

GIBSON DUNN

Practice Group Overviews:

Anti Money Laundering

Financial Institutions

Securities Litigation

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Anti-Money Laundering Practice


Lawyers at Gibson, Dunn & Crutcher are recognized as leaders in providing advice to financial institutions and other businesses on issues related to compliance with anti-money laundering and economic sanctions laws and regulations and the development of global and risk-based anti-money laundering compliance programs.

The Anti-Money Laundering practice provides legal and regulatory advice to all types of financial institutions and nonfinancial businesses with respect to compliance with federal and state anti-money laundering laws and regulations, including the U.S. Bank Secrecy Act as amended by the USA PATRIOT Act. We represent clients in criminal and regulatory government investigations.

We have developed extensive knowledge and broad anti-money laundering experience. The group's members have experience as government lawyers with the Department of the Treasury, the U.S. Department of Justice (DOJ), the U.S. Securities and Exchange Commission (SEC), and the U.S. Attorneys' Offices, as well as private practitioners.

Our practice includes advising U.S. and global banks, securities broker-dealers, mutual funds, investment advisors, private equity funds, insurance companies, money services businesses, financial technology companies, casinos, other financial services businesses, and multinationals on how to comply with Bank Secrecy Act and anti-money laundering laws and regulations. We assist financial institutions and businesses in developing, enhancing and implementing enterprise-wide anti-money laundering compliance programs, including customer due diligence and enhanced due diligence, suspicious activity identification and reporting, and currency transaction reporting policies, procedures and internal controls.

We regularly provide legal and regulatory advice with respect to the development, implementation and enhancement of risk-based enterprise-wide anti-money laundering compliance programs, including drafting Customer Identification Program (CIP), Customer Due Diligence (CDD), and Enhanced Due Diligence (EDD) policies and procedures, and policies, procedures and internal controls that are reasonably designed to ensure compliance with suspicious activity and currency transaction reporting requirements; wire transfer and other recordkeeping requirements; and economic sanctions laws and regulations administered and enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC). In matters involving anti-money laundering and sanctions, we work closely with partners in our International Trade Practice Group's Economic and Trade Sanctions team.



When Bank Secrecy Act, anti-money laundering and OFAC issues arise in the course of a regulatory examination, we help financial institutions respond to the regulators and address their criticisms. We also advise clients in connection with regulatory enforcement actions before the federal bank regulators, state regulatory authorities, including the New York State Department of Financial Services (DFS), the Treasury Department's Financial Crimes Enforcement Network (FinCEN), the IRS, the SEC, the Financial Industry Regulatory Authority (FINRA), and the Nevada Gaming Commission, including assisting financial institutions in taking remedial actions.

We represent clients in connection with federal and state criminal money laundering and Bank Secrecy Act investigations and prosecutions, including those involving the DOJ, the U.S. Attorneys' Offices, and the New York County District Attorney's Office. The group also conducts internal investigations involving money laundering and Bank Secrecy Act violations for a wide range of clients in the financial services industry and companies with multinational operations.

In connection with mergers, acquisitions and underwritings, we conduct due diligence reviews for compliance with U.S. and applicable local anti-money laundering, OFAC and other economic sanctions laws and regulations, the U.S. Foreign Corrupt Practices Act (FCPA), and non-U.S. anti-bribery laws.

We provide training on all aspects of anti-money laundering and Bank Secrecy Act laws, regulations and requirements, procedures, and current schemes and trends.

Recent representations include:

- Represented national banks in connection with investigations regarding U.S. Bank Secrecy Act/anti-money laundering and OFAC compliance programs, as well as other potential regulatory and criminal issues, involving the banking regulators, DOJ, and OFAC.
- Represented foreign banks and Boards of Directors in connection with regulatory actions by the Federal Reserve Board and New York Department of Financial Services.
- Represented non-bank financial institutions in connection with Department of Justice criminal investigations and FinCEN regulatory investigations.
- Represented individuals in connection with Department of Justice criminal investigations.
- Represented broker-dealer in connection with regulatory investigation by the Financial Industry Regulatory Authority (FINRA).
- Conducted internal investigations for financial institutions and multinational companies involving potential money laundering allegations.
- Represented clients in criminal and civil asset forfeiture matters.
- Represented a UK bank group and its U.S. operations in connection with an enforcement action by the Federal Reserve Board, DFS, and other state banking regulators relating to deficiencies in the UK group's consolidated U.S. Bank Secrecy Act/anti-money laundering and OFAC compliance programs,

including correspondent banking and other CDD and suspicious activity reporting procedures, and Board and management oversight of the U.S. operations, and to assist the U.S. operations in enhancing their Bank Secrecy Act/anti-money laundering and OFAC programs. We also assisted in conducting a U.S. CDD remediation project.

- Represented an Edge corporation in connection with a written agreement entered into with the Federal Reserve Bank of New York arising out of deficiencies in the bank's Bank Secrecy Act program related to its foreign correspondent banking business, including with its EDD program and suspicious activity reporting procedures and monitoring systems, and assisted the bank in enhancing its CDD and suspicious activity monitoring and reporting policies and procedures.
- Represented an Asian bank in connection with regulatory actions by the Federal Reserve Board and DFS.
- Represented a U.S. bank in connection with a deferred prosecution agreement with the DOJ and enforcement actions by FinCEN and the Office of the Comptroller of the Currency (OCC) that involved the failure to maintain effective anti-money laundering and CDD programs, including with respect to Mexican casas de cambio, and to identify and file timely Suspicious Activity Reports (SARs). We also assisted the bank in enhancing its Bank Secrecy Act/anti-money laundering policies, procedures, and internal controls bankwide and in conducting a historical transaction review ("SAR lookback").
- Represented a U.S. bank in connection with a formal investigation and a consent cease and desist order entered into with OCC and a subsequent civil money penalty arising out of deficiencies in the bank's Bank Secrecy Act program, including with its correspondent banking CDD and suspicious activity reporting procedures, and in conducting a SAR lookback.
- Represented a small U.S. bank in connection with a civil money penalty assessed by the OCC and in responding to examination criticisms related to deficiencies in its Bank Secrecy Act/anti-money laundering program.
- Represented a leading global bank in connection with a DOJ grand jury, SEC investigation, and Swiss Attorney General investigation relating to money laundering issues.
- Represented U.S. broker-dealers in connection with enforcement actions by DOJ, SEC and FINRA.
- Represented a global money transmitter in connection with the assessment of civil money penalties by FinCEN and the New York State Banking Department related to deficiencies in SAR and CTR reporting.
- Represented a large traveler's check issuer in connection with the assessment by FinCEN of a civil money penalty for the late filing of SARs and in enhancing its Bank Secrecy Act/anti-money laundering program.
- Conducted an internal investigation and implemented a compliance program for a major accounting firm regarding alleged money laundering by the client's foreign subsidiary.

** Includes experience prior to joining Gibson Dunn*

Financial Institutions Practice


Gibson, Dunn & Crutcher's Financial Institutions Practice Group offers services in all disciplines, including across-the-board regulatory advice; transactional design, planning and execution; advocacy before U.S. regulatory agencies and Congress; representation in connection with criminal and regulatory enforcement actions; litigation counseling and defense; and strategic advice and crisis management.

Transactional work includes mergers and acquisitions advice; preparation of required applications to relevant bank regulatory agencies and negotiating with those agencies during the course of the approval process; and counseling on financial institution stock and debt issuances, including instruments compliant with the Basel III capital regime.

For M&A transactions, Gibson Dunn's specialty solutions teams permit us to be a one-stop shop on all relevant areas of heightened compliance risk. We perform comprehensive due diligence reviews to assess compliance with the U.S. Bank Secrecy Act (BSA) and other anti-money laundering laws and regulations, U.S. sanctions (OFAC, the Office of Foreign Assets Control), and anti-corruption laws such as the Foreign Corrupt Practices Act.

Regulatory advice includes counseling and representing U.S. and international banks and financial holding companies before U.S. federal and state regulatory agencies. We advise on compliance with all aspects of regulation mandated by the Dodd-Frank Act, including enhanced capital and liquidity standards, heightened corporate governance expectations and the Volcker Rule. Our derivatives regulatory lawyers, who have significant Commodity Futures Trading Commission expertise, handle the full range of issues raised by Title VII of Dodd-Frank.

We advise all types of financial institutions, including banks, securities broker-dealers, mutual funds, private equity funds, insurance companies and money services businesses, on compliance with U.S. federal and state anti-money laundering laws and regulations and OFAC requirements. Our combination of knowledge and skill permits us to anticipate potential problems before they become serious timing or deal issues. We are also adept at assisting clients in responding effectively to examination criticisms in these areas.




Our corporate governance specialists guide senior management, boards of directors and committees regarding board and committee structure and operations and enterprise-wide risk management, which has become a critical focus of regulatory attention under the Dodd-Frank Act.

Our group also represents financial institutions and their officers and directors in connection with a wide variety of U.S. federal and state investigations and criminal and regulatory enforcement matters. We have also been engaged to represent special board committees, including outside directors, in connection with these and similar proceedings.

We provide strategic advice on pending legislation before the U.S. Congress and regulatory and public policy issues being considered by bank regulators. Our capabilities include drafting proposed bill amendments, meeting with members of Congress and their staffs to generate support, commenting on pending regulatory proposals, and challenging finalized regulations in court.

Recent representations include:

- GE Capital in the sale of its retail deposit business to Goldman Sachs, the first expansionary transaction by a U.S. G-SIB approved by the Federal Reserve since passage of the Dodd-Frank Act.
- Grupo Financiero Ficohsa, in acquiring Citibank's retail banking and card operations in Honduras and Nicaragua.
- General Electric in connection with the sale of its Mexican equipment lending and leasing business to a Latin American private equity group.
- MetLife in its successful lawsuit challenging its designation as a systemically significant nonbank financial company by the Financial Stability Oversight Council.
- UBS AG and certain of its affiliates in a successful defense against claims by a customer of Bernie Madoff that UBS aided and abetted the fraud, causing damages of approximately \$2.9 billion.
- The Royal Bank of Canada Europe, Ltd. and RBC Capital Markets, LLC (RBC) in a successful defense against an action by five Wisconsin school districts and their affiliated trusts alleging that they were misled in the purchase of synthetic CDOs, which RBC had manufactured following its selection by co-defendant brokerage house Stifel Nicolaus.
- A U.S. bank holding company controlled by a non-U.S. bank group in connection with Section 165 enhanced prudential standards compliance and other bank regulatory issues.
- Wells Fargo Securities as underwriters for the SEC-registered capital and senior debt issuances of Wells Fargo.
- A significant U.S. bank holding company on its capital and senior debt issuances, periodic filings with the SEC, and corporate governance issues.
- A UK bank group and its U.S. operations in connection with an enforcement action by the Federal Reserve Board, the New York State Department of Financial Services, and other state banking regulators relating to deficiencies in the UK group's consolidated BSA/anti-money laundering and OFAC compliance programs.

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- A U.S. bank in connection with a deferred prosecution agreement with the U.S. Department of Justice (DOJ) and enforcement actions by the Financial Crimes Enforcement Network (FinCEN) and the Office of the Comptroller of the Currency that involved the failure to maintain effective anti-money laundering and customer due diligence programs.
 - U.S. broker-dealers in connection with money laundering enforcement actions by the DOJ, SEC and the Financial Industry Regulatory Authority (FINRA).
 - A major property and casualty insurance company in securing an amendment to the Terrorism Risk Insurance Act (TRIA) necessary to prevent TRIA from being applied in a way that would have significantly diluted the benefits of the program for the insurer.
 - Guided the uncleared swap margin bill to enactment into U.S. law, providing statutory certainty that nonfinancial end users are not subject to margin requirements for uncleared swaps.

Securities Litigation Practice

Gibson, Dunn & Crutcher is a recognized leader in defending and handling securities class action litigation, derivative litigation, M&A litigation, internal investigations, and investigations and enforcement actions by the SEC, DOJ and state attorneys general.

When a company and its directors and officers experience an unexpected crisis, they usually face a perplexing array of challenges. In these circumstances, there is no substitute for experience and integrated multi-disciplinary solutions. Gibson Dunn has handled hundreds of such cases and investigations and has a proven track record of successful results.

