

BANKING & FINANCE

Transactional Practice

Hodgson Russ represents banks and other lenders and borrowers in a variety of commercial lending and finance transactions, including:

- Lines of credit, revolving credit facilities, and formula-based inventory and accounts receivable loans
- Asset-based lending
- Term loans
- Letters of credit
- Acquisition financing
- Real estate acquisition, construction, and permanent financing
- Equipment leasing and finance

- Cross-border secured and unsecured credit facilities
- Securitized conduit credit facilities
- Receivables purchase transactions
- High-yield note issuances
- Subordinated debt issuances
- Agented syndicated credit facilities
- Public finance transactions, including tax exempt bonds
- Restructuring and workouts
- Debtor-in-possession financings

Our lender clients include commercial banks, asset-based lenders, equipment leasing companies, and other domestic and international traditional and non-traditional lenders.

We represent publicly traded and private companies and nonprofit entities, including colleges, universities, and health care facilities, as borrowers.

We frequently assist our clients with the negotiation of interest rate swaps and inter-creditor and subordination agreements and with a wide range of collateral types covered by the Uniform Commercial Code or by other federal and state law. With our tax and employee benefits lawyers, we provide Employee Retirement Income Security Act (ERISA) and tax advice in the lending context.

Contact

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Professionals

Attorneys

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Valerie Stevens

Melissa Subjeck

Brianne Szopinski

James Thoman

Shannon Wagner

Dylan Weber

Sujata Yalamanchili

Paralegals

Alexandra Fox

Paula Hearn

Melissa Magiera

Senior Paralegals

Betsy Mills

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We assist borrowers in arranging for, negotiating, and closing financing transactions of all sorts.

Restructuring and Insolvency

We represent our lender clients in the enforcement of personal property security interest and real estate foreclosures and other enforcement proceedings. We also assist both lenders and borrowers in restructuring and workouts, debtor-in-possession financings, and bankruptcy proceedings, including cross-border proceedings.

Public Finance

We act as bond counsel to a wide variety of public issuers, ranging from simple note financings of equipment to complex refundings and revenue bond transactions. We routinely act as bond counsel, underwriter's counsel, and trustee's counsel and handle environmental-State Environmental Quality Review Act (SEQRA) matters in connection with the issuance of industrial revenue bonds, revenue anticipation notes, tax anticipation notes, budget notes, certificates of participation, statutory installment bonds, bond anticipation notes, and serial bonds for issuers located throughout New York State and elsewhere.

Banking Corporate Practice

Our banking attorneys have substantial experience in dealing with the following matters affecting financial institutions:

- Handling acquisitions of businesses by banks
- Assisting in purchases and sales of branch offices by banks
- Advising on responsibilities of directors and officers
- Drafting charter and by-law amendments
- Assisting with annual and special meetings of shareholders, including preparing proxy materials
- Drafting stock option and other compensation plans for officers and employees – Hodgson Russ has been awarded a prestigious "Best Law Firms" Metropolitan Tier 1 ranking by *Best Lawyers/U.S. News & World Report* in the Banking and Finance Law category.

Experience

In 2019, Hodgson Russ attorneys represented a manufacturer of highly engineered products with international operations in connection with the amendment and restatement of its syndicated secured revolving credit facility. The revolving credit facility is in the initial amount of \$1.1 billion and includes letters of credit and foreign currency advances.

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Hodgson Russ attorneys represented a manufacturer in a \$100 million trade receivables securitization.

Hodgson Russ attorneys represented a nonprofit 501(c)(3) corporation located in Staten Island in the refinancing of its existing tax-exempt fixed-rate bonds and letter of credit-backed variable rate bonds with two new tax-exempt bond issuances, aggregating approximately \$11.6 million, that were privately placed with a bank.

Hodgson Russ represented a Canadian mutual fund as borrower in connection with the U.S. aspects of a \$117 million credit facility secured by senior secured loans.

Hodgson Russ represented a banking client as the agent bank in a syndicated \$19 million building loan secured by multiple locations in addition to the real estate being improved. The borrower was a public entity, and the credit was structured with both taxable and tax-exempt components. The principal source of repayment involved future funds to be received from a state agency, complicating the analysis.

Hodgson Russ represented a client in the hardwood and lumber industry in connection with the amendment and restatement of its senior secured revolving credit facility. The facility is in the initial amount of \$225 million and includes letters of credit and asset based loan components.

Hodgson Russ represented the Collateral Agent in connection with an approximately \$27 million syndicated construction loan. The transaction involved the construction of a mixed use facility, and the capital stack for the development included brownfield tax credits and various state and local tax incentives.

