

## **BROKER-DEALER AND INVESTMENT ADVISOR REGULATORY ENFORCEMENT, DISPUTES AND INVESTIGATIONS**

### **OVERVIEW**

Working with Fortune 500 broker-dealers, their executives and relevant teams, to small independent investment advisors, financial planners, insurance agents and companies, BCLP guides clients in the securities industry through an ever-changing regulatory landscape. Providing thoughtful counsel and, when necessary, strong advocacy in disputes to help them achieve their business objectives, our clients regularly turn to us for the most complicated and highest-exposure matters.

Our securities industry clients have access to a deep bench of professionals with the experience necessary to efficiently and effectively bring matters to a close. Our objective is to make sure we understand the business model of each of our securities industry clients and tailor our representation to achieve optimum results consistent with their business goals.

Even with careful front-end compliance and regulatory planning, industry participants consistently face inquiries, investigations, and enforcement actions by government agencies such as the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the Consumer Financial Protection Bureau, and self-regulatory organizations (SRO) such as the Financial Industry Regulatory Authority (FINRA). When investigations or enforcement actions arise, clients regularly count on our team to provide outstanding representation in all aspects of the investigation and enforcement process at both the federal and state level. Our team includes the former Deputy Regional Chief Counsel for the Midwest Region of Financial Industry Regulatory Authority, Inc. (FINRA), a former Assistant Director in the Division of Enforcement at the Securities and Exchange Commission (SEC), a former Assistant United States Attorney who handled significant white-collar matters, and a former in-house counsel for a major broker-dealer. We not only have years of experience in representing broker-dealers and investment advisors, we also have established longstanding relationships with the regulators.

We also routinely defend brokerage firms, individual brokers, investment advisors and other financial industry clients in an array of complex disputes, including class actions, FINRA arbitrations, and other proceedings across the country. We regularly handle claims concerning allegations of “selling-away,” unauthorized trading, fraud, inadequate supervision, money-market sweeps, unsuitability, churning, and violations of state and federal securities laws, including state Blue Sky laws, the Securities Exchange Act of 1934, the Securities Act of 1933, and the Investment

Advisors Act of 1940. We also represent clients in intra-industry disputes such as raiding and U-5 defamation claims.

Our breadth of knowledge and experience in the financial industry means our clients don't have to waste time bringing us up to speed on the basics. We regularly defend claims arising from investments in a wide variety of financial products, including stocks, bonds, options, real estate investment trusts (REITs), market linked notes and CDs, mutual funds, structured products, variable annuities, fixed annuities, equity indexed annuities, auction rate securities, asset protection trusts, and private placements.

## MEET THE TEAM



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## **RELATED PRACTICE AREAS**

- Banking & Finance Disputes
- International Arbitration

## **EXPERIENCE**

### **Regulatory and Compliance Issues**

Our attorneys have an array of experience handling day-to-day broker-dealer and investment advisor regulatory and compliance issues with firms of all sizes and types. We have a team of attorneys dedicated to the representation of broker-dealers and RIAs in all facets of the business. Our attorneys include a former Deputy Regional Chief Counsel for the Midwest Region of FINRA, a partner who served at the SEC in the agency's home office in Washington, D.C. including seven years as Assistant Director in the Division of Enforcement, an attorney who served for more than 12 years as an in-house litigation and regulatory counsel for a major broker-dealer as well as a number of other attorneys who each have years of experience representing broker-dealers.

Our experience includes the handling of investigations, enforcement actions and litigation conducted or initiated by the SEC, FINRA and state regulatory agencies. We also have significant experience counseling broker-dealers with respect to day-to-day regulatory issues as well as advising broker-dealers on regulatory matters arising in connection with acquisitions. Our regulatory experience includes matters involving net capital issues, licensure issues, U-4/U-5 and Form B/D

reporting issues, trade execution issues, operational issues, self-reporting issues, AML issues, supervisory issues and a wide array of product issues.

With respect to specific products, in recent years we have handled significant regulatory matters involving auction rate securities, non-traditional ETF's, synthetic CDO's, structured products and variable annuities. Because we have a team of attorneys dedicated to representing a wide array of broker-dealers, we are attune to both new regulatory developments as well as new developments in the conduct of the business of broker-dealers. Our objective is to make sure we understand the business model of each of our broker-dealer clients and tailor our representation to achieve optimum results consistent with the business goals of our clients.

