:** What are your thoughts on the state of the public finance market?

**Rosoff:** Obviously, it's been through the wringer and not all the dust has settled or will for a while. Dropping tax revenues from weak local economies, fallout from the frozen auction rate market, the small spread between interest rates for taxable and non-taxable bonds, uncertainty over the stability of bond insurers, all stress the system. However, there are some countervailing trends as well. First is a renewed focus on infrastructure spending, particularly to leverage stimulus money, and to take advantage of the taxable Build America Bonds. Second is recognition that not every locality has been affected by the Great Recession the same way. Certainly the weaknesses in the Sunbelt's rapid growth have been exposed and it's going to take quite a while for places like Florida, Arizona and California to recover. The same goes for aging industrial cities in the Midwest. But the Northeast region, which was at a disadvantage during the '70s, '80s and '90s, is well positioned. It has a major portion of the country's intellectual firepower, critical for creating value in growth areas from healthcare to technology to media. A heightened awareness of sustainability has made vertical living, mass transit and cultural centers more attractive. And after decades of power flowing in the other direction, the Democratic majorities in Congress have catapulted Northeast political figures like Chuck Schumer into positions where they can really have an impact on national policy to their region's benefit.

**Editor:** Are public issuers looking at new strategies as well?

**Fisher:** They have to, and many are going beyond timing, combinations of taxable and tax-exempt offerings and the like. For example, the State of New York's Asset Maximization Commission's final report in June laid out a strategy for public-private partnerships in areas such as transportation, education, energy, information technology and underused real property. Unfortunately, the political gridlock in the state legislature has impeded implementation. However, the Port Authority of New York & New Jersey is currently considering a major design-build-finance strategy for construction of a new bridge from Staten Island to New Jersey. They are the kind of agency that has the experience, talent and revenue stream to pull off a project of that magnitude.

**Editor:** Public-private partnerships or P3s have stumbled in quite a few places. Why is that?

**Fisher:** First off, there are successful P3s in many places that just are not recognized as such. In Chicago, a private company has been clearing city streets of abandoned cars for a decade, and selling the unclaimed ones for scrap. Many airports and the country's largest ports are, in a variety of ways, really public-private partnerships. New York City often does large scale mixed-use development combining public land and subsidies with private sector capital and expertise. P3s were pushed in the 1990s on an ideological premise that government by definition was wasteful and the private sector by definition was efficient. Some of those initial efforts, however, boiled down to just replacing more senior, better compensated civil servants with newly hired, lower paid private sector workers, or giving localities the discounted present value of long-term revenue streams without adequately protecting the public from price increases or lower quality resulting from cost cutting. That's made it harder for P3s to get political traction.

**Editor:** What makes for a successful P3?

**Fisher:** There has to be a clear alignment of how the public interest and the private interests benefit, with a focus on life cycle costs, shared risks, and long term perspective. And there needs to be transparency both in the selection process and the ongoing operation to satisfy stakeholders and maintain the public's trust.

**Editor:** Between the new administration in Washington, the shifts in Congress, and local government capital spending, it sounds like public policy itself is a growth area.

**Rosoff:** There's a high degree of skepticism about government, as the health care debate has demonstrated, but there's no doubt that the capital markets are enmeshed with government to an extent not seen since the 1930s and businesses would be wise to be well advised in that area. That's why Cozen has decided to ramp up its government relations practice and has launched Cozen O'Connor Public Strategies including Mark Alderman, the former chair of WolfBlock who served on the Obama HUD transition team, former U.S. Ambassador and Blank Rome Chair David Girard-diCarlo, and Stuart Shorestein, who was president of WolfBlock Public Strategies.

**Editor:** Tell us a bit about yourselves and your practice areas?

**Rosoff:** I am an M&A lawyer by training and experience although recently I have been involved with a number of substantial infrastructure transactions. But as the general counsel of two Fortune 500 companies I had to deal with a very broad array of legal issues ranging from corporate governance and executive compensation to the settlement of multi-billion dollar class actions.

**Fisher:** For most of my career, I've represented clients before government agencies, in regulatory matters, transactions

and litigation. I've always been interested in public policy and in 1991 I was elected a member of the New York City Council, serving through the end of 2001. Because of my background, I often get involved in matters of public controversy where crisis management and media relations experience need to overlay legal analysis. A large part of my practice involves large scale development, siting of infrastructure projects, and transactions requiring government regulatory approvals.

**Editor:** As New Yorkers, how do you think the city has fared in the Great Recession?

**Rosoff:** It hasn't been good, but it could have been worse. The collapse of Lehman Brothers and Bear Stearns, for example, weren't just abstract events. We had friends and neighbors who worked there. So the ensuing shock wave of job losses and credit freezes is something we've felt up close. Both residential and commercial property values are down; clients are struggling to salvage projects and meet their loan obligations. On the other hand, a complete Wall Street meltdown was avoided and an awful lot of New Yorkers are employed at restructuring the financial markets. So despite some indications that the national economy has turned the corner, there are still some challenges to New York ahead, particularly an increase in non-performing commercial real estate loans and slow job recovery.

**Fisher:** While there have been terrible short terms job losses, and they will continue for a few years, New York's population continues to grow. Tourism has dropped, but not as much as was feared. Traditional media is off but new media is flourishing. It's the safest big city in America, has a diversified economy, albeit still heavily skewed to financial services, has invested billions in the last decade to upgrade its infrastructure and create new facilities from transit to schools to waterfront parks, and is consciously managing its resources to protect city services from the kind of devastating cuts in earlier bad times from which it took so long to recover. It's still the place where a good portion of the world's wealth and talent wants to be and will continue to be.

**Editor:** So you're optimistic about New York's future as a global financial center?

**Fisher:** New York has been a place for global opportunities and innovation since Henry Hudson sailed into the harbor for the Dutch East India Company four hundred years ago this fall. JP Morgan Chase & Co. can trace its origins to the Manhattan Company, ostensibly founded as a water company by Aaron Burr in 1799 but which quickly became a lender to compete with Alexander Hamilton's Bank of New York. So while optimism may be premature as 2009 comes to a close, I can certainly say I'm hopeful that New York's economic best is still ahead.

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