Hodgson Russ represented a banking client as the agent bank in a syndicated \$28 million building loan, the proceeds of which were used to construct a luxury condominium hotel containing both residential and commercial units, where each residential unit was further divided into fractional fee interests. Repayment requirements were structured to facilitate the separate sales of the fractional fee interests and the commercial units.

Hodgson Russ was lead counsel for a publicly traded international metal and mining operation in connection with the closing of trade receivables financing facilities of \$300 million. The transactions involved assets and entities based in the United States, Canada, South America, Asia and Europe.

Hodgson Russ attorneys represented a college in the refinancing of its tax-exempt fixed-rate bonds and letter of credit-backed variable rate bonds with two new tax-exempt bond issuances aggregating approximately \$35 million purchased by two different financial institutions. Hodgson Russ also represented the college in connection with interest rate swaps entered into in connection with such refinancings as well as a line of credit.

Hodgson Russ represented a sponsor in connection with a \$40 million dividend recapitalization financing of a group of manufacturing companies. A syndicate of lenders provided term and revolving debt. Existing mezzanine financing was amended to accommodate the transaction.

Hodgson Russ represented a Canadian lender in connection with the U.S. aspects of revolving and term loans aggregating \$40 million. The loans were used to finance the borrower's new manufacturing operation in Western New York, including a bridge loan pending receipt of brownfield tax credits.

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Hodgson Russ attorneys represented a global mining company as seller of receivables with respect to the U.S. aspects of a receivables purchase facility.

Hodgson Russ attorneys represented a manufacturer of highly engineered products with international operations, as issuer, in connection with a \$500 million senior notes offering to qualified institution buyers under Rule 144A and non-US persons under Regulation S. The net proceeds from the offering were used to effect a redemption of the company's previously outstanding senior notes.

Hodgson Russ represented a client engaged in the business of selling commodity materials in the negotiation and closing of an asset-based revolving credit facility. The facility, which was initially in the maximum amount of \$65 million, was increased to \$75 million and contains a specially crafted complex borrowing base with sub-limits for foreign receivables and inventory.

Hodgson Russ has been critical to the extensive expansion and growth of a large commercial bank. Working closely with our client, Hodgson Russ assisted in the acquisition of both owned and leased properties, resulting in the addition of more than 500 new branches in New York, Connecticut, Massachusetts, and Pennsylvania. As part of the transactions, Hodgson Russ attorneys assisted the bank with environmental due diligence for each site. The work included coordination with environmental consultants in evaluation of site-specific risks and the identification and resolution of issues involved in transferring some sites to other parties after the initial acquisitions. The acquired branches totaled more than 2.3 million square feet and carried a purchase price of more than \$130 million. By virtue of these acquisitions, our client added an estimated \$6.5 billion in deposits.

When a bank borrower sold its business to a competitor, the bank retained lien rights to accounts receivable pledged to support a \$1 million loan obligation. The buyer of the business refused to turn over any of the accounts receivable to the bank. Following a denial of the bank's motion for summary judgment seeking payment from the buyer, Hodgson Russ prosecuted an appeal of that decision and obtained a favorable decision from the Appellate Division of the New York State Supreme Court.

Acted as local counsel to an international wind energy company in the closing of building and project loans on two separate windfarms in upstate NY. The aggregate building and project loans were approximately \$194 million and \$13 million, respectively.

Hodgson Russ attorneys represented a Canadian manufacturer of home comfort care and compact appliances in the U.S. aspects of an asset based credit facility.

Represented a developer/investor in multiple finance transactions which closed on the same day. These included a \$12.5 million loan secured by 11 multi-family properties, a \$15 million loan secured by 12 multi-family properties, and a \$4 million loan secured by 31 multi-family properties.

Hodgson Russ represented multiple entities formed by a developer client to enable separate financings with multiple bank lenders and an EB-5 regional center lender of elements of an extended hospitality campus consisting of two hotels and one major restaurant. One of the hotels was being constructed, the other was being substantially renovated. The financings aggregated in excess of \$30 million.

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Represented a client in the acquisition, construction financing, development, and leasing of a medical office building.

Representation of regional transit authority in connection with the acquisition and development of transit stations, condemnation matters and various real property transactions. Matter handled prior to joining Hodgson Russ.