## **SEC, SRO and State Investigations and Litigation**

- Successfully defended broker-dealer in SEC investigation of firm-wide best execution of Nasdaq opening trades. Investigation closed with no action against firm.
- Successfully defended broker-dealer in SEC investigation of firm-wide supervisory practices following alleged misappropriation of customer funds. Investigation closed with no action taken.
- Represented broker-dealer in SEC investigation into whether it entered into linked swaps that it knew had no economic purpose to aid and abet client's fraudulent accounting scheme. SEC brought no charges against broker dealer.
- Represented multiple broker-dealer employees, including head of the CDO structuring desk, global head of market risk, and members of management in SEC and New York Attorney General investigations into originating, valuing and trading Collateralized Debt Obligations backed by subprime mortgages.
- Represented mutual funds portfolio manager in an SEC investigation into possible insider trading in one of the funds.
- Represented employee of major broker-dealer in connection with SEC investigation into possible misrepresentations by the division that provided advisory services to high net worth and institutional clients.
- Represented employees of broker-dealer at trial before administrative hearing officer on SEC charges relating to alleged improper redemption fees for unit investment trusts. Case dismissed.
- Represented mutual fund employee in SEC investigation into violations stemming from the receipt of gifts and gratuities.

- Representing broker-dealer in FINRA inquiry into compliance with procedures concerning holding customer funds.
- Successfully defended broker-dealer in FINRA investigation following receipt of Wells Notice challenging mark-ups on fixed income products. Investigation closed with no action against firm.
- Obtained similar successful result for broker-dealer in NASD investigation after Wells Notice challenging suitability of firm-wide sales of B and C classes of mutual funds.
- Defended broker-dealer in NASD and state investigations of alleged firm-wide incentives for representatives to encourage customers to margin their securities portfolios. Negotiated settlement with NASD.
- Defended broker-dealer in SRO investigation into possible violations of the collar restrictions by its index arbitrage trading desk.
- Successfully persuaded Illinois trial and appellate courts to quash subpoenas issued by the Illinois Department of Securities to individual brokers seeking personal financial records as part of a routine audit.

### **Broker-Dealer and Investment Advisor Litigation**

- Represented broker-dealer in FINRA arbitration involving suitability and misrepresentation claim in excess of \$600,000 brought by institutional investor for losses associated with auction rate securities.
- Representing broker-dealer in state securities law and common law claims by five Wisconsin school districts related to alleged fraud in connection with a \$200 million investment in synthetic collateralized debt obligations (“CDO’s”)
- Represented broker-dealer in federal court trial and on appeal, defeating claims alleging it took on status as ERISA fiduciary to profit sharing plan and breached ERISA duties.
- Successfully handled numerous arbitration claims for broker-dealers before NASD, NYSE and FINRA panels on issues involving suitability, churning and selling away. Some matters involved multi day and multi week proceedings, and multimillion dollar claims. Examples: in week-long NYSE arbitration, defeated a multimillion dollar suitability claim; in a multi-day NASD hearing, panel rejected investor’s suitability claim arising out of a \$9 million leveraged bond arbitrage investment; and successfully defended top-four broker-dealer and financial advisor from negligent investment and tax advice claims in connection with exercise and disposition of employee incentive stock options.

- Representing broker-dealers in employment-related litigation in state and federal courts, including class and collective actions, discrimination, breach of employment contract, ERISA, and other compensation and bonus issues.
- Representing numerous broker-dealers in trade secret and unfair competition cases in federal and state courts, including temporary restraining order and preliminary injunction hearings involving customer and employee raiding and misappropriation of trade secrets.
- Represented Securities Industry Association in amicus curiae brief to U.S. Supreme Court in *Lampf v. Gilbertson*.
- Represented broker-dealer in connection with nationwide litigation, including class action, arising out of the sale of oil and gas limited partnerships.
- Represented SII Investments, Inc. in NASD arbitration involving “selling-away” with compensatory damage claim in excess of \$500,000. Award for Respondents at close of Claimants’ case.
- Represented large broker dealer in a FINRA arbitration involving “selling-away” with compensatory damage claim of approximately \$200,000 plus pre-judgment interest and attorneys’ fees. Award for Respondent.
- Represented broker dealer in FINRA arbitration involving compensation dispute related to payment of bonus and termination. Compensatory damage claim of over \$350,000 plus statutory treble damages, attorneys’ fees and costs.
- Defended broker dealer against breach of contract and fraud claims in excess of \$50 million related to sale of NASCAR team.
- Represented broker-dealer in litigation arising from a \$40 million Ponzi scheme operated by an elder care attorney unaffiliated with the broker-dealer. Successfully defended against federal and state RICO claims brought against the broker-dealer on the basis of allegations that a number of its registered representatives conspired with the perpetrator of the scheme.

### **Class Actions involving Broker-Dealers and Financial Services Firms**

- Represented large broker-dealer in putative class action alleging that broker-dealer breached alleged contractual and fiduciary duties by not forwarding securities class action settlement notices to customers who held the subject securities in their accounts during the relevant settlement periods. The plaintiff purported to bring a nationwide class action on behalf of all of the broker-dealer’s customers who allegedly would have participated in the class action settlements. Case dismissed.

