

Securities Litigation and Regulatory Enforcement



BakerHostetler's Securities Litigation and Regulatory Enforcement practice team consists of more than 40 prominent attorneys nationwide with experience in securities litigation and class actions; SEC, CFTC and FINRA investigations and enforcement proceedings; regulatory and compliance legal services; and internal investigations and crisis management.

We take a big-picture approach to securities law by looking beyond the issue at hand to provide clients with comprehensive legal advice and advocacy. We are forward-looking attorneys who think outside the box to see the many layers of a legal issue and devise creative legal solutions designed to get our clients the best possible results in the regulatory and securities litigation matters we handle.

Over the course of decades we have developed firsthand experience representing various securities market participants, particularly hedge funds, public companies and broker-dealers, in securities litigation and regulatory investigations. Our team, made up of several former securities regulators, is especially strong because we can strategically advise on parallel civil litigation and criminal and regulatory proceedings.

We conduct internal reviews and defend investigations and litigations for public companies, boards and committees, broker-dealers, and investment funds on a number of issues such as Sarbanes-Oxley Section 404 internal controls, insider trading and Regulation FD, FCPA compliance, mutual fund market timing/late trading, hedge fund market manipulation, front running, portfolio valuations, ERISA violations and employee misappropriation. Our insight and guidance help clients find appropriate remedial solutions to mitigate adverse business and regulatory consequences.

Since 2008, BakerHostetler has served as court-appointed counsel to SIPA Trustee Irving H. Picard, based on our experience in bankruptcy law and securities litigation, white collar criminal investigations and corporate finance. As of November 1, 2016, the SIPA Trustee has recovered or entered into agreements to recover more than \$11.4 billion, representing 65 percent of the \$17.5 billion in principal estimated to have been lost in the Ponzi scheme. Many members of our team have worked on various aspects of this complex and extensive legal matter.

“BakerHostetler is ‘an A+ law firm where the lawyers are well prepared, professional, impressive and extremely capable.’

The ‘smart and strategically astute’ Marc Powers in New York leads ‘a vibrant practice’ that is prominent among investment banks and hedge funds. The firm, which ‘knows when to push the buttons and be aggressive,’ had ‘amazing success in representing the Madoff estate’ in representing its SIPA trustee. Dean Hunt in Houston, who with Powers represented former CEO of Global Geophysical Services Richard Degner in a securities class action, and Mark Kornfeld in New York are highly recommended.

– *Legal 500*

Representative Clients

- Credit Suisse
- Denbury Resources
- TAG Associates LLC
- GF Capital Asset Advisors
- M&T Bank
- BCP Securities
- Progress Investment Management
- Virtus Funds, Independent Trustees
- BlackRock Advisors
- Banco de Investimento Tendencia S/A
- Infinity Capital Management Ltd.
- Guaranty Bancorp
- Asta Funding Inc.
- Atlasbanc Holdings Corporation
- ABN AMRO
- Global Geophysical, former founder and CEO

Securities Litigation

We represent public and private issuers, partnerships, closely held corporations, directors, and officers in securities and fraud litigation before federal, bankruptcy and state courts across the U.S. We understand that clients face ever-changing regulations and heightened scrutiny from the public and private sectors. We draw on a wealth of experience to navigate complex cases and obtain successful results.

BakerHostetler has a breadth of experience, including:

Civil Litigation: Represent public and private issuers and their directors and officers in civil class actions and private-party suits alleging securities law violations and fraud.

Derivative Litigation: Represent directors and officers of companies in derivative and other securities litigation against claims of mismanagement, breach of fiduciary duty and fraud. We also represent directors and officers facing secondary liability claims for others' primary securities violations.

Initial Public Offering and Mergers & Acquisitions Litigation:

Represent directors and officers in litigation arising out of IPO and M&A corporate transactions for breach of fiduciary duty, mismanagement and claims relating to merger consideration.

We work with clients to tailor the representation to their needs. We solve problems efficiently and effectively by providing integrated representation. Our team handles every aspect of litigation, including initial filings, strategic correspondence, motion practice, discovery, trial and appeal. Through communication and collaboration, we understand client goals and business objectives. We recognize that litigation is expensive and disruptive, so we strive to resolve disputes as quickly, economically and favorably as possible. We narrow plaintiffs' allegations, limit costly discovery and customize our representation to the precise needs of the case. We develop and execute winning strategies.