Our firm is consistently ranked as one of the top securities litigation practices in the United States. Many of our securities litigators have been recognized by publications such as *Chambers USA*, *The Legal 500*, Institutional Investor's *Benchmark Litigation Guide* and *The Best Lawyers in America*® as among the best nationally and in key jurisdictions such as New York and California.

Lawyers in Gibson Dunn's Securities Litigation Practice Group bring unparalleled experience to every matter. Our partners include nationally recognized securities class action defense counsel, as well as a number of former senior officials with the Securities and Exchange Commission, FINRA and the Department of Justice (including two former U.S. Attorneys).

Gibson Dunn knows that each case and investigation is unique and that the best possible outcome requires an assessment of the facts and issues, development of a sound strategy in collaboration with our clients, and, of course, successful execution of that strategy. Whether a headline-grabbing corporate takeover battle, a major financial restatement case, an SEC probe of insider-trading issues, or a government enforcement action that puts an individual's professional reputation and personal assets at risk, our securities litigators have the experience to achieve a successful outcome. Working with our White Collar, Securities Enforcement and Crisis Management groups, we offer integrated solutions to the most complex and challenging situations facing corporate America.

Accolades

- *U.S. News – Best Lawyers*® “Best Law Firms” named Gibson Dunn Law Firm of the Year for 2019 in Litigation – Securities. Only one law firm is recognized in each national practice area.
- *Benchmark Litigation* 2019 ranked Gibson Dunn in Tier 1 in the U.S. Securities Litigation category.

- BTI Consulting Group recognized Gibson Dunn as a Securities and Finance Standout in its BTI Litigation Outlook 2019 report.
- *The Legal 500 United States* 2018 ranked Gibson Dunn in Tier 1 in the Dispute resolution – Securities litigation: defense category.
- *Law360* named Mark Perry a 2018 Securities MVP, noting among his achievements the “precedent-setting Supreme Court win in a case about how the Securities and Exchange Commission selects its administrative law judges.”
- *Best Lawyers*® named Meryl Young as its 2018 Litigation – Securities “Lawyer of the Year” in Orange County.
- *Law360* named Gibson Dunn a 2017 Securities Practice Group of the Year, and a 2015 Securities All-Star for having been designated Securities Practice Group of the Year multiple times in the past five years.
- *Chambers USA* 2016 ranked Gibson Dunn in Tier 1 nationwide for Securities Litigation.
- *Law360* named Mark Kirsch to its 2016 list of MVPs, in the Securities category, which recognizes lawyers who have “distinguished themselves from their peers by securing hard-earned successes in high-stakes litigation, complex global matters and record-breaking deals.”
- *The Recorder* named Gibson Dunn the winner in the Securities category of its 2016 Litigation Department of the Year competition.
- *The Daily Journal* recognized five Gibson Dunn cases among its Top 2016 Verdicts in California, including *In re: Arrowhead Research Corporation Securities Litigation*, in which we convinced the court that complex scientific terminology had been accurate and not misleading, recognized among the Top Defense Results. The publication also recognized four Gibson Dunn cases among its Top 2015 Verdicts in California, including: *Depomed Inc. v. Horizon Pharma PLC*, in which we obtained a rare preliminary injunction against Horizon’s hostile takeover bid of Depomed, recognized as a Top Plaintiffs’ Verdict by Impact; and *In re Herbalife Ltd. Securities Litigation*, in which we obtained dismissal with prejudice of all securities fraud claims against Herbalife, recognized among the Top Defense Results.

Securities Class and Other Actions


Securities class actions pose a significant financial risk not only to companies, but also to their senior management and directors, who are frequently named as individual defendants. Gibson Dunn has a proven track record of obtaining favorable results in major securities class actions.

Representative matters:

- Representing AmTrust Financial Services, Inc., a Fortune 500 U.S. insurer, in an SEC investigation regarding the company’s investments in life settlement contracts, acquisition of Luxembourg captives, certain accounting practices, internal controls and other related matters. Gibson Dunn is also representing the company in litigation filed in the wake of its announced restatement of its financial

statements for 2014, 2015 and part of 2016, and naming AmTrust, its board, and senior executives as defendants. Three consolidated securities class actions filed by stockholders in the Southern District of New York allege violations of §§ 10(b) and 20(a) of the Exchange Act, Rule 10b-5, and §§ 11, 12(a)(2) and 15 of the Securities Act. A derivative action was filed in the New York State Supreme Court followed by two derivative suits in the District of Delaware, the latter consolidated and asserting violations of §§ 10(b), 20(a), and 29(b) of the Exchange Act, breaches of fiduciary duties, unjust enrichment, and corporate waste.

- Defending Facebook and its directors and officers in securities class actions and shareholder derivative lawsuits arising out of the misuse of user data by Cambridge Analytica.
- Representing the former CEO of a major public company in the alternative energy industry in connection with DOJ and SEC investigations and 35 individual and class-action lawsuits involving alleged financial reporting fraud. The matter arises from the collapse and bankruptcy of high-flying Silicon Valley solar provider, and in particular its use of “yieldcos,” a subsidiary public company structure used to apportion revenue.
- Representing Rio Tinto, one of the world’s largest publicly traded mining companies, in connection with an SEC enforcement action and a class action in the Southern District of New York against Rio Tinto plc, Rio Tinto Limited (collectively “Rio Tinto”), and a former CEO and CFO, arising from a multibillion-dollar impairment and write-down in connection with coal assets in Mozambique. The SEC asserts claims under the Exchange Act for violations of §10(b), Rule 10b-5, §13(a) and Rules 12b-20, 13a-1, and 13a-16, and §§13(b)(2)(A) and 13(b)(2)(B), as well as under §17(a) of the Securities Act. The litigation raises complex accounting and disclosure issues in connection with the assets’ acquisition and subsequent write-down. The purported class action against the same defendants alleges securities fraud claims based on the same underlying conduct.
- Representing Zillow and certain of its officers and directors in a putative federal securities class action and shareholder derivative litigation arising from the Company’s disclosures concerning an investigation by the U.S. Consumer Financial Protection Bureau. The cases are pending in Washington state and federal court.
- Representing major retail broker-dealer in a putative class action alleging violations of federal securities law and breaches of fiduciary duty in connection with transfers of clients from commission-based brokerage accounts to fee-based advisory accounts. The case is pending in the Eastern District of California.
- Representing underwriter defendants UBS Securities LLC, Deutsche Bank Securities Inc., Jefferies & Company, Inc., and KeyBanc Capital Markets Inc. in connection with litigation arising out of an offering of common stock by Amira Nature Foods. Plaintiffs claimed that the registration statements for the offering contained misstatements and material omissions about its basmati rice exports and alleged related party transactions, piggybacking on allegations made by a short-seller report. Judgment has been entered dismissing the case without prejudice.
- Representing Pfizer Inc. in connection with a securities class action brought against it and certain individual defendants, alleging principally that Pfizer concealed the cardiovascular risks associated with



the drugs Celebrex and Bextra. The alleged damages are \$10 billion. After the Southern District of New York excluded plaintiffs' loss causation and damages expert and granted summary judgment in favor of defendants, plaintiffs appealed and Gibson Dunn was retained to prepare and argue the appeal.

- Representing Vale S.A., one of the world's largest metals and mining companies and second largest in the Americas, in a multibillion-dollar securities fraud putative class action in the Southern District of New York stemming from the collapse of the Fundão Dam, reportedly one of the worst environmental disasters in Brazil's history. Plaintiffs allege that Vale made misstatements concerning such disparate topics as cost-cutting, safety efforts and environmental compliance. Gibson Dunn has secured dismissal of most of plaintiffs' claims, and a further narrowing of the case on a successful motion for reconsideration.
- Defending UBS AG, UBS Securities LLC, Mortgage Asset Securitization Transactions, Inc., and UBS Real Estate Securities, Inc. in an action brought by Royal Park Investments SA/NV for alleged misrepresentations and omissions in connection with purchases of residential mortgage-backed securities.
- Secured Seventh Circuit affirmance of the dismissal of a putative securities class action at the pleading stage on behalf of venture capital firm Kleiner Perkins Caufield & Byers and individually named defendants. The case arose when high-net-worth individuals and entities, who collectively invested approximately \$800 million in Fisker Automotive, an electric car manufacturer, filed putative securities fraud claims after Fisker filed for bankruptcy. The Seventh Circuit agreed with Gibson Dunn's arguments that the Illinois three-year statute of limitations for securities causes of actions governed the plaintiffs' claims—notwithstanding certain Delaware choice-of-law provisions—and that the statute began to run once publicly available information put the plaintiffs on notice of the alleged fraud.
- Secured dismissal for NASDAQ OMX PHLX LLC and International Securities Exchange, LLC of an action in the Northern District of Illinois brought by market-maker and specialist firms which, for more than five years, pursued legal action against numerous U.S. securities exchanges. Plaintiffs alleged that other firms mismarked orders sent to the securities exchanges, resulting in the plaintiffs being improperly charged "payment for order flow" fees by the exchanges on certain orders. Agreeing with the arguments of Gibson Dunn, which led the defense group in briefing the dismissal motion, the court concluded that the plaintiffs had challenged the exchanges' exercise of their regulatory duties in enforcing their payment for order flow rules. And either those claims were "preempted by the Exchange Act," or the exchanges were "completely immune from suit" for them.
- Represented a major department store retailer, and its senior executives and board members in securities class actions and shareholder derivative suits in Texas. The lawsuits were filed following the investment by an activist shareholder, the resulting management and business changes, the activist shareholder's showdown with the board of directors, and the sale of the shareholder's stake in the company. The lawsuits centered on the retailer's public statements regarding the company's projected liquidity and alleged assurances that it did not need additional financing, quickly followed by a nearly \$1 billion equity offering. The lawsuits were favorably resolved before trial.

- Represented Quiksilver, Inc. and two former executives in a putative class action alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 relating to alleged accounting improprieties.
- Representing Leidos, Inc. in cases arising from a \$500 million settlement and deferred prosecution agreement with the U.S. Department of Justice and New York City related to SAIC's involvement with CityTime, the City's payroll system. Plaintiffs alleged that Leidos' 2010 annual report on Form 10-K was misleading because it omitted information related to a contract Leidos had with the City, including a required disclosure under Item 303 of Regulation S-K. After the Southern District of New York dismissed the complaint, the Second Circuit reversed in part, holding that violations of Item 303 could serve as the basis for Section 10(b) claims. Gibson Dunn secured U.S. Supreme Court review of the Second Circuit's decision and then settled the case on highly favorable terms.
- Successfully represented Arrowhead Pharmaceuticals, Inc. when the Ninth Circuit affirmed, in all respects, dismissal of a putative securities fraud class action in the Central District of California, also obtained by Gibson Dunn. Plaintiffs claimed that Arrowhead made intentionally misleading statements about its research progress during an August 2014 investor call, supposedly inflating the price of the company's stock by hundreds of millions of dollars. The Ninth Circuit adopted Gibson Dunn's arguments, and ruled that the complaint failed to adequately plead both a material misstatement and scienter.
- Secured Second Circuit affirmance of the dismissal of claims against UBS AG and certain of its affiliates arising out of the Bernie Madoff fraud. Plaintiff, a customer of Madoff, alleged that UBS aided and abetted the fraud, causing damages of approximately \$2.9 billion. In the Southern District of New York Gibson Dunn defeated the plaintiff's attempt to remand the case to state court and then won dismissal of the claims for lack of personal jurisdiction. In a precedential opinion the Second Circuit adopted a broad view of federal subject matter jurisdiction where an action is "related to" a bankruptcy proceeding within the meaning of 28 U.S.C. §157(a), ruling the action sufficiently related to the Madoff case to support jurisdiction. The Circuit then affirmed dismissal of the claims against UBS.
- Successfully represented Texas-based HMS Holdings Corp. and its officers in a shareholder securities class action arising out of the company's announcement of internal control weaknesses related to its financial accounting for its ongoing contingent liabilities. Specifically, in 2017, HMS had filed a Form NT 10-K with the SEC stating that the company's auditor believed it had identified a material weakness in HMS' internal controls over financial reporting relating to its CMS reserves. Plaintiff alleged that in light of this, all of the company's SEC filings in 2016 were materially misleading, and that HMS and its senior management knowingly falsified the company's financial statements. Gibson Dunn persuaded plaintiff's counsel to voluntarily dismiss the suit.
- Successfully represented AECOM and certain of its directors and officers in a putative class action in the Central District of California alleging that certain disclosures in the company's public statements and filings regarding non-GAAP financial metrics were false. The plaintiffs sought to capitalize on a "research report" issued by a short seller that challenged the company's business and financial reporting practices, and led to a significant decline in the company's stock price. Adopting Gibson Dunn's arguments with respect to materiality, scienter and loss causation, the court dismissed the

amended complaint with leave to amend it. However, plaintiffs declined, and voluntarily dismissed the action.

