

Regulated Financial Entities: Regulatory Counseling, Enforcement, and Litigation

WINSTON
& STRAWN
LLP

Winston & Strawn offers legal services to broker-dealers and other regulated entities in the financial services industry. Our multidisciplinary team of attorneys has extensive experience providing regulatory counseling, enforcement defense, and litigation services to broker-dealers, banks, investment advisers, exchanges, and entities regulated by virtually every U.S. regulatory and enforcement agency, as well as self-regulatory organizations like FINRA. Our broker-dealer clients include major national and regional firms, full-service firms, alternative trading systems, clearing firms, inter-dealer brokers, introducing firms, discount firms, limited purpose brokers, and specialty boutiques. Our team includes litigators with significant experience working as regulators and as in-house counsel at financial institutions, as well as more than a dozen former prosecutors from U.S. Attorney's Offices.

Our attorneys counsel broker-dealers and other entities in the financial services industry regarding matters involving regulatory and compliance, customer disputes, and intra-industry disputes. We are a go-to firm for handling both large-scale and small-scale internal investigations within financial institutions and have experience in managing inspections, examinations, and regulatory inquiries related to the SEC and FINRA, among other regulators. We have successfully identified, responded to, and directed a course of action to keep our clients in the strongest possible positions. Our team is experienced in defending broker-dealers in customer disputes and intra-industry disputes in FINRA arbitration and state and federal courts, with a special focus on handling claims for sales practice violations, failure to supervise, misappropriation and theft, and insider trading.

In addition to our broker-dealer lawyers, Winston offers a strong bench Securities Litigation attorneys who have experience handling complex litigation involving shareholder derivative suits and other actions stemming from mergers, acquisitions, and proxy statements.

REPRESENTATIVE CLIENTS

AIG/Chartis
Ambac Financial
AXA Equitable
Bankers Life
Charles Schwab & Co.
CIBC World Markets
Citadel LLC
Conseco Life Insurance Co.
COR Clearing
Credit Suisse
Deutsche Bank
Discover Financial Services
Gilder Gagnon Howe & Co.
Goldman, Sachs & Co.
Guggenheim Partners
Household International
Jane Street Capital
JPMorgan Chase & Co.
Magnetar Capital
Morgan Stanley
Neuberger Berman
Nomura Securities
Nasdaq Private Markets
Petra Capital Management
Raymond James
Tradition North America
Two Sigma Investments
US Bancorp

THE LEGAL 500 2017

“Winston & Strawn LLP’s team provides **‘robust advice’** to a diverse array of **financial services clients, including banks, broker-dealers, hedge funds and insurance companies.**”

Regulatory/Compliance

Our team provides U.S. broker-dealers and banks with advice on regulatory and transactional matters, including advice on federal and state laws, self-regulatory rules, and the preparation and response to regulatory inquiries, examinations and inspections. Frequent areas of focus include: insider trading; SRO registration and membership issues; anti-money laundering, including drafting and filing of suspicious activity reports, and compliance with regulations of the Office of Foreign Assets Control (OFAC); capital requirements; customer protection; sales practices; research; trading and trade reporting; distribution of securities; pay-to-play restrictions; supervision; FINRA's corporate financing rules; and soft dollars. Other areas of focus include the preparation of supervisory and compliance procedures and drafting and negotiating clearing, account, prime brokerage, and other industry agreements. Additional areas of experience include the provision of due diligence and regulatory counsel in connection with acquisitions of broker-dealers and other regulated financial entities.

Enforcement/Litigation

Our team handles enforcement and litigation matters for broker-dealers, banks, investment advisers, and investment companies. We represent clients in litigation and in regulatory inquiries involving issues arising under the Securities Act of 1933, the Securities and Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, various state blue-sky statutes, the rules of the Municipal Securities Rulemaking Board, and SRO rules before entities including the SEC, FINRA, the FTC, the Department of Justice (DOJ), the Consumer Financial Protection Bureau (CFPB), state securities regulators, and foreign securities regulators.