Representative Securities and Derivative Litigation Experience

- Represented the independent board members of a prominent mutual fund group in a securities class action filed in New York and won dismissal of all claims, including Section 10(b) fraud and Section 20 control person liability claims, and Delaware state law derivative claims for breach of fiduciary duty. *Youngers v. Virtus Investment Partners* (S.D.N.Y.)
- Defending a publicly held regional bank and its board of directors against an attempt to enjoin the shareholder vote on the acquisition of a privately held regional bank. Successfully negotiated a settlement on favorable terms to prevent delaying the consummation of the merger. *Sciabacucchi v. Guaranty Bancorp* (Colo.)
- Obtained dismissal with prejudice of all claims against our client, a publicly traded executive services firm, at the motion-to-dismiss stage. The court dismissed claims under sections 10(b) and 20(a) of the Securities Exchange Act that followed a salacious article about the company's management and a significant drop in the price of the company's stock. *Lopez v. CTPartners Executive Search Inc.* (S.D.N.Y.)
- Represented the former chairman, CEO and founder of an energy company in a consolidated securities class action filed in Houston, alleging fraud arising from financial restatements and a secondary preferred stock offering. Also advised the client in a related bankruptcy proceeding. *Miller v. Global Geophysical Services, Inc.* (S.D. Tex.)
- Represented an investment bank whose partner was accused of providing fraudulent marks in a civil securities class action alleging securities fraud in connection with the valuation of a UK hedge fund. *Marylebone PCC Ltd. – Rose 2 Fund v. Millennium Global Inv., Ltd.* (S.D.N.Y.)
- Represented Denbury Resources in a class action securities litigation relating to the merger consideration in Denbury's \$4.5 billion merger with *Encore Acquisition Corp. Bensinger v. Denbury Resources, Inc.* (E.D.N.Y.)
- Represented the trustee, M&T Bank, in a civil case alleging fraud and breach of fiduciary duty involving pooling and servicing agreements of CDO tranches. *Ellington Credit Fund v. Select Portfolio Servicing* (S.D.N.Y.)
- Represented the board of directors of a multinational outsourcing company in a derivative action, related to options backdating, in Delaware State Court. *Susan M. Gregory v. Kenneth D. Tuchman, et al.* (Del. Ch. Ct.)
- Represented a designer and developer of high-tech energy products and the company's executives in a securities fraud class action. Successfully obtained dismissal. *Medis Investor Group v. Medis Technologies, Ltd.* (S.D.N.Y. 2d Cir.)
- Represented the CFO in a civil derivative action against the NYFIX board of directors and officers for securities fraud arising from alleged stock options backdating, in both federal and state actions. In re *NYFIX, Inc. Derivative Litigation* (D. Conn.)
- Represented the former CEO and COO of a Fortune 500 multinational construction firm in defense of a shareholder class action in the Southern District of New York. Successfully negotiated a settlement with the plaintiffs and the company's D&O insurer that cost the executives nothing. *Welmon v. Chicago Bridge & Iron Co., NV, et al.* (S.D.N.Y.)

SEC, CFTC and FINRA Examinations, Investigations and Enforcement Proceedings

We have represented hundreds of financial institutions, public companies and senior executives in SEC, CFTC and FINRA regulatory examinations, investigations and enforcement proceedings throughout the country. We often successfully assist individuals and firms that receive Wells notices in avoiding SEC enforcement actions. Many of us are former regulators and government attorneys, and we draw on our personal experience, relationships and knowledge regarding the legal tactics of government regulatory agencies to proactively chart the appropriate course of action for clients under investigation. When a client faces a government inquiry or investigation, our calculated strategic approach seeks to eliminate or minimize charges with the SEC, CFTC and FINRA.

As Third-Party Examiner in several FINRA settlements requiring broker-dealers to conduct a remediation process for eligible customers, we oversaw the remediation process, advised the firms on settlement compliance and prepared a final report for FINRA assessing the firms' performance of their obligations.

The SEC's and CFTC's enforcement power has expanded and intensified through the enactment of legislation like the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). We are attuned to this climate of heightened scrutiny, and keep ahead of the curve on new laws, policies and trends.