Hodgson Russ assisted client Community Action Organization of Erie County, Inc. (CAO) on a \$16.25 million development project that turned a long-vacant orphanage on Buffalo's East Side into St. Martin Village, a low-income housing project comprising 60 housing units and related facilities and grounds. The project involved rehabilitating three architecturally significant buildings, demolishing eight other buildings, and constructing six new buildings. Hodgson Russ attorneys assisted CAO in securing \$1.32 million annually in low-income housing tax credits from the New York State Division of Housing and Community Renewal, with a total of \$13.2 million in tax credits anticipated. The firm also provided project-financing assistance, negotiating a construction loan not to exceed approximately \$9.5 million from KeyBank National Association; a permanent loan of \$1 million from Community Preservation Corporation; and secondary loans in varying amounts from the New York State Housing Trust Fund Corporation, the City of Buffalo, and CAO. The firm also assisted St. Martin Village in obtaining, through CAO, a grant from the New York State Urban Initiatives Program Fund and an approximately \$1 million federal home loan grant.

Hodgson Russ represented an equipment vendor client in establishing equipment leasing and financing programs. The client will use the leasing and financing program to increase sales of its used equipment.

Hodgson Russ represented a corporate client in establishing Dodd-Frank-compliant reporting and record-keeping protocols. The client uses physically settled and financially settled derivatives to hedge its financial exposures to fluctuating prices. Although Dodd-Frank provides for certain exceptions to corporate "end users," the cross-border nature of the client required a customized approach to derivatives regulations.

Represented a United Kingdom-based real estate investor in closing of a refinance loan with a CMBS lender.

Represented a borrower in connection with a syndicated \$200 million asset based financing of a rental equipment business.

Represented real estate investor/developer in the acquisition of a 43 property multi-family housing portfolio. This included related Fannie Mae financing and a \$23 million real estate loan secured by 52 properties.

Hodgson Russ collaborated with a client on the purchase, structuring, and financing of a large life insurance policy designed to offset estate tax and provide a significant inheritance at a relatively low transfer tax cost. Utilizing a strategy commonly known as "premium financing," the client created an insurance trust and arranged for that trust to borrow money from a banking institution to pay the annual insurance premium. Under the structure, the client only pays the interest on the loan, allowing the client to obtain a significant insurance policy while utilizing a minimal amount of the client's federal transfer tax exemption. A team of attorneys in the Estates & Trusts, Finance, and Tax Practices worked with the client to establish the insurance trust, negotiate the loan documents, and analyze the tax implications associated with the various financing and structuring options.

Assisted the owner of a historic former factory (which has been converted into a multi-tenant facility containing art studios, light manufacturing and office space) with an \$8 million loan refinancing.

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Representation of commercial lenders in various mortgage financing transactions for apartments, office buildings and retail centers. Matter handled prior to joining Hodgson Russ.

Represented a developer/investor in the \$21 million acquisition of three multi-family properties encompassing 350 units. This transaction included the closing of a \$16.6 million Fannie Mae real estate loan.

A Hodgson Russ team represented a retail company in the rent-to-own industry in a series of acquisitions of hundreds of stores. The team also represented the company in several securities offerings and debt financings. Robert B. Fleming, Jr. led the Hodgson Russ team that served this client.

Hodgson Russ represented a banking client in a \$20 million credit facility to fund improvements to real estate where, for a variety of reasons, a mortgage on the improvements and the underlying real estate could not be granted. Collateral was limited principally to certain special purpose equipment and the revenues to be generated by ongoing business operations, complicating the analysis. The co-borrowers were both U.S. and Canadian entities, requiring close coordination on both credit and collateral issues with Canadian counsel.

Represented a commercial developer in the acquisition of three multi-family properties for \$2.7 million and related \$2.1 million loan. Also represented this same client in the refinancing of a portfolio of commercial properties with a conduit loan lender, and the \$6.5 million refinance of a 27-property multi-family portfolio.

Represented a large, publicly traded financial institution with respect to construction contracts for a regional headquarters (\$3.6 million, including sustainable project provisions for LEED certification), leasehold improvements (\$525,000), branch renovations (\$1,020,000), and multi-site upgrades at dozens of their branches under a cost of work with GMP model.

Hodgson Russ attorneys represented a banking client in a \$42 million permanent financing on a multipurpose (office, hotel, and residential) building. The building was divided into separate condominium structures to accommodate each purpose and the varied repayment terms required.

Represented a large, Canada-based real estate investment company in the closing of two separate real estate acquisitions and related Freddie Mac loans of \$16,730,000 and \$17,880,000, respectively.

Representation of regional health systems and a health insurance company in connection with leases, purchases, sales and donations of real property. Matter handled prior to joining Hodgson Russ.