- Successfully represented Microsoft Corporation and several of its former executives in class action litigation alleging, under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, that they made a series of false or misleading statements in connection with the release and initial sales of the company's first-generation tablet computer, Surface RT. In July 2013 Microsoft announced that it had taken an inventory-related charge against earnings of \$900 million, reflecting a reduction in the price of Surface RT by \$150 to \$349 per device. While plaintiff had sued in the District of Massachusetts, Gibson Dunn obtained transfer to the Western District of Washington and subsequent dismissal. Plaintiffs declined to amend their complaint and, following entry of judgment, unsuccessfully appealed to the Ninth Circuit, which affirmed the dismissal.
- Successfully represented current and former board members of Yahoo (subsequently acquired by Verizon Communications, Inc.) in a shareholder class and derivative action in the Delaware Chancery Court. The action arose out of Yahoo's high-profile, controversial hiring of former COO Henrique de Castro, who was subsequently terminated without cause after 16 months and received a \$60 million severance package. Plaintiff charged the director defendants with breaching the company's by-laws in connection with the termination and severance, and charged Yahoo and the individual defendants with making false and misleading statements about the severance terms in a proxy statement. The parties reached a favorable settlement, a so-called "mootness" dismissal, the framework for which was devised by Gibson Dunn and agreed to by other parties following extended settlement negotiations. The directors paid nothing and all claims against them were dismissed.
- Successfully represented Dole Food Co., Inc. and certain current and former executives in a high-profile Section 10(b) class action in the District of Delaware. The complaint relied heavily on an opinion in a prior Delaware Court of Chancery action challenging a "go-private" transaction in which the company's CEO purchased its publicly traded stock. Plaintiffs claimed that the opinion found that the defendants acted fraudulently leading up to the transaction, and that those findings also established their claims for securities fraud on behalf of a "seller class" harmed by supposed artificial deflation in the stock price. The case presented cutting-edge issues regarding the collateral estoppel or evidentiary effect of the Court of Chancery opinion, and arising from the unusual seller class. Following mediation, the parties reached a settlement for far less than plaintiffs' claimed damages.
- Secured dismissal from the Central District of California of a complaint alleging securities claims against Arrowhead Pharmaceuticals under Section 10(b) and Section 20(a). The allegations related to a regulatory setback Arrowhead experienced in its efforts to develop novel drugs aimed at curing Hepatitis B. The court held that the complaint did not plead any material misstatement or omission, and cast significant doubt on the plaintiffs' theory of scienter.
- Secured dismissal of a securities class action brought against Northwest Biotherapeutics, Inc. and its CEO in the District of Maryland. Northwest is a development-stage biotechnology company that focuses on developing immunotherapy treatments for cancer. Asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act, the plaintiff contended that the defendants made false statements or omissions about the clinical trials for the company's leading immunotherapy products

and engaged in a misleading stock promotion campaign. The court granted Northwest's motion to dismiss in its entirety, agreeing with Gibson Dunn's arguments.

- Secured dismissal of a securities class action against the former president of Platform Specialty Products Corporation (Platform), a global producer and seller of specialty chemical products, when the Southern District of Florida granted the dismissal motions of the client as well as co-defendants Platform and several other executive officers. Plaintiffs alleged violations of Sections 10(b) and 20(a) of the Exchange Act based on alleged misstatements and omissions in connection with Platform's disclosure that it had discovered certain third-party payments in West Africa that may have been improper or illegal under the U.S. Foreign Corrupt Practices Act or similar laws. The court provided plaintiffs with the opportunity to amend the complaint but they declined and entered into a voluntary stipulation of dismissal.
- Secured Tenth Circuit affirmance of the District of Colorado's dismissal of a securities class action complaint filed against Deloitte & Touche, LLP asserting claims under Section 10(b) of the Securities Exchange Act. Plaintiffs alleged that Deloitte's audit of its client, shoe manufacturer Crocs, Inc., was deficient because it failed to recognize "red flags" indicating inventory problems Crocs was experiencing during the height of the Great Recession – and that Deloitte's unqualified audit opinions amounted to false statements. The Tenth Circuit unanimously rejected plaintiffs' arguments, and also affirmed the district court's denial of leave to amend the complaint.
- Secured dismissal from the Central District of California of claims under the Securities Act of 1933 for UBS, Deutsche Bank and other underwriters of the common stock of Amira Nature Foods, Ltd. Plaintiffs' securities class action alleged that Amira, which processes and sells specialty foods, made misleading statements in various SEC filings regarding its revenue from basmati rice, and relating to certain of Amira's transactions with its affiliates and other entities. The court dismissed the second amended complaint against all defendants.
- Secured a complete victory for F-Squared when the Southern District of New York dismissed F-Squared Investments, Inc., F-Squared Alternative Investments, LLC, F-Squared Institutional Advisors, LLC, and F-Squared Investment Management, LLC from a putative class action asserting claims under the Securities Act of 1933 and the Securities Exchange Act of 1934. The ruling brought to an end efforts by private plaintiffs to exploit (i) a regulatory settlement in which F-Squared admitted wrongdoing to settle charges by the SEC regarding alleged misleading performance advertising; and (ii) a civil action filed by the SEC against F-Squared's former CEO.
- Secured dismissal of a putative securities class action for Coty Inc., the global leader in beauty and fragrance manufacturing, and several of its officers and directors in the Southern District of New York. The complaint, which alleged that the pre-IPO registration statement was false and misleading in violation of Sections 11 and 15 of the Securities Act of 1933, was amended twice before the court dismissed the case with prejudice. Given that the complaint principally alleged that Coty failed to disclose negative material trends as required, particularly in its nail category products, this was a particularly difficult win to achieve because the law is limited and murky on when a series of events becomes a negative material trend.

- Secured dismissal of all claims against UBS AG and three subsidiaries (collectively, UBS) in two Southern District of New York lawsuits arising out of the Bernard Madoff Ponzi scheme, including a putative class action. Plaintiffs alleged that UBS enabled Madoff's scheme by sponsoring two overseas funds that invested in Bernard L. Madoff Investment Securities. Both lawsuits alleged claims for aiding and abetting fraud, aiding and abetting breach of fiduciary duty, and aiding and abetting conversion, among other state law claims. Agreeing with Gibson Dunn, the court held that it lacked personal jurisdiction over all UBS defendants and significantly also held that UBS AG was not subject to general jurisdiction in New York under *Daimler AG v. Bauman*, a Gibson Dunn win in the U.S. Supreme Court.
- Secured dismissal in the Southern District of New York of claims under the Securities Act of 1933 against the underwriters for two common stock offerings by The Bank of New York Mellon Corp. (BNY Mellon) totaling \$2 billion. In the putative securities class action, plaintiffs alleged that BNY Mellon issued a series of false and misleading statements concerning practices designed to artificially inflate revenues derived from foreign currency exchange transactions executed on behalf of its customers. Gibson Dunn convinced plaintiffs' counsel to voluntarily dismiss all claims against the underwriter defendants with prejudice.
- Won dismissal of putative class claims against Janus Capital Management for alleged misrepresentations in the prospectuses of a mutual fund created by Janus Capital Management and to whom Janus Capital Management provided investment advisory services. In a seminal ruling, the U.S. Supreme Court agreed with Gibson Dunn that only the maker of a statement can be liable in a private action for alleged violations of Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5.
- For UBS AG and four of its senior executives we secured Second Circuit affirmance of the dismissal of a putative class action filed in the wake of reports that a UBS London employee and rogue trader, Kweku Adoboli, engaged in unauthorized trades resulting in more than \$2 billion in losses to UBS's proprietary account. The plaintiffs, alleging that statements by UBS and the individual defendants concerning the quality of the company's risk management and controls were false or misleading, asserted claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. The Second Circuit affirmed the dismissal, also obtained by Gibson Dunn, agreeing that plaintiffs had provided "no plausible explanation as to why Defendants would turn a blind eye to the possibility that unauthorized trading was exposing UBS to billions of losses."
- Obtained a complete dismissal of all securities fraud claims against Herbalife Ltd. and its CEO. Tossing the third amended complaint without leave to amend, the Central District of California found that plaintiffs failed to plead material misstatements or scienter in support of the allegations that the company lied about its compliance with the anti-pyramid scheme laws. The court ruled that any misstatements were not material, because Herbalife made extensive warnings to investors that its multi-level marketing business model could potentially be challenged as a pyramid scheme. The court also firmly rejected plaintiffs' arguments that the complaint sufficiently alleged that defendants did anything with an intent to defraud Herbalife shareholders.
- Obtained dismissal of putative class action filed against the former CEO and former CFO of Eastman Kodak Company in the wake of Kodak's bankruptcy filing in January 2012. The plaintiffs alleged that defendants concealed that Kodak was suffering a liquidity crisis due to its inability to successfully

license or sell its IP assets and asserted claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. The Second Circuit affirmed the dismissal of the action for failure to plead an actionable misstatement and failure to adequately plead the defendants' fraudulent intent.

- Successfully defeated attempt by multiple pension funds to assert class claims under Sections 11 and 12(a)(2) of the Securities Act of 1933 against Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., Goldman, Sachs & Co., and Morgan Stanley & Co. LLC in connection with their role as underwriters for offerings of over \$15 billion in residential mortgage-backed securities. Against the vast weight of authority, Gibson Dunn convinced the Second Circuit to hold that the tolling doctrine articulated by the U.S. Supreme Court in *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974), does not apply to the three-year statute of repose for Securities Act claims. As a result, the putative class claims were deemed time-barred.
- Obtained dismissal of putative class action against Textron Inc., Textron Financial Corporation, and senior officers of the companies. Plaintiffs alleged that the defendants failed to disclose that Cessna, a Textron subsidiary, had a material weakness in the backlog of aircraft orders, which allegedly caused a steep drop in Textron's stock price. The First Circuit affirmed the dismissal of plaintiffs' claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 for failure to adequately plead defendants' fraudulent intent.
- Secured dismissal in the Southern District of New York of the majority of claims filed against UBS AG and 15 other banks in three class actions and four individual actions that claimed unlawful manipulation and collusion in the process of setting the U.S. Dollar LIBOR reference rate. In addition to dismissing all RICO claims and a significant portion of the Commodity Exchange Act claims, the court dismissed all state and federal antitrust claims because plaintiffs lacked antitrust standing.
- Won dismissal of putative class action filed against Molycorp, Inc. and certain of its directors and officers, and certain of its private equity investors. Adopting Gibson Dunn's arguments, the court dismissed plaintiffs' claims under Sections 10(b), 20(a), and 20A of the Securities Exchange Act of 1934 for failure to adequately plead an actionable misstatement, fraudulent intent, or loss causation. The court also dismissed plaintiffs' claims under Sections 11, 12(a), and 15 of the Securities Act of 1933 for failure to plead an actionable misstatement.
- Obtained dismissal and Eighth Circuit affirmance of putative class action against K-V Pharmaceutical Co. (now Lumara Health, Inc.) and three of its executives. K-V launched a new drug that reduced the risk of pre-term births, and plaintiffs alleged that defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 by failing to warn that the FDA could take unprecedented action by publicly announcing that it would not enforce K-V's statutory exclusivity in light of the price that K-V intended to charge for the drug. The district court dismissed plaintiffs' claims for failure to allege an actionable misstatement or omission and failure to adequately plead scienter.
- Won dismissal for Ernst & Young LLP in a putative class action arising out of alleged accounting fraud by AOL. The Second Circuit affirmed the dismissal of plaintiffs' claims under Sections 10(b) and 14(a) of the Securities Exchange Act of 1934 and under Section 11 of the Securities Act of 1933 for failure to plead loss causation.