Representative Cases

- Representing two former executives of a publicly traded company that provides energy efficiency services to utilities, who were under investigation by the SEC for their role in the company's alleged accounting fraud that resulted in a restatement of their financials. The firm successfully negotiated settlements with the SEC for both individuals. The SEC agreed to drop all scienter-based fraud charges against one of the executives, and the other executive did not have to pay civil penalties or disgorgement.
- Represented a for-profit education company in connection with a NYAG investigation alleging consumer fraud concerning the way graduate job placements were counted and disclosed. Successfully negotiated a multimillion-dollar settlement that helped set the standard for the industry.
- Represented an investment adviser being sued by the SEC in federal court in Columbus, Ohio, for alleged violations of the Custody Rule and other Investment Advisers Act violations. Also negotiated the appointment of a receiver for the sale of the business to minimize the client's financial exposure. The civil action was settled without any admissions of wrongdoing.
- Represented a Latin American investment fund in an insider trading investigation by the SEC's Los Angeles office concerning the fund's purchases of a public company's stock and options prior to a tender offer announcement. Negotiated testimony and document production in such a way as to successfully close the matter without action.
- Represented a hedge fund and commodity pool operator in an investigation by the SEC headquarters and the CFTC alleging cornering of the market in Treasury futures and false statements made to market regulators. We relied on our understanding of the sophisticated nature of the hedge fund industry and markets to ensure that no manipulation charges were brought against the client in conjunction with the case's settlement, based solely on books and records violations.
- Represented a Midwestern investment bank and underwriter in regulatory examinations and investigations brought by the SEC and FINRA regarding the issuance of \$170 million in bonds exempt from registration. Obtained a favorable settlement for our client in less than three months to avoid the need for senior officers and principals to provide expensive and time-consuming testimony and evidence.
- Represented a Midwestern public corporation during a three-year investigation by the SEC's Chicago office alleging violations of SOX 404, Regulation FD, and stock manipulation by a hedge fund. Worked with the corporation's general counsel to ensure that no charges were brought against the company or its officer (after a Wells notice).
- Fought unfounded accounting fraud charges against a former senior vice president of a Fortune 500 telecommunications company in an SEC enforcement action in the District of New Jersey. Won summary judgment dismissing all the fraud charges – an unprecedented pretrial defeat against the government.
- Represented a hedge fund in an SEC enforcement action in the Southern District of New York alleging insider trading. Successfully negotiated a favorable settlement after depositing the SEC's expert and gaining admissions that his damages calculations were flawed.
- Represented a FINRA-regulated broker-dealer client and its parent (and executives) in a successful pre-complaint settlement after receipt of Wells Notices charges by FINRA arising out of a multimillion-dollar mini-maximum offering and the breaking of escrow relating to same, including a disposition of no charges against the individuals.

Regulatory and Compliance Legal Services for Regulated Entities

Our team has the depth of experience required to effectively manage the legal services required by the financial services industry. We represent registered broker-dealers and their associated persons, hedge funds and their managers, and exchanges.

We serve as a trusted advisor and partner for our broker-dealer and hedge fund clients. We understand the interplay between and among wealth and money managers, prime brokers, investors, administrators, banks, and other securities industry service providers. We advise and counsel our clients in connection with their marketing materials, investment and operating strategies, and management agreements. We represent our clients before Congress and monitor congressional committees charged with supervising and regulating their activities.

Clients turn to us for assistance in crafting policies and procedures, and compliance and employee manuals. We advise on internal controls, regulatory filings, regulator examinations, and compliance with the 1934 and 1940 Acts. We skillfully handle all forms of SEC and CFTC inquiry, including those arising from allegations of market abuses, fund valuation issues and insider trading.

As part of the practice, we provide advice to investment banks, hedge funds, wealth managers, prime brokers, custodian banks, correspondent clearing firms and electronic trading platforms. Members of our team have counseled domestic and foreign banks, insurance companies, investment banks, alternative trading systems, broker-dealers, market makers and exchange platforms on market structure, registration, corporate governance and compliance matters.

Representative Experience

- Represent exchanges, alternative trading systems, dark pools, broker-dealers, market makers, and high-frequency trading firms and specialists before the SEC and other self-regulatory organizations, including FINRA.
- Represent clients including industry associations on Capitol Hill in the preparation of testimony and the formation and management of political action committees.
- Represent clients seeking exemptions, interpretive guidance and “no action” relief concerning novel securities issues, and the creation and distribution of products or services proposed by our clients.
- Advise hedge fund managers, family offices and funds of funds on compliance with various regulatory issues, including the Custody Rule requirements, JOBS Act capital-raising activities, ERISA and fiduciary compliance, insider trading policies and the creation of information barriers, preparation for SEC examinations, and response to regulatory inquiries.

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