Hodgson Russ represented a nonprofit 501(c)(3) corporation located in Staten Island, New York, in the refinancing of its existing tax-exempt fixed-rate bonds and letter of credit-backed variable rate bonds. Our attorneys assisted with two new tax-exempt bond issuances, aggregating approximately \$11.6 million, that were privately placed with a bank.

Hodgson Russ represented a banking client as the agent bank in a syndicated \$100 million asset-based loan facility to a major clothing designer. The transaction represented a refinancing of an existing facility that allowed for the increase in maximum availability, which was secured by intellectual property.

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Hodgson Russ represented a corporate borrower client in a syndicated \$22 million asset based loan facility. The transaction represented a refinancing of an existing facility.

A team of Hodgson Russ attorneys led by John J. Zak represented long-time client, Integer Holdings Corporation (NYSE: ITGR), in a \$1.7 billion acquisition of Lake Region Medical, a privately held portfolio company of KKR. The purchase price consisted of cash (including assumed debt) and unregistered shares of common stock. Financing was through a bank/bond package, consisting of a \$1.6 billion credit facility (TLA/TLB/revolver) and \$360 million of senior notes offered under Rule 144A. Hodgson Russ counseled on every aspect of the transaction, performing U.S. and supervising international due diligence; negotiating the merger agreement and related acquisition documentation; advising on U.S. competition law matters, including preparing Hart-Scott-Rodino and related foreign filings; negotiating the bank credit facility and leading the high-yield note offering; and advising on executive compensation and employment law aspects of the transaction. The Hodgson Russ team consisted of attorneys Craig M. Fischer, Cristin L. Murray, Matthew R. Scherer, and David G. Reed (securities regulation and corporate compliance); Robert B. Fleming, Jr. (antitrust and trade regulation); Christofer C. Fattey and Timothy Ho; Ryan M. Murphy and Richard W. Kaiser (employee benefits); Peter C. Godfrey (labor and employment); and Michael J. Hecker (environmental); and paralegals Courtney Scanlon, Deborah Kalstek, and Betsy Mills.

Attorneys from Hodgson Russ acted as Chapter 11 bankruptcy counsel to a meat distribution company in its Chapter 11 bankruptcy proceedings. At the time of its filing, the company was one of the largest family-owned meat distribution companies in the country, with yearly revenues in excess of \$900 million.

Assisted lenders in the closing of commercial loans and lines of credit for manufacturing facilities throughout the U.S.

Hodgson Russ represented a banking client as lender in a \$10 million asset-based loan facility to a beauty care company. The transaction represented a refinancing of an existing facility.

Hodgson Russ represented a banking client as lender in a \$15 million asset-based loan facility to a footwear distributor. The proceeds of the loan were used to acquire the principal manufacturer of footwear sold by client.

Hodgson Russ represented a banking client as lender in a \$5.5 million asset-based loan facility to a real estate investment company. The transaction represented a refinancing of an existing facility.

Hodgson Russ represented a banking client in construction loans aggregating \$17 million, the proceeds of which were used to build market-rate senior apartment facilities.

A team of Hodgson Russ attorneys led by John J. Zak represented long-time client, Integer Holdings Corporation (NYSE: ITBR), in its successful tax-free spin-off of its subsidiary, QiG Group, LLC, which converted into Nuvectra Corporation prior to the completion of the spin-off. Nuvectra is a medical device company that is concentrated on the development and commercialization of its neurostimulation technology platform, and, in particular, its Algovita spinal cord stimulation system, for the treatment of various disorders through the stimulation of tissues associated with the nervous system. As part of the spin-off, Nuvectra received approval to list and to have its common stock traded on the NASDAQ Global Market under the symbol "NVTR." Hodgson Russ advised on all aspects of the separation of Nuvectra from Greatbatch and the corresponding distribution of the Nuvectra shares of common stock to Greatbatch's stockholders, including the registration

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of Nuvectra with the SEC, the listing of Nuvectra's common stock on the Nasdaq Global Market, facilitating the negotiation of agreements between Nuvectra and Greatbatch to establish a framework for their post spin-off relationship; preparation of corporate governance policies and procedures for Nuvectra as a newly publicly-traded company and assisting in the separation of Greatbatch's existing employee benefit programs and the establishment of new programs by Nuvectra. The team of Hodgson Russ attorneys consisted of Craig M. Fischer (securities regulation and corporate compliance); Christofer C. Fattey (banking and finance); Terrence M. Gilbride and Elizabeth A. Holden (real estate); Ryan M. Murphy and Richard W. Kaiser (employee benefits); Peter C. Godfrey (labor and employment); Richard F. Campbell and Andrew D. Oppenheimer (business tax); and paralegal Courtney Scanlon.