- Successfully opposed class certification on behalf of a syndicate of underwriters, led by Citibank, Credit Suisse and Barclays, for the initial public offering of Kosmos Energy. The plaintiffs asserted putative class claims against the underwriters under Sections 11 and 12(a) of the Securities Act of 1933. Noting that the U.S. Supreme Court’s *Comcast* decision, a Gibson Dunn win, required that “plaintiffs seeking certification must produce quality evidence for each Rule 23 element—period,” the court concluded that plaintiff had failed to meet its evidentiary burden of demonstrating that common issues predominated.
- Won dismissal of putative class claims against RBC Capital Markets Corp. The preferred stock purchasers of the now-defunct Franklin Bank Corp. alleged that RBC, as the underwriter of the preferred stock issue, violated Section 11 of the Securities Act of 1933. The court dismissed the Section 11 claim against RBC for failure to adequately plead falsity and materiality.
- Secured dismissal of putative class claims asserted against Deloitte LLP in the wake of two large write-downs by Crocs, Inc., maker of the well-known plastic footwear. Plaintiffs alleged that Deloitte, which served as Crocs’ outside auditor, ignored red flags when it opined that Croc’s financial statements were fairly presented. The court dismissed plaintiffs’ claims against Deloitte under Section 10(b) of the Securities Exchange Act of 1934 for failure to adequately plead scienter.
- Obtained dismissal of putative class claims asserted against Ernst & Young LLP in the wake of the collapse of Bernard Madoff’s Ponzi scheme. The court dismissed plaintiffs’ claims against Ernst & Young under Section 10(b) of the Securities Exchange Act of 1934 for failure to adequately plead scienter.
- On behalf of Williams Companies, obtained summary judgment victory in putative class action alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. Adopting Gibson Dunn’s arguments, both the district court and the Tenth Circuit held that plaintiffs had not presented evidence demonstrating that their investment losses were caused by any alleged misrepresentation.
- Won dismissal of putative class action filed against Cadence Design Systems, Inc. and four of its current and former officers in the wake of financial restatements by the company. The court dismissed the putative class claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 for failure to adequately plead scienter.
- Successfully opposed class certification in action filed against China Automotive Systems, Inc. and its former auditor, Schwartz Levitsky Feldman LLP, in the wake of a restatement by China Auto. Plaintiffs alleged a putative class claim against Schwartz Levitsky under Sections 10(b) of the Securities Exchange Act of 1934. After the court denied defendants’ motions to dismiss, Schwartz Levitsky retained Gibson Dunn and defendants contested class certification. The court held that plaintiffs were not entitled to a class-wide presumption of reliance and denied class certification.
- Secured a highly favorable settlement for Toyota in a federal securities class action arising from the recalls of Toyota and Lexus vehicles related to alleged sudden unintended acceleration. Although the plaintiffs claimed that the alleged misrepresentations resulted in a loss of \$30 billion in Toyota’s market capitalization, plaintiffs settled for \$25.5 million. Prior to the settlement, the court eliminated 97% of the defendants’ exposure on a motion to dismiss. Gibson Dunn previously secured dismissal on

the pleadings of two other actions (a derivative action and bondholder action) filed against Toyota also arising from the recalls.

- Successfully represented a former executive of a major international insurer in settlement of a securities class action relating to the company's exposure to the subprime mortgage market. The former executive will not pay any portion of the settlement and will have all claims against him released.
- Secured settlement of securities fraud claims against the former directors and officers of Ener1, Inc., a once-high flying manufacturer of lithium batteries intended to power the next generation of electric cars. The company foundered when the electric car market deteriorated and it announced an impairment charge on an investment in a foreign electric car manufacturer. Plaintiffs claimed the directors and officers misled the market about Ener1's prospects for future revenue growth and that the investment should have been written off nine months earlier. Settlement came after Gibson Dunn's motion to dismiss and was funded by Ener1's D&O insurer, with Gibson Dunn's clients paying nothing.

Derivative Litigation

All too often, derivative actions are filed on the heels of securities fraud class actions. These cases, which are purportedly brought on behalf of the company against its directors, pose a particular concern for board members. Gibson Dunn has decades of experience representing companies and their directors and officers in defending, and taking control of, shareholder derivative actions.

Representative matters:

- Defending Facebook and its directors and officers in securities class actions and shareholder derivative lawsuits arising out of the misuse of user data by Cambridge Analytica.
- Secured dismissal with prejudice of a stockholder derivative action asserting claims on behalf of Medallion Financial Corp., a publicly traded specialty finance company, against certain of its current and former directors, including Hank Aaron, the legendary member of the National Baseball Hall of Fame and a current executive of the Atlanta Braves. The New York State Supreme Court lawsuit alleged that Medallion hired a young model with no college degree to provide public relations services and that she violated the federal securities laws when she published, under a pseudonym, articles in the *Huffington Post* and financial blog posts touting Medallion. The plaintiff charged that Medallion was harmed when the financial media uncovered the alleged deception, and asserted claims against Medallion's directors for breach of fiduciary duty. In dismissing, the court adopted all of Gibson Dunn's arguments.
- Secured complete victory for the directors and officers of one of the world's leading retailers in a long-running shareholder derivative suit when the U.S. Supreme Court declined to review the Delaware Supreme Court's affirmance of the dismissal of the action. Plaintiffs had alleged that current and former directors and officers breached their fiduciary duties in connection with a 2005-2006 internal investigation relating to allegations of FCPA violations at the company's Mexican subsidiary. However, the Delaware action paralleled an Arkansas federal court suit by a separate set of plaintiffs involving nearly identical issues and claims. Gibson Dunn had secured dismissal of the Arkansas claims for

failure to adequately allege demand futility, and the Eighth Circuit affirmed. Gibson Dunn persuaded the Delaware Supreme Court that the Delaware plaintiffs must be collaterally estopped from relitigating that demand futility ruling, and that doing so did not violate Due Process. The U.S. Supreme court's denial of review successfully ended more than six years of litigation in both Delaware and Arkansas.

- Represented Trinity Industries and its senior officers in a shareholder derivative action arising out of the company's ET-Plus guardrail program, which was the subject of separate False Claims Act and securities litigation. The litigation followed a jury verdict finding that Trinity had defrauded the U.S. government through sales of ET-Plus guardrails that had allegedly been modified without proper regulatory approval, resulting in a multimillion-dollar judgment. Plaintiff voluntarily dismissed complaint at the motion to dismiss phase.
- Successfully represented Merck & Co.'s board of directors and current and former chief financial officers in a derivative action in the Superior Court of New Jersey and on appeal in the New Jersey Appellate Division. Plaintiff alleged that the directors and officers breached their fiduciary duties by permitting Merck to file a Form 10-K that allegedly inaccurately represented that it was "not practicable" for the company to calculate the hypothetical tax liability on its nearly \$60 billion in indefinitely reinvested foreign earnings. Secured dismissal from the court in an opinion that tracked in large part Gibson Dunn's arguments, and the Appellate Division affirmed the decision.
- Representing Arrowhead Research Corporation and its directors in connection with federal and state derivative actions. Arrowhead is a life sciences research company that is working to develop pharmaceuticals, including ARC-520, which the company hopes will offer a cure for the hepatitis B virus. The derivative actions claim that Arrowhead's directors breached their fiduciary duties when Arrowhead allegedly made misleading statements regarding preliminary ARC-520 clinical data. Three federal actions were filed in the Central District of California, with an additional consolidated derivative action in Los Angeles County Superior Court. Two of the actions have been dismissed in the wake of a dismissal secured by Gibson Dunn of a related federal securities class action, and the other two derivative actions have been stayed.
- Defending officers of SM Energy in a shareholder derivative action asserting claims of breach of fiduciary duty and unjust enrichment. The lawsuit, which was filed in Colorado state court, claims the company's directors and officers harmed it by failing to ensure that the company paid correct oil and natural gas royalty amounts to landowners. Gibson Dunn has filed a motion to dismiss.
- Represented the independent directors of JPMorgan in connection with various shareholder derivative lawsuits arising out of the \$6 billion "London Whale" trading losses. The Delaware Supreme Court issued a summary order affirming the dismissal of a shareholder derivative action brought on behalf of JPMorgan and against the Company's directors and certain officers. The Supreme Court ruling affirmed a decision of the Delaware Chancery Court dismissing the derivative action on collateral estoppel grounds, based on the prior dismissal of two substantially similar actions in New York federal and state court. The Delaware Supreme Court's decision likely is the final nail in the coffin for the various shareholder lawsuits filed in connection with the London Whale losses. Gibson Dunn, working closely with Sullivan & Cromwell as counsel for the Company, secured the dismissal of all six derivative actions at the pleadings stage, several of which were affirmed on appeal.

- Represented a major department store retailer, and its senior executives and board members in securities class actions and shareholder derivative suits in Texas. The lawsuits were filed following the investment by an activist shareholder, the resulting management and business changes, the activist shareholder's showdown with the board of directors, and the sale of the shareholder's stake in the company. The lawsuits center on the retailer's public statements regarding the company's projected liquidity and alleged assurances that it did not need additional financing, quickly followed by a nearly \$1 billion equity offering. The lawsuits were favorably resolved before trial.
- Defending China Housing & Land Development in shareholder derivative litigation in Nevada state court. Plaintiffs accuse two company directors of wrongdoing by providing improper loans to the company, and by selling certain real estate that belonged to the company for a personal profit. They seek hundreds of millions of dollars.
- Represented Northwest Biotherapeutics, Inc., a biotechnology company working to develop revolutionary cancer treatments, and the members of its board of directors in a series of shareholder derivative lawsuits in multiple jurisdictions. The suits claimed that Northwest overpaid a service provider by issuing it stock in satisfaction of invoices worth more than the debt owed, and that the director defendants breached their fiduciary duties to Northwest by authorizing those payments. Gibson Dunn negotiated resolutions of all the cases on terms that required no payments by the defendants.
- Represented Leidos, Inc. in cases arising from a \$500 million settlement and deferred prosecution agreement with the U.S. Department of Justice and New York City related to SAIC's involvement with CityTime, the City's payroll system. Gibson Dunn secured dismissal and Second Circuit affirmance of consolidated derivative litigation.
- Successfully represented directors and officers of BioNutritional Research Group, Inc. (BNRG), maker of the popular PowerCrunch protein bar, in multiple phases of litigation in the California Superior Court. Following a five-day bench trial, we obtained reformation of a shareholder agreement after three BNRG minority shareholders sued for various claims relating to the clients' alleged failure to turn BNRG into a California close corporation. Plaintiffs also filed direct and derivative claims against BNRG's former corporate counsel for his role in alleged wrongdoings. The court's order that the shareholder agreement be reformed defeated all of plaintiffs' claims relating to the close corporation issues. Gibson Dunn subsequently defeated plaintiffs' request for court approval of a global settlement reached with BNRG's former counsel on all claims against him, including a professional negligence claim directly affecting our clients' defense in the continuing lawsuit, and the company's potential recovery. Last, after an eight-day bench trial, we defeated multiple derivative and individual claims brought by the minority shareholders. Plaintiffs voluntarily dismissed some of their claims before trial began, and the court rejected all of the remaining claims.
- Successfully represented current and former board members of Yahoo (since merged with Verizon Communications, Inc.) in a shareholder class and derivative action in the Delaware Chancery Court. The action arose out of Yahoo's high-profile, controversial hiring of former COO Henrique de Castro, who was subsequently terminated without cause after 16 months and received a \$60 million severance package. Plaintiff charged the director defendants with breaching the company's by-laws in connection with the termination and severance, and charged Yahoo and the individual defendants

with making false and misleading statements about the severance terms in a proxy statement. The parties reached a favorable settlement, a so-called “mootness” dismissal, the framework for which was devised by Gibson Dunn and agreed to by other parties following extended settlement negotiations. The directors paid nothing and all claims against them were dismissed.