Complex Financial Instrument Litigation

Winston & Strawn represents issuers, underwriters, trustees, investment funds, corporate officers and directors, other professionals, and major investors in disputes arising out of complex securities, financial instruments, and derivatives transactions, including esoteric equities, corporate debentures and other debt instruments, options, warrants, futures, hybrids, government securities, structured financial products, credit default and other swaps, foreign exchange (FX) forward transactions and other trades governed by ISDA

master agreements, collateralized debt obligations (CDOs), mortgage-backed securities (MBS), residential mortgage-backed securities (RMBS), synthetic transactions, and other exotic derivatives.

Shareholder Derivative Suits/Class Actions

Winston & Strawn defends clients in "stock drop" and other class actions brought by shareholders and other parties alleging securities fraud and related claims arising out of IPOs and other offerings, "earnings surprises," financial restatements, government investigations, product failures and other bad news or "corporate trauma," including obtaining dismissals under the heightened pleading standards of the PSLRA and recent U.S. Supreme Court jurisprudence and successfully opposing class certification by challenging the applicability of the "fraud-on-the-market" presumption and on various other grounds. The firm also represents companies, boards, and special litigation committees in shareholder and other derivative suits and related actions.

M&A/Proxy Litigation

Winston & Strawn represents private and public companies, directors, board committees, investors, private equity firms, and financial advisors in corporate control litigation, in hostile takeover litigation (successfully representing both hostile acquirors and target boards); proxy contests (successfully representing both incumbent boards and insurgent investors); defense of expedited shareholder class actions seeking preliminary injunctions for alleged breaches of fiduciary duty, disclosure, and/or federal proxy rules violations; successfully mounting and fending off challenges to defensive devices (poison pills, break-up fees, no-shops, and other "lock-ups"); "busted deal" (MAC/MAE) litigation; and post-closing disputes relating to earn-outs, purchase price/working capital adjustments, and indemnification for breaches of representations and warranties.

A recent representative sample of our broker-dealer cases includes:

- Representation of an independent securities clearing firm in connection with eight matters involving FINRA members in disputes with other members, customers, and other associated persons at arbitration hearings across the nation. These cases involve alleged Ponzi schemes, regulatory compliance, and due diligence, among other broker-dealer issues.
- Attorneys now with Winston & Strawn represented a California-based securities trading firm in an SEC enforcement action in the U.S. District Court for the Central District of California alleging violations of Rule 105 of Regulation M.
- Represented a major investment research company in a year-long SEC investigation related to incorrect data that our client published with respect to a mutual fund that overstated the fund's returns. After several Wells submissions, the SEC informed our client that it was not proceeding with any action and closed the investigation.
- Attorneys now with Winston & Strawn convinced the SEC to take no enforcement action against a Fortune 100 financial services company following an investigation for failure to supervise an employee who embezzled customer funds in a high-profile matter.
- Representation of several senior brokers and Raymond James Morgan Keegan in multiple investigations conducted by the DOJ and SEC, as well as customer arbitrations for alleged insider trading. Winston was successful in avoiding charges by the DOJ or SEC and the firm won every arbitration on behalf of our clients.
- Representation of a clearing broker, in settling a FINRA enforcement action as well as the ongoing management of various regulatory inquiries, including a material associated person review by the SEC; ongoing scrutiny by FINRA's MAP Review; FINRA's Risk Oversight and Operational Regulation (ROOR) and FINRA's sales practice examination group. Winston helped establish and execute a strategy designed to minimize ongoing tensions between FINRA and the client, which strategy drew upon a substantive understanding by Winston attorneys of the examination process generally and across a number of substantive areas, including the clearing function, the net capital rule, the customer protection rule and the MAP-related rules in particular.
- Representation of a CBOE member firm in an enforcement action relating to the failure to register a supervisory principal.
- Representation of a broker-dealer in connection with a FINRA enforcement action involving possible violations of Regulation SHO.
- An attorney now with Winston & Strawn represented a CBOE market maker in enforcement actions relating to the failure to provide and maintain a two-sided 100-share quote in its remote market maker assignment.
- An attorney now with Winston & Strawn represented a brokerage firm owned by a leading European bank in an enforcement matter involving trade reporting. The matter was dismissed.
- In connection with the acquisition by a private equity firm of a leader in the mortgage technology industry, Winston & Strawn provided written analysis of whether services to mortgage originator, including hedging of mortgage loan originations with "to be announced" positions in mortgage pass-through securities, required federal or state registration as a broker-dealer, investment adviser or was otherwise subject to regulation by the CFTC.

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