In the News

Thought Leaders: Banking Leaders Adapt Quickly to Changing World
Buffalo Business First, June 25, 2021

How the New Tax Rules Affect Taxpayers
October 26, 2020

Thought Leaders: Banking
Buffalo Business First, July 18, 2019

The Peculiarities of New York's Commercial Mortgage Tax Laws
MortgageOrb, October 9, 2018

Delinquent Tax Returns May Be A Crime
Buffalo Law Journal, June 6, 2016

Six Hodgson Russ Attorneys Named *Best Lawyers* 2012 Buffalo 'Lawyers of the Year'
October 17, 2011

Best Lawyers Names John P. Amershadian 2010 Buffalo Banking Lawyer of the Year
December 21, 2010

Press Releases

Fifty-Nine Hodgson Russ Attorneys Ranked in 2022 Edition of Upstate New York Super Lawyers
Hodgson Russ Press Release, August 23, 2022

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*
Hodgson Russ Press Release, August 19, 2022

Hodgson Russ Receives Top Tier National and Metropolitan Rankings in 2022 Best Law Firms Listings
Hodgson Russ Press Release, November 15, 2021

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Two Hodgson Russ Attorneys Selected to Author Monthly Columns in Tax Notes State
Hodgson Russ Press Release, April 27, 2020

Hodgson Russ Earns Five National-Level Rankings in *U.S. News & World Report*/Best Lawyers 'Best Law Firms' Report
Press Release, November 18, 2015

Hodgson Russ Attorney Victoria Saxon Named to Best Lawyers in Canada
Press Release, August 24, 2015

Rafael Pignataro Among *Buffalo Business First's* 30 Under Thirty
Press Release, May 7, 2015

Publications

Warning: Don't Ignore Your Customers' Secured Lenders, You Could be Required to Pay Twice!
Hodgson Russ Banking & Finance Alert, March 27, 2023

The Collapse of Silicon Valley Bank and Signature Bank and FDIC Receiverships Generally
Hodgson Russ Banking & Finance Alert, March 13, 2023

Borrower Beware V: Prepare Your PPP Loan Forgiveness Questionnaire Before the SBA Asks For It, and Thoughtfully Identify the "Totality of Circumstances" Supporting Your Necessity Certification
Hodgson Russ COVID-19 Litigation and Employment Action Team Alert, February 8, 2021

Relief from Some PPP Restrictions
Hodgson Russ Banking & Finance Alert, June 4, 2020

New York State Launches Forward Loan Fund Program – What Do I Need to Know?
Hodgson Russ Banking & Finance Alert, May 26, 2020

Paycheck Protection Program: SBA Releases Forgiveness Application – Some Questions Answered, Others Remain
Hodgson Russ Banking & Finance Alert, May 18, 2020

PPP Update: SBA Provides Guidance on Application of Necessity Certification
Hodgson Russ Banking & Finance Alert, May 13, 2020

Should My Business Apply for an Economic Injury Disaster Loan (EIDL)?
Hodgson Russ Banking & Finance Alert, April 24, 2020

More Funds for Paycheck Protection Program, More Uncertainty for Businesses
Hodgson Russ Banking & Finance Alert, April 24, 2020

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CARES Act Update: Federal Reserve Releases First Guidance on Main Street Lending Program
Hodgson Russ Banking & Finance Alert, April 10, 2020

Presentations & Events

Borrower Beware: Defending PPP Loans from After-the-Fact Government Scrutiny
September 28, 2020

Borrower Beware: Defending PPP Loans from After-the-Fact Government Scrutiny
September 10, 2020

Borrower Beware: Defending PPP Loans from After-the-Fact Government Scrutiny
September 3, 2020

Borrower Beware: Defending PPP Loans from After-the-Fact Government Scrutiny
August 20, 2020

Borrower Beware: Defending PPP Loans from After-the-Fact Government Scrutiny
August 10, 2020

Borrower Beware: Defending PPP Loans from After-the-Fact Government Scrutiny
August 7, 2020

CLE: Borrower Beware: Defending PPP Loans from After-the-Fact Government Scrutiny
July 29, 2020

NAIOP Upstate NY PPP Update
July 7, 2020

The Hodgson Russ CARES Act Webinar Series – A Primer for Businesses
April 6 & 13, 2020

Hodgson Russ/FAE COVID-19 Webinar Series
April 1 & 2, 2020