- Successfully represented the special litigation committee (SLC) of the Board of Directors of PG&E Corporation in multiple shareholder derivative suits in the California Superior Court arising out of a massive 2010 pipeline explosion in San Bruno, California that resulted in major property damage and loss of life. Plaintiffs alleged that for decades, PG&E directors and officers breached their fiduciary duties by putting “profits over safety” by, among other things, failing to maintain PG&E’s gas pipelines and failing to maintain accurate records. Plaintiffs further alleged that these breaches of fiduciary duties were a cause of the explosion and resulting fines, penalties, settlements, and reputational harm. After an extensive investigation, Gibson Dunn and the SLC led the effort to resolve the claims, and were instrumental in bringing about a final settlement, ending massive litigation exposure for PG&E.
- Secured unanimous Eighth Circuit affirmance of the dismissal of all claims brought against current and former directors and executives of one of the world’s leading retailers in a consolidated shareholder derivative action, bringing to a close four years of litigation over federal and state claims brought in the Western District of Arkansas in several consolidated actions. The district court had dismissed the complaint, with prejudice, on the basis that the shareholders failed to meet the strict pleading standards for establishing demand futility under Federal Rule of Civil Procedure 23.1 and substantive Delaware law.
- Won dismissal of all derivative claims brought against current and former directors and executives of one of the world’s leading retailers. The court agreed with Gibson Dunn that the plaintiffs failed to allege that demand on the company’s board of directors would have been futile, as required by Federal Rule of Civil Procedure 23.1. The case arose out of a newspaper article asserting that former leaders of the company’s subsidiary violated the Foreign Corrupt Practices Act when they purportedly bribed Mexican officials to secure quick expansion of the company’s holdings in Mexico. The complaint consolidated several separate shareholder derivative actions based on the same allegations. After almost three years of briefing, including a trip up to the Eighth Circuit to litigate a stay in favor of a parallel state court action in Delaware, the Western District of Arkansas dismissed the complaint in its entirety with prejudice.
- Successfully represented current and former officers and directors of ITT Educational Services, Inc. in multiple shareholder derivative actions, filed in state and federal courts, based on factual allegations similar to those made in two securities class actions in the Southern District of New York and the Southern District of Indiana, in which Gibson Dunn also represented the clients. Plaintiffs in the securities class actions alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, primarily charging material misstatements and omissions relating to the performance of the private student loans, the amounts that would be due under risk-sharing agreements, and related accounting issues. A global settlement of the shareholder derivative actions was achieved.
- Won affirmance of dismissal in the Ninth Circuit of a shareholder derivative action brought against the directors of Hewlett-Packard for alleged breaches of fiduciary duty, ending a five-year saga that saw numerous amended complaints, dismissals, and accusations against HP of having conducted a “white

wash” investigation into suspected wrongdoing by directors and officers of HP. Among other charges, the action attacked the Company’s handling of the scandal involving former CEO Mark Hurd’s alleged romantic involvement with a former female contractor. The case also set forth sweeping allegations of “failed leadership” at HP, including its allegedly failed acquisitions of EDS, 3Par and Autonomy. Gibson Dunn’s clients included HP directors Ray Lane, Meg Whitman, Leo Apotheker, Patricia Russo, and Gary Weiner, several of whom also constituted the board committee that investigated the alleged wrongdoing. After the committee concluded that no claims against any individuals were warranted, Plaintiff challenged that decision, arguing that his demands had been wrongfully refused. The Northern District of California disagreed, and dismissed the case twice, in October 2012 and May 2013. On appeal, the Ninth Circuit affirmed, finding Plaintiff’s allegations “devoid of particular facts that could show an absence of good faith.”

- Secured dismissal of a putative shareholder derivative action brought against the directors of Och-Ziff Capital Management Group, LLC. Plaintiff alleged that Och-Ziff’s directors caused or allowed Och-Ziff to violate the Foreign Corrupt Practices Act and other anti-bribery laws in connection with certain transactions in Africa and caused or allowed Och-Ziff to fail to make timely disclosures regarding an investigation by the SEC and DOJ relating to these transactions. Plaintiff alleged that making a shareholder demand on the Och-Ziff Board would have been futile because the directors faced a “substantial likelihood” of personal liability for the alleged misconduct and because the directors were beholden to the company’s CEO. After two oral arguments, the N.Y. State Supreme Court, New York County, agreed with Gibson Dunn that the plaintiff had failed to adequately allege that a shareholder demand to the Och-Ziff Board would have been futile and dismissed plaintiff’s amended complaint.
- Represented Vivendi S.A. and directors of Activision Blizzard companies affiliated with Vivendi in consolidated derivative and class action litigation before the Delaware Court of Chancery and the Delaware Supreme Court. The consolidated action asserted breaches of fiduciary duty relating to a more than \$8 billion stock repurchase transaction between Activision Blizzard and Vivendi. The action commenced with an expedited hearing on a motion for a temporary restraining order, and then proceeded to an emergency appeal to the Delaware Supreme Court after the trial court issued a preliminary injunction sua sponte. Gibson Dunn secured reversal of the preliminary injunction on appeal and then litigated the case through motions to dismiss, fact and expert discovery, and pre-trial preparation. The litigation settled on terms requiring contributions on behalf of the other two defense parties (the officer group and the special committee director group) that are more than three times what Gibson Dunn’s Vivendi-affiliated clients contributed.
- Secured the voluntary dismissal in the Central District of California of a derivative suit against Conversant, Inc. (formerly known as ValueClick, Inc.), its directors, and its officers. The suit was prompted by the company’s announcement of a major write-down of a note receivable taken in connection with the sale of its lead generation business unit, as well as a significant drop in revenues and income from its media segment business. Shortly after Gibson Dunn moved to dismiss the derivative action for failure to allege demand futility, plaintiff’s counsel voluntarily dismissed the case.
- Won dismissal from the Northern District of Texas of a creditor derivative lawsuit seeking over \$725 million from Energy Future Competitive Holdings, Inc. (EFCH) and its directors. The court, dismissing for lack of standing, adopted Gibson Dunn’s argument in its entirety.

- Successfully defended the independent directors of Diamond Foods in shareholder derivative litigation in the state and federal courts in California and Delaware. The cases arose out of Diamond's announcement of a major accounting restatement in 2012, and the commencement of an SEC investigation into the restatement issues. Gibson Dunn represented the audit committee in the company's internal investigation leading to the announcement of the restatement. Defendants successfully moved to dismiss the derivative actions, after which they settled with no payment from Gibson Dunn's clients.
- Obtained a victory on behalf of the directors of Allergan, Inc. in the Supreme Court of Delaware in a derivative lawsuit brought by shareholders who had filed substantively identical actions against the directors in both California and Delaware. The Delaware court ultimately agreed with Gibson Dunn that the previous dismissal of the federal California action precluded further proceedings in Delaware, holding that under constitutional principles of full faith and credit, the preclusion law of California, not of Delaware, must be applied; and that under established California preclusion law, the dismissal of one shareholder derivative complaint precludes complaints by other shareholders on the same allegations and theories.
- Obtained an order sustaining with prejudice defendants' demurrers to a shareholder derivative complaint brought against the board of directors and certain senior executives of client Jacobs Engineering Group, Inc., as well as an outside executive compensation consultant, Frederic W. Cook & Co. Jacobs is a leading provider of technical, professional, and construction services headquartered in Pasadena, California. The shareholder complaint alleged that the Jacobs board of directors acted wrongfully by approving increased compensation to senior executives in 2011 in light of a negative vote by a majority of the company's shareholders against the increased compensation pursuant to the "Say-on-Pay" provisions of the Dodd Frank Act, 15 U.S.C. Section 78n-1. The Complex Case Panel of the Los Angeles Superior Court sustained the demurrers without leave to amend.
- Represented the current and former outside directors of Revlon Corporation in connection with state and federal class action and derivative lawsuits filed in Delaware and New York. The claims arose out of an exchange offer conducted by Revlon in September 2009. A favorable settlement of all the claims was reached in 2012.
- Defeated two derivative suits against Bidz.com, the largest online jewelry auction site. Plaintiffs filed derivative actions in state and federal court in California alleging a wide range of purported wrongdoing by the defendants. Both the state and federal court dismissed the actions with prejudice for failure to allege demand futility.
- Won dismissal of a shareholder derivative action against current and former members of Textron's board of directors and the company's former Chief Executive Officer and Chief Financial Officer. The decision, by the District of New Hampshire, followed an earlier decision to grant Gibson Dunn's motion to dismiss a related federal securities class action against Textron. The derivative complaint repeated many of the allegations in the securities complaint, which asserted that Cessna, a Textron subsidiary, had a material weakness in the backlog of aircraft orders, allegedly causing a steep drop in Textron's stock price. The District of New Hampshire concluded that the derivative complaint failed to adequately plead that the shareholder plaintiff was excused from making a demand on the Textron board before bringing suit.

- Represented the board of directors of BP plc in a shareholder derivative suit in which the federal district court in Texas dismissed all claims arising out of BP's oil refining operations in Texas City. The lawsuit alleged that EPA and OSHA violations, dating to a refinery explosion in 2003, were due to the board's failure to oversee and monitor the company's compliance programs. Before filing the derivative suit, the plaintiff-shareholder made demands on the company to bring claims against its directors and officers for breach of fiduciary duty. In response, BP formed a special committee and retained Gibson Dunn to serve as the committee's independent counsel. The special committee concluded that there was no basis for asserting claims, and the company moved to dismiss the pending lawsuit. The court found that the plaintiff lacked standing to sue under UK law and, therefore, it did not need to address the special committee's findings.
- Successfully settled shareholder derivative litigation against Intel Corporation. In July 2010, the federal district court in Delaware gave final approval to a settlement of all derivative claims brought against Intel's board of directors, arising out of alleged anticompetitive misconduct. The settlement followed the resolution of an antitrust case brought by AMD. Gibson Dunn negotiated a settlement that involved no monetary relief and limited governance enhancements. The court also approved a release of all derivative claims related to past or pending antitrust proceedings. In 2009, Gibson Dunn also obtained dismissal of related derivative litigation against Intel's board.
- Represented Baker Capital and its related investment funds, which owned shares of Internet retailer Wine.com, in separate direct and derivative actions brought against our client by current and former shareholders of Wine.com. Plaintiffs sought damages of \$66 million, plus unspecified punitive damages and attorney fees. In July 2009, after more than three years of litigation, followed by an 18-day trial, Gibson Dunn obtained a complete victory for Baker Capital and its related investment funds.

Selected Attorney Profiles

Stephanie L. Brooker



1050 Connecticut Avenue, N.W., Washington, DC 20036-5306

Tel: 202.887.3502

sbrooker@gibsondunn.com

Stephanie L. Brooker, former Director of the Enforcement Division at the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) and a former federal prosecutor, is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher. She is Co-Chair of the Financial Institutions Practice Group and a member of White Collar Defense and Investigations Practice Group. As a prosecutor, Ms. Brooker served as the Chief of the Asset Forfeiture and Money Laundering Section in the U.S. Attorney's Office for the District of Columbia, tried 32 criminal trials, and briefed and argued criminal appeals.

Ms. Brooker's practice focuses on internal investigations, regulatory enforcement defense, white-collar criminal defense, and compliance counseling. She represents financial institutions, multi-national companies, and individuals in connection with criminal, regulatory, and civil enforcement actions involving anti-money laundering (AML)/Bank Secrecy Act (BSA), sanctions, anti-corruption, securities, tax, wire fraud, and sensitive employee matters. Ms. Brooker's practice also includes BSA/AML compliance counseling and due diligence and significant criminal and civil asset forfeiture matters. Ms. Brooker was named a 2018 National Law Journal White Collar Trailblazer and a Global Investigations Review Top 100 Women in Investigations.

Before joining Gibson Dunn in April 2016, Ms. Brooker served as the first Director of FinCEN's Enforcement Division, which is the lead federal regulator with responsibility for enforcing the U.S. AML laws and regulations. In this role, she oversaw all of FinCEN's domestic and foreign enforcement and compliance under the BSA, such as civil money penalty actions and injunctions against a wide range of financial institutions, including banks, credit unions, money services businesses, virtual currency entities, casinos, broker-dealers, futures, insurance, and dealers in precious metals, stones and jewels. She also oversaw rulemaking actions under Section 311 of the PATRIOT Act against foreign institutions and jurisdictions and Geographic Targeting Orders.