- Represented Fortune 500 broker-dealer in litigation claiming violations of federal and state securities laws resulting from the collapse of the Auction Rate Securities market. Compensatory damage claim in excess of \$225 million. Case dismissed.
- Represented financial services company in class action brought on behalf of IRA account holders who invested in an alleged \$55 million Ponzi scheme operated by fund manager Edward Stein, convicted of securities fraud.
- Represented broker-dealer in litigation claiming violations of federal and state securities laws resulting from the collapse of the Auction Rate Securities market. Case dismissed.
- Representing broker-dealer in class action alleging state law claims of breach of fiduciary duty related to mutual fund revenue sharing. Compensatory damage claim in excess of \$400 million. Settlement approved.
- Represented broker-dealer in class action alleging violations of federal and state securities laws related to variable annuities. Case dismissed.
- *Clancy-Gernon Funeral Homes, Inc. et. al. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (S. D. Ill.) Representing broker-dealer in case alleging violations of federal and state funeral contracts. Compensatory damage claim in excess of \$50 million.
- *Mandelbaum v. Fiserv, Inc. et al.* (D. Col.) Represented financial services company and various other entities in claims brought as a class action arising out of the multi-billion dollar Ponzi scheme operated by Bernard Madoff. Case dismissed.
- *Kurz v. Fidelity Management & Research Company* (S.D. Ill.). Defended major mutual fund in putative securities fraud class action.
- *In re H&R Block Securities Litigation* (W.D. Mo.). Represented financial services defendant in class action alleging securities law violations.

## RELATED INSIGHTS

Events

May 09, 2024

### **BCLP Hosts 12th Annual Regulatory Roundtable**

Insights

Apr 23, 2024

### **Regulators Impose Extraordinary Fine Amounts in Recent Off-Channel Communications Enforcement Actions**



Insights

Mar 18, 2024

## **SEC Adopts Expanded Exchange Act Dealer Rules: What Do the New SEC Rules Mean for DeFi?**

Insights

Feb 23, 2024

## **FinCEN proposes AML/CFT rules for investment advisers**

Events

May 09, 2023

## **BCLP Hosts 11th Annual Regulatory Roundtable**

Insights

Mar 29, 2023

## **FDI Regulation in the US, UK, France & Germany**

The regulation of foreign direct investment (“FDI”) has become an increasingly important feature of the regulatory landscape for investors. Globally, there is a trend towards greater FDI restrictions although the degree and nature of regulation varies significantly across jurisdictions. In the below we highlight key aspects of FDI regulation in the United States (“US”), United Kingdom (“UK”), France and Germany. Contents Types of deals reviewed in the US, UK, France and Germany Notification process in the US, UK, France and Germany Sanctions for non-compliance in the US, UK, France and Germany Recent trends and developments in the US, UK, France and Germany Other points for investors to consider in the US, UK, France and Germany

Insights

Oct 20, 2022

## **Implications of FINRA’s Recently Released 2022 Sanction Guidelines**

Key Takeaways: Last December, BCLP’s Financial Services Disputes and Investigations Team issued an alert discussing the Sanction Guidelines issued by FINRA on October 20, 2021. A copy of that alert can be found [here](#). Among other things, we noted that: Previous FINRA Sanction Guidelines failed to recommend the largest monetary sanctions for sales practice violations and other conduct that arguably caused the most significant impact to investors; and FINRA regularly negotiated for, and often received, settlements that largely exceeded the ranges outlined in its prior published Sanction Guidelines. FINRA’s recently published Sanction Guidelines for 2022 surprisingly addresses these two previous critiques. See FINRA Regulatory Notice 22-20 which introduces the most recent Sanction Guidelines. A copy can be found [here](#). One issue the latest version of the Sanction Guidelines raises for debate is the r...

Events

Sep 14, 2022

## **BCLP hosts 10th annual Regulatory Roundtable**

Insights

Jun 06, 2022

## **The SEC’s Continued Efforts to Dive Feet First into Climate Control and ESG Initiatives**

On May 25, 2022, the U.S. Securities and Exchange Commission (“SEC”) provided notice of proposed rulemaking aimed at Investment Advisers (“Advisers”), Investment Companies and Business Development Companies (collectively “Funds”) that market themselves as incorporating environmental, social and governance (“ESG”)

factors into their investment selection process or overall investment strategies. The public comment period will be open for 60 days following the SEC's announcement. The proposed rules seek to standardize the categorization of ESG strategies and require Advisers and Funds to provide more specific disclosures in their fund prospectuses, annual reports, and brochures, as well as enhanced ESG reporting requirements on Forms N-CEN and ADV Part 1A, with the quantity of disclosures commensurate with the standardized categorizations. The SEC's proposed rules follow a related announcem...