As Enforcement Director, Ms. Brooker also oversaw for the agency litigation of contested enforcement actions, including several cases of first impression in federal court handled by the Department of Justice (DOJ) on behalf of the agency. She also oversaw examinations of regulated financial institutions and development of compliance strategies. Ms. Brooker worked closely with a wide range of state and federal partners, including DOJ/Asset Forfeiture and Money Laundering Section, U.S. Attorneys' offices, State

Department, Securities and Exchange Commission, Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Consumer Financial Protection Bureau, Financial Industry Regulatory Authority, and the Conference of State Bank Supervisors. Prior to serving as Enforcement Director, Ms. Brooker served as Chief of Staff and Senior Advisor to the Director of FinCEN.

Ms. Brooker served from 2005 to 2012 as an Assistant U.S. Attorney in the U.S. Attorney's Office for the District of Columbia, where she served as the first Chief of the new Asset Forfeiture and Money Laundering Section from 2010 to 2012. This Section was responsible for all asset forfeiture and money laundering issues in Criminal Division cases and for litigation of civil forfeiture cases. In this role, she investigated and prosecuted complex civil and criminal forfeiture cases involving high-priority enforcement areas, such as national security, sanctions violations, and major financial fraud. She established the USAO's first DC Financial Crimes Task Force and supervised the investigation and prosecution of BSA and money laundering cases. In 2012, she received the U.S. Attorney's Award for Creativity and Innovation in Management. She was awarded three Special Achievement Awards for Superior Performance and the Office's Criminal Division Award.

Ms. Brooker clerked for Judge Diana Gribbon Motz of the U.S. Court of Appeals for the Fourth Circuit and for Judge James Robertson of the U.S. District Court for the District of Columbia. She also worked in private practice as an appellate litigation associate at an international law firm. She graduated *magna cum laude* in 2001 from Georgetown University Law Center, where she served as Managing Editor of Georgetown Law Journal and was elected to the Order of the Coif. She graduated with highest distinction from Northwestern University with a B.S. in Journalism in 1996. She was also selected as a Harry S. Truman Scholar.

Ms. Brooker serves as Treasurer of the Board of Directors of the Robert A. Shuker Scholarship Fund. Ms. Brooker is admitted to practice in the District of Columbia.

Recent Representations

Representing European bank Board of Directors in connection with regulatory actions by the Federal Reserve Board and New York Department of Financial Services

Representing national and foreign banks in connection with investigations regarding allegations of money laundering, corruption, sanctions violations, securities fraud, and tax fraud and evasion, involving the U.S. Department of Justice, Office of the Comptroller of the Currency, Federal Reserve Board, and OFAC

Conducting independent investigations of allegations of sexual harassment on behalf of Boards of Directors

Representing non-bank financial institutions in connection with Department of Justice criminal investigations

Representing individuals in connection with Department of Justice criminal investigations

Representing broker dealer in connection with regulatory investigation by the Financial Industry Regulatory Authority (FINRA)

Providing Bank Secrecy Act and anti-money laundering compliance advice and corporate deal due diligence to wide range of banks, broker dealers, private equity and hedge funds, non-bank financial institutions (i.e. money service businesses and casinos), insurance companies, technology companies, hotels, and other multi-national companies

Conducting internal investigations for financial institutions and multi-national companies involving potential money laundering and other criminal allegations

Representing clients in criminal and civil asset forfeiture matters

Recent Speaking Engagements*

American Bar Association, 32nd Annual Institute on White Collar Crime (2018), “Global Reach of Money Laundering Enforcement

Securities Industry and Financial Markets Association, “Regulatory and Examination Priorities,” Anti-Money Laundering and Financial Crimes Conference (SIFMA) (2018)

Gibson Dunn Webcast: Anti-Money Laundering and Sanctions Enforcement and Compliance in 2018 and Beyond (2018)

ABA/ABA Money Laundering Enforcement Conference, Advisory Board Member and Panel Moderator (2017)

Verafin, Annual Bank Secrecy Act/Anti-Money Laundering Conference (2017)

Florida International Bankers Association (FIBA), “Lessons learned from the U.S. Treasury’s recent enforcement actions against financial institutions in the region” (2017)

Investment Adviser Association, Compliance Conference, AML Panel (2017)

Gibson Dunn Webcast: Challenges in Compliance and Corporate Governance (2017 and 2018)

Practicing Law Institute, Hedge and Private Fund Enforcement & Regulatory Developments 2016, “Hot Button Enforcement Issues for Private Funds” (2016)

ABA/ABA Money Laundering Enforcement Conference, “Hot Legal Cases and Enforcement Actions: How They Impact Your AML/Fraud Program” (2016)

Institute of International Bankers Association, “Supervisory Developments Regarding BSA/AML and OFAC Compliance” (2016 and 2017)

New York State Society of Certified Public Accountants, “BSA Challenges for Registered Investment Advisors” (2016)

Deloitte Financial Crime Symposium, 10th Annual US Anti-Money Laundering Compliance Conference, “A Financial Institution Under Criminal Investigation -- Strategic Issues” and “Update from the Regulators and Law Enforcement” (2016 and 2017)

ABA, Criminal Justice Section, “Anti-Money Laundering Issues Panel” (2016)

SandPiper Partners, “Financial Crime Summit: Convergence Trends—From the Regulatory, Enforcement & Industry Perspective Conference” (2016)

Hudson Institute and Gibson, Dunn, and Crutcher: “Kleptocracy: Fighting It and Avoiding It.” (2016)

Panel Presentation, “Recent Developments in Anti-Money Laundering Enforcement,” American Bar Association, 30th Annual Institute on White Collar Crime (2016) *

Panel Presentation, “Money Laundering Enforcement Trends,” Wall Street Journal (2016) *

Panel Presentation, “Enforcement Trends and Takeaways,” Anti-Money Laundering and Financial Crimes Conference, Securities Industry and Financial Markets Association (2016) *

Keynote Speaker, Puerto Rico Bankers Association Annual Money Laundering Symposium (2016) *

Keynote Speaker, Bank Secrecy Act Conference, State Bar of Nevada Gaming Law Section, published remarks available at https://www.fincen.gov/news_room/testimony/ (2015) *

Panel Presentation, “Spotlight on Women Power Players in Government: Shaping the Future of Financial Services Law,” Women Leaders in Financial Services Industry Law, American Conference Institute (2015) *

Panel Presentation, Legal and Legislative Issues Conference, Financial Markets Association (2015) *

Keynote Speaker, Advanced BSA/AML Specialists Conference, Federal Financial Institutions Examination Council (2014 and 2015) *

Panel Presentation, “White Collar Crime 2014: Prosecutors and Regulators Speak,” Practising Law Institute*

Panel Presentation, Risk Management and Regulatory Examination/Compliance Seminar, Institute of International Bankers (2014) *

Panel Presentation, “Virtual Currency Overview,” Edward Bennett Williams Inn of Court (2014) *

Panel Presentation, “AML Enforcement,” Women in Housing and Finance (2014) *

Panel Presentation, Annual AML and Financial Crime Conference, Association of Certified Anti-Money Laundering Specialists (2013) *

*Engagements prior to joining Gibson, Dunn & Crutcher

M. Kendall Day



1050 Connecticut Avenue, N.W., Washington, DC 20036-5306

Tel: 202 955 8220

kday@gibsondunn.com

Kendall Day is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher. He is a member of the White Collar Defense and Investigations and the Financial Institutions Practice Groups. As a prosecutor, Mr. Day served as an Acting Deputy Assistant Attorney General, the highest level of career official in the Criminal Division at the U.S. Department of Justice (DOJ) with responsibility for the work of more than 200 prosecutors and professionals. He began his career as a trial attorney during which he prosecuted and tried complex and sensitive cases, including cases against a Member of Congress, a New York State Supreme Court Judge, and other elected public officials.

Mr. Day's practice focuses on internal investigations, regulatory enforcement defense, white-collar criminal defense, and compliance counseling. He represents financial institutions, multi-national companies, and individuals in connection with criminal, regulatory, and civil enforcement actions involving anti-money laundering (AML)/Bank Secrecy Act (BSA), sanctions, FCPA and other anti-corruption, securities, tax, wire and mail fraud, unlicensed money transmitter, and sensitive employee matters. Mr. Day's practice also includes BSA/AML compliance counseling and due diligence, and the defense of forfeiture matters.

Prior to joining Gibson Dunn, Mr. Day spent 15 years as a white collar prosecutor with the DOJ. As an Acting Deputy Assistant Attorney General of the Criminal Division, he supervised investigations and prosecutions of many of the country's most significant and high-profile cases involving allegations of corporate and financial misconduct. He also exercised nationwide supervisory authority over BSA and money-laundering charges, deferred prosecution agreements and non-prosecution agreements involving financial institutions.

Mr. Day previously served as Chief of the Money Laundering and Asset Recovery Section of the DOJ's Criminal Division from 2014 to 2017 and as Principal Deputy Chief from 2013 to 2014. During his tenure, he supervised 90 lawyers and managed investigations involving global financial institutions and enforcement of anti-money laundering and sanctions laws. He also directed the Kleptocracy Initiative, an international corruption unit focused on safeguarding the U.S. financial system from foreign bribe and corruption proceeds.

From 2005 through 2013, Mr. Day served as a deputy chief and trial attorney in the Public Integrity Section of the DOJ. During his tenure at the Public Integrity Section, Mr. Day prosecuted and tried some of the

Criminal Division's most challenging cases, including the prosecutions of Jack Abramoff, a Member of Congress and several chiefs of staff, a New York state supreme court judge, and other elected local officials. From 2003 to 2005, he served as an Honors Program Trial Attorney in the DOJ's Tax Division. Mr. Day also served overseas as the Justice Department's Anti-Corruption Resident Legal Advisor in Serbia.

Mr. Day received a number of awards while at the DOJ, including the Attorney General's Award for Distinguished Service, the second highest award for employee performance; the Assistant Attorney General's Award for Exceptional Service; and the Assistant Attorney General's Award for Ensuring the Integrity of Government.

Mr. Day clerked for Chief United States District Court Judge Benson E. Legg of the District of Maryland. He earned his J.D. from the University of Virginia School of Law, where he graduated in 2002 after winning first place in the Lile Moot Court Competition and being selected to receive the Margaret G. Hyde Graduation Award. He graduated with honors and highest distinction from the University of Kansas in 1999 with a B.A. in Italian Literature and Humanities.

Mr. Day is licensed to practice in the Commonwealth of Virginia.

Recent Representations

Representing foreign banks and bank officers in connection with investigations regarding allegations of money laundering, FCPA and other corruption, tax fraud and evasion.

Representing technology company in connection with inquiries from the SEC, FinCEN, and OFAC.

Representing individuals in connection with Department of Justice criminal investigations.

Representing NYSE listed company in connection with DOJ, SEC, and FINRA inquiries.

Representing European bank Board of Directors in connection with enforcement actions brought by the U.S. Department of Justice.

Conducting internal investigation of FCPA allegations for a publicly traded company.


Selected Recent Speaking Engagements*

Panel Presentation, "AML Compliance: Essentials of Anti-Money Laundering," Global Gaming Expo 2018 Education Program

Panel Presentation, "Supervisory Developments Regarding BSA/AML and OFAC Compliance," Risk Management and Regulatory Examination/Compliance Seminar, Institute of International Bankers, 2018

Gibson Dunn webcast, "Developments in Virtual Currency Law and Regulation," June 2018

Gibson Dunn webcast, "Anti-Money Laundering and Sanctions Enforcement and Compliance in 2018 and Beyond," May 2018



American Bar Association, 32nd Annual Institute on White Collar Crime, “Global Reach of Money Laundering Enforcement,” March 2018*

Testimony to Senate Committee on the Judiciary, for a hearing entitled “Beneficial Ownership: Fighting Illicit International Financial Networks Through Transparency,” February 2018*

Testimony to Senate Committee on Banking, Housing, and Urban Affairs, for a hearing entitled “Combatting Money Laundering and Other Forms of Illicit Finance: Administration Perspectives on Reforming and Strengthening BSA Enforcement,” January 2018*

Kleptocracy and Money Laundering: A Conversation with Kendall Day, Hudson Institute, July 2017*

Cambridge Forum on Financial Institutions Enforcement, Interview, May 2017*

Chicago White Collar Crime and Corporate Governance Conference, Interview, April 2017*

American Bankers Association/American Bar Association AML Conference, Keynote Address, November 2016*

Wall Street Journal PRO, “Financial Regulation – Taking Stock, Looking Ahead,” Interview, October 2016*

*Engagements prior to joining Gibson, Dunn & Crutcher.

Admitted only in the Commonwealth of Virginia; practicing under the supervision of Principals of the Firm.

Arthur S. Long



200 Park Avenue, New York, NY 10166-0193

Tel: +1 212.351.2426

ALong@gibsondunn.com

Arthur S. Long is a partner in the New York office of Gibson, Dunn & Crutcher, where he is a Co-Chair of Gibson Dunn's Financial Institutions Practice Group and a member of the Securities Regulation Practice Group. Mr. Long focuses his practice on financial institutions regulation, advising on the regulatory aspects of M&A transactions; bank regulatory compliance issues; Dodd-Frank issues, including the regulation of systemically significant financial institutions (SIFIs) and related heightened capital and liquidity requirements; resolution planning; and Volcker Rule issues with respect to bank proprietary trading and private equity and hedge fund operations.

In addition, Mr. Long has significant experience with bank securities offerings and issues particular to foreign banks operating or seeking to operate in the United States. He also counsels fintech companies on regulatory issues relating to their businesses, and advises on regulatory matters relating to virtual currencies and blockchain technology, as such technology relates to payment and clearance and settlement systems.

Mr. Long is ranked as a leading lawyer in Banking and Financial Services Regulation by *Chambers USA: America's Leading Lawyers for Business* and *IFLR1000*. *Chambers* describes Mr. Long as "an outside-the-box thinker" and "a relentless worker" who is "careful and creative with difficult issues in both financial services law and corporate law."

Among Mr. Long's publications are *The Financial Services Regulation Deskbook*, the Practising Law Institute treatise on the Dodd-Frank Act, and "The New Autarky? How U.S. and UK Domestic and Foreign Banking Proposals Threaten Global Growth," a Policy Analysis of The Cato Institute.

At Gibson Dunn, in addition to counseling both non-U.S. and U.S. financial institutions on financial regulatory compliance issues, Mr. Long has advised on such publicly disclosed transactions as:

- GE Capital's sale of its retail bank deposit program to Goldman Sachs, the first expansionary transaction by a global systemically important bank (G-SIB) since the Financial Crisis;

- Grupo Financiero Ficohsa's purchase of Citigroup's banking and credit card operations in Honduras and Nicaragua; and
- Green Dot Corporation's acquisition of the Santa Barbara Tax Products Group, a provider of tax-related financial products.

Prior to joining Gibson Dunn, Mr. Long practiced with Davis Polk & Wardwell LLP for 16 years. During the Financial Crisis, he provided advice in connection with:

- The Federal Reserve Bank of New York's emergency loan to American International Group, Inc.;
- Her Majesty's Treasury's plan to provide support to the U.K. banking system, including obtaining relief from the U.S. Bank Holding Company Act for the U.K.-government controlled company that was the majority shareholder of the Royal Bank of Scotland Group plc and Lloyds Banking Group plc;
- Morgan Stanley's becoming a bank holding company and conforming its global operations to the Bank Holding Company Act; and
- Citigroup's proposed rescue of Wachovia Corporation and FDIC assistance.

Mr. Long advised Banco Santander, S.A. in connection with its acquisition of Sovereign Bancorp, Inc., which resulted in protested applications to the Federal Reserve Board, the Office of Thrift Supervision and the New York State Banking Department. He also advised one of the first-round filing international banks on its resolution plan required by Section 165 of the Dodd-Frank Act.

Mr. Long served as law clerk to U.S. Supreme Court Justice Clarence Thomas from 1997 to 1998, and to Judge J. Michael Luttig of the U.S. Court of Appeals, Fourth Circuit from 1993 to 1994. In 1993, he graduated *magna cum laude* from Harvard Law School, where he served as the Supreme Court Editor for the *Harvard Law Review*. He received his A.B. *magna cum laude* from Harvard College in 1989.

Joel M. Cohen



200 Park Avenue, New York, NY 10166-0193

Tel: +1 212.351.2664

JCohen@gibsondunn.com

Joel M. Cohen, a trial lawyer and former federal prosecutor, is Co-Chair of Gibson Dunn's White Collar Defense and Investigations Group, and a member of its Securities Litigation, Class Actions and Antitrust Practice Groups. Mr. Cohen has been lead or co-lead counsel in 24 civil and criminal trials in federal and state courts. Mr. Cohen is equally comfortable leading confidential investigations, managing crises or advocating in court. Mr. Cohen's experience includes all aspects of FCPA/anticorruption issues, insider trading, cross-border tax issues, securities and financial institution litigation, class actions, sanctions, money laundering and asset recovery, with a particular focus on international disputes and discovery.

Mr. Cohen was the prosecutor of Jordan Belfort and Stratton Oakmont, which is the focus of "The Wolf of Wall Street" film by Martin Scorsese. He was an advisor to the OECD in connection with the effort to prohibit corruption in international transactions and was the first Department of Justice legal liaison advisor to the French Ministry of Justice. Mr. Cohen is rated in *Chambers*, where practitioners and clients have noted that he has "incredibly strong substantive depth melded with a risk-based practicality," "strong trial skills and handling of large-scale investigations," is "very, very smart and very knowledgeable," and praised his ability to "handle very intense, complex matters with regulatory authorities and really just deliver great results." Mr. Cohen has been repeatedly named a leading white collar criminal defense attorney by *The Best Lawyers in America*®, a "Litigation Star" national Top 100 Trial Lawyer by *Benchmark Litigation*, an "MVP" by *Law360*, one of the world's leading practitioners in White Collar Crime in *Euromoney's Expert Guides - White Collar Crime*, a "Super Lawyer" in Criminal Litigation, and his work is noted by *Legal 500* in the areas of white collar criminal defense and securities litigation. In addition, *The American Lawyer* named Mr. Cohen as one of its Litigators of the Week after winning a jury defense verdict in an insider trading case on behalf of Nelson Obus, general partner of Wynnefield Capital.

Mr. Cohen was featured in *The American Lawyer's* 2016 award of "White Collar/Regulatory Law Firm of the Year" to Gibson Dunn for his Obus trial victory. Noting that his client was "in awe" of his trial and cross examination skills, *The American Lawyer* linked the trial victory with the SEC's decision days after the defense verdict to avoid jury trials and seek administrative actions in the future.

Mr. Cohen has achieved significant victories pretrial and at trial in many high-profile matters, including:

- Winning a jury trial in the closely watched *Securities and Exchange Commission v. Obus* insider trading matter on behalf of Wynnefield Capital and its chief portfolio manager after a 12 year battle with the SEC.
- Obtaining summary judgment for Citi in a class action seeking more than \$13 billion in damages for its alleged role in the Parmalat collapse.
- Winning a jury trial for AllianceBernstein in which the Florida state pension fund attempted to recover \$3.2 billion in losses sustained in Enron and other stocks, and successfully defending the same client in other significant Enron-related litigation, one of which resulted in an award of attorney's fees and costs for his client.

Mr. Cohen previously was Head of U.S. Litigation at Clifford Chance, where he practiced from 2004 to 2009. From 1999 to 2004, he practiced with Greenberg Traurig. From 1992 to 1999, he served as Assistant United States Attorney in the Eastern District of New York, supervising the Business/Securities Fraud Unit, where he received numerous awards from the Department of Justice and law enforcement agencies.

Mr. Cohen received his bachelor's degree from Middlebury College, his master's degree in History from Duke University and his Juris Doctor from Duke University Law School, where he was a moot court champion. He is a member of the bars of New York and Massachusetts.

Mr. Cohen is committed to pro bono work. He serves on the board of or acts as outside counsel to several prominent nonprofit entities, including as Board Chairman for Lawyers Without Borders, Jericho Project, The Brooklyn Historical Society, and the National Center for Law and Economic Justice. He successfully led a team of Gibson Dunn attorneys in representing all plaintiffs in a high-profile immigration civil rights case (*Barrera v. Boughton*) in Connecticut federal court, which resulted in the largest settlement in history for such claims, for which Gibson Dunn was awarded the National Legal Aid & Defender Association's Beacon of Justice Award, and *The New York Times* noted the accomplishment in an editorial, and his team received the *National Law Journal's* Hot Pro Bono designation. He currently is litigating First Amendment claims on behalf of dairy industry migrant workers against ICE and Vermont authorities who allegedly stifled their First Amendment rights.

Recent Representations

- Major U.S. bank: Representation of Major U.S. bank in European criminal tax proceeding.
- Major U.S. bank: Representation of Major U.S. bank in Brazilian/U.S. investigation.
- Major European Insurance/Asset Management Company: Representation of Major European Insurance/Asset Management Company in global cross-border tax matter.
- Major European bank: Representation of Major European bank in U.K. Serious Fraud and DOJ matter.
- Och-Ziff: Represented Och-Ziff, the publicly-traded asset management firm, in connection with DOJ and SEC investigations relating to investment activity in Africa and elsewhere. After five-year investigations, successfully negotiated settlements allowing for deferred prosecution for parent

entity, in one of the most-closely followed FCPA matters in years because of its impact on the investment and asset management sectors.

- Nelson Obus and Wynnefield Capital: Achieved trial victory and exoneration for Nelson Obus and Wynnefield Capital, a prominent hedge fund, in one of the longest fought insider trading cases in history. *Nelson v. Obus*.
- CEO of major public U.S. Alternative Energy Company: Represented the CEO of major U.S. Alternative Energy Company in connection with DOJ and SEC investigations and over thirty securities and employment cases.
- Major U.S. telecom company: Successfully resolved two separate SEC investigations involving alleged securities bond market activity and data security breaches, both ending with no charges.
- Fortune 100 Major Public Wireless and Broadband Company: Prevailed in civil action against major Mexican television and cable company in New York Supreme Court (Manhattan), recovering over \$50 Million for client after expedited proceedings.
- European bank: Representing the Global Head of Treasury in DOJ LIBOR investigation.
- European bank: Represented senior management and employees of a European bank in a large U.S. economic sanctions investigation.
- Swiss banks: Acted as independent examiner for several Swiss banks in connection with the DOJ's "Tax Non-Prosecution Program."
- European bank: DOJ FIRREA mortgage fraud investigation.
- Moody's: Successfully defended Moody's in two matters concerning its ratings of structured investments. *Abu Dhabi Commercial Bank v. Moody's et al.*
- Duke Energy: Represented Duke Energy legacy board of director members in connection with outstanding derivative and class action litigations and a resolved regulatory matter arising from the Duke-Progress corporate merger. North Carolina Utilities Commission/Duke Energy.
- UBS, Citi and Lazard: Successfully defended UBS, Citi and Lazard in a class action (and related SEC inquiry) alleging violation of federal securities laws in the underwriting of the \$165 million IPO for SinoTech, a Chinese issuer delisted from NASDAQ following allegations that SinoTech was a shell operation. *Athale v. Sinotech*.
- Allianz SE: Obtained a rare declination to prosecute from the Department of Justice and highly favorable SEC settlement on a cease-and-desist basis, in which both agencies were convinced not to proceed on an aggressive "private equity liability" theory relating to FCPA-related issues. *SEC v. Allianz SE*.

- Major Global Oil and Gas Service Company: Represented client involving reviews in more than a dozen countries, on five continents, resulting in no charges brought anywhere globally.
- Private equity and investment management funds: Represented several private equity and investment management funds in connection with SEC and Department of Justice FCPA-related investigations.
- AllianceOne: Acted as monitor counsel for AllianceOne in connection with a three year DOJ and SEC FCPA-related monitorship. *United States v. Alliance One*.
- Fortune 100 companies: Represented several Fortune 100 companies in global regulatory investigations relating to corporate fraud, corruption/FCPA issues, sanctions issues and insider trading concerns.
- Major accounting firm: Represented a major accounting firm, convincing the SEC not to bring charges for alleged violations of the auditor independence rules.
- Wall Street general counsel: Represented a Wall Street general counsel, convincing the SEC to decline to bring insider trading charges.
- Former head of CDO trading: Represented the former head of CDO trading at a top global bank in connection with several related criminal and regulatory and civil litigations in which no charges were brought against client. *SEC v. Stoker*.
- Multiple financial institutions: Represented multiple financial institutions in designing crisis management and global anticorruption programs.
- Audit and special committees: Represented many audit and special committees of public companies and private company boards of directors in connection with allegations of wrongdoing.

Recent Speaking Engagements

- Speaker, “FCPA Trends in the Emerging Markets of China, Russia, Latin America, India and Africa,” Gibson Dunn Webinar, January 2019.
- Speaker, “Hot Trends in DOJ and SEC Enforcement Litigation 2018/2019,” Sandpiper, New York City, December 2018.
- Speaker, “[The Current State of FCPA Enforcement Efforts](#),” RANE Network Podcast, January 2018.
- Speaker, “2018 FCPA Trends in the Emerging Markets of China, Russia, India, Africa, and Latin America,” Gibson Dunn Webcast, January 2018.
- Speaker, “IPO and Public Company Readiness: Regulatory Compliance issues,” Gibson Dunn Webcast, November 2017.

- Speaker, “Are We Speaking the Same Language? Privilege Issues in Cross-Border Litigation, Investigations and International Arbitration,” Gibson Dunn Webcast, May 2017.
- Speaker, “The New French Anti-Corruption Law (“Sapin II”) within the Global Compliance Landscape,” Gibson Dunn Webcast, April 2017.
- Speaker, “Sapin II: A New French Anti-corruption and Compliance Law: Revolutionary or Reactionary?,” Paris Webinar, April 2017.
- Speaker, “Anti-Bribery & FCPA Compliance in the Fashion Industry,” New York City Bar Association, New York, NY, April 2017.
- Keynote Speaker, “Economic Empowerment For Women,” United Nations Commission on the Status of Women, New York, NY, March 2017.
- Moderator, “Significant Legal Developments in the Regions,” 31st Annual National Institute on White Collar Crime, March 2017.
- Speaker, “FCPA Trends in the Emerging Markets of China, Russia, India, Africa and Latin America,” Gibson Dunn Webcast, January 2017.
- Speaker, “The Representation of Individuals in FCPA Investigations,” Duxes Anti-Corruption Compliance Summit, October 2016.
- Speaker, “Sports and Sponsorship Risks,” ACI Anti-Corruption Compliance Conference, July 2016.
- Speaker, “Evolving Ethical and Liability Challenges for Audit Committee Advisors,” PLI, June 2016.
- Keynote Speaker, 2014 RGL Forensics Annual Conference, May 2015.
- Speaker, “Securities Litigation & Arbitration Section,” Houston Bar Association, Houston, TX, February 2015.
- Keynote Speaker, “Certified Investment Management Analyst Program Master’s Class,” Investment Management Consultants Association, Sydney, Australia,
- Speaker, “Wolves of Wall Street – The Continuing Investigation,” ABA Securities Fraud Conference 2014, New Orleans, LA,
- Keynote Speaker, Young Presidents’ Organization, November 2014.
- Speaker, “Where Trading Can Get Your Firm into Deep Trouble, And How Best to Prevent These Compliance Risks,” IA Watch Webinar, September 2014.
- Speaker, “SEC v. *Obus*: Insider Trading and Taking the SEC to Trial,” Practising Law Institute, New York, NY, July 2014.

- Speaker, “25th Annual Global Fraud Conference,” Henry B. Gonzalez Convention Center, Association of Certified Fraud Examiners, San Antonio, TX, June 2014.
- Speaker, False Claims Act Conference, New York, NY, May 2014.
- Speaker, “Foreign Corrupt Practices Act and International Anti-Corruption Developments 2014,” PLI Conference Center, New York, NY, May 2014.
- Speaker, “False Claims Act Conference: Damage Theories,” New York City Bar Association, New York, NY, May 2014.
- Keynote Speaker, Offshore Alert Conference, Miami, FL, May 2014.
- Speaker, “Recent Trends in Foreign Corrupt Practices Act Investigations, Enforcement, Litigation & Compliance,” New York City Bar Association, New York, NY, April 2014.
- Speaker, “2nd Annual Conference 2014: Rule of Law and Innovation,” Lawyers Without Borders, Oxford, United Kingdom, March 2014.
- Speaker, “Anti- Corruption and the FCPA – What Should Your Fund’s Policy Look Like?,” Hedge Fund Compliance Master Class, New York, NY, February 2014.
- Speaker, “The Wolf of Wall Street:Behind the Scenes of Stratton Oakmont,” Heyman Center on Corporate Governance, New York, NY, January 2014.
- Speaker, “Financial Institutions in the Crosshairs: The False Claims Act and FIRREA,” October 2013.
- Speaker, “A Guide to Anti-Corruption and the FCPA – What Should Your Firm’s Policy Look Like?,” Private Equity Operations & Compliance Forum, New York, NY October 2013.
- Speaker, SEC & DOJ Hot Topics 2013 Breakfast Briefing, New York, NY, December 2012.
- Speaker, PLI FCPA 2012 Conference, New York, NY, May 2012.
- Speaker, ACI National Conference on FCPA, New York, NY, April 2012.
- Speaker, PLI FCPA 2011 Conference, New York, NY May, 2011.
- Speaker, ACI FCPA-Health Sciences Conference, New York, NY, May 2010.
- Speaker, ACI Annual FCPA Conference, Washington, D.C., November 2008.
- Speaker, Legal IQ Annual Securities Litigation Conference, New York, NY, May 2008.
- Speaker, “Ethics and Experts,” Antitrust Law Section Symposium, New York State Bar Association, 2007.

Recent Publications


- Contributing Editor, “The International Comparative Legal Guide to: Anti-Money Laundering 2018,” *Global Legal Group*, May 6, 2018.
- “Right Back Where We Started From? In *Salman*, the Supreme Court Clarifies the ‘Personal Benefit’ Test But Otherwise Leaves Undisturbed Insider Trading Contours,” Volume 21, Issue 1, *Wall Street Lawyer*, January 2017.
- “Developments and Trends in CFTC Enforcement,” *The Review of Securities & Commodities Regulation*, September 7, 2016.
- “SEC Moves in the Right Direction with Proposed Amendments to Rules Governing Administrative Proceedings, but the Changes Do Not Go Far Enough,” *Gibson Dunn Client Alert*, September 28, 2015.
- “Coerced Corporate Social Responsibility and the FCPA,” *The International Comparative Legal Guide to: Business Crime 2016*, October 2015.
- “Welcome News from the SEC on Forum Selection,” *National Law Journal*, June 1, 2015.
- “SEC v. *Obus*: A Case Study on Taking the Government to Trial and Winning,” *Review of Securities & Commodities Regulation*, November 5, 2014.
- SEC Plans to Play Insider-Trading Cases on Home Court,” *National Law Journal*, September 16, 2014.
- Op-ed, “The Real Belfort Story Missing From ‘Wolf’ Movie,” *The New York Times*, January 7, 2014.
- “Nepotism: Friendly Relations? When Nepotism May Violate the FCPA,” *The FCPA Report*, October 17, 2012.
- “Foreign Corrupt Practices Act, Private Equity International, June 1, 2012.
- “Does That Settle It? Well, Maybe Not,” *National Law Journal*, April 9, 2012.
- “Private Equity Investment and the FCPA,” *Review of Securities and Commodities Regulations*, Fall 2011.
- “Insider Trading: It’s Not for Suits,” *Law Journal Newsletters*, December 2010.
- “Six Ways a Board Can Manage FCPA Risk,” *Corporate Board Member Magazine*, October 1, 2010.
- “UK Serious Fraud Office Discusses Details of UK Bribery Act with Gibson Dunn,” *Gibson Dunn Client Alert*, September 7, 2010.

- “Erosion of the Fiduciary Duty Requirement in Insider Trading Actions,” *Securities Litigation Journal*, American Bar Association, Spring 2010.
- “Narrow, Don’t Abolish: The Facilitating Payments Exception to the FCPA,” *New York Law Journal*, July 8, 2010.
- “Mutual Fund Litigation Triggered By the Credit Crisis,” *The Review of Securities & Commodities Regulation* June 3, 2009.
- “Under the FCPA, Who Is a Foreign Official Anyway?,” *The Business Lawyer*, 2008.
- “Due Diligence Under the Foreign Corrupt Practices Act: Defining a Foreign Official,” *Clifford Chance US Regulatory & White Collar Update*, 2008.
- “Anti-Money Laundering Laws and Regulations for Broker-Dealers: Spotlight on Foreign Broker-Dealers,” *Clifford Chance Client Memo* 2008.
- “The U.S. Foreign Corrupt Practices Act and its Application to Foreign Companies that Do Not Issue Securities in the U.S.,” *Clifford Chance Client Memo* 2008.
- “Five Things to Know About the FCPA,” *Corporate Compliance Zeitschrift*, January 2008.
- “SEC on Corporate Penalties: Two Steps Forward, One Step Backward,” *New York Law Journal*, February 2006.
- “Toward True Deterrence of Government Misconduct,” *New York Law Journal*, October 2004.
- “Regulation FD,” *New York Law Journal*, October 2002.

Recent Media

- "[Wary Firms Won't Rush To Test FCPA Corruption Guidelines](#)," *Law360*, January 11, 2018
- “A Guide to Insider Trading Laws Across Jurisdictions: How Funds with Global Assets Can Implement Tactical and Compliant Policies and Procedures (Part Two of Two),” *Hedge Fund Legal & Compliance Digest*, April 20, 2017
- “SEC Gives Ground on Judges,” *WSJ.com*, September 24, 2015.
- “[American Greed](#),” *CNBC*, March 5, 2015.
- “[White Collar Group Of The Year: Gibson Dunn](#),” *Law360*, February 5, 2015.
- “[Securities Group Of The Year: Gibson Dunn](#),” *Law360*, January 29, 2015.

- [“Litigators of the Week: Joel Cohen of Gibson, Dunn & Crutcher; Mark Cohen of Cohen & Gresser; and Roland Riopelle of Sercarz & Riopelle,”](#) *AmLaw Litigation Daily*, June 5, 2014.
- [“SEC Loses Insider-Trading Case,”](#) *The Wall Street Journal*, May 30, 2014.
- [“After Fighting Insider Trading Charges for 10 Years, a Fund Manager Is Cleared,”](#) *The New York Times*, May 30, 2014.
- [“12 Years Later, a Fund Manager Gets to Give His Side,”](#) *The New York Times*, May 27, 2014.
- [“Nelson Obus’s Lawyer Says His Client Is Honest or the ‘Lamest Insider Trader in History’,”](#) *The Wall Street Journal*, May 19, 2014.
- [“NY fund manager made insider trading ‘jackpot,’ SEC tells jurors,”](#) *Reuters*, May 19, 2014.
- [“The Wolf Hound Of Wall Street: Joel M. Cohen on Jordan Belfort, White Collar Work, And Corruption,”](#) *Forbes*, May 6, 2014.
- [“Inside Money: The real sheep of Wall Street?,”](#) *The New Zealand Herald*, January 14, 2014.
- [“Prosecutors Give Poor Reviews to Restitution From ‘Wolf of Wall Street’,”](#) *WSJ.com*, January 12, 2014.
- [“Jordan Belfort: The real wolf of Wall Street and the men who brought him down,”](#) *The Independent*, January 12, 2014.
- “Boulton and Co.,” *Sky News*, January 10, 2014.
- [“The Wolf of Wall Street: Why we like a villain,”](#) *BBC News*, January 9, 2014.
- [“‘Wolf of Wall Street’ prosecutor says film glorifies Belfort,”](#) *Fox Business*, January 9, 2014.
- “Blockbuster Backlash,” *CBS Morning News*, January 8, 2014.
- [“The Wolf of Wall Street Glorifies Crook’s Misdeeds Critics Say,”](#) *CBS Insider News*, January 8, 2014.
- Op-ed, “The Real Belfort Story Missing From ‘Wolf’ Movie,” *The New York Times*, January 7, 2014.
- [“‘Wolf of Wall Street’ Prosecutor Lambasts the Movie – Joel Cohen on Jordan Belfort,”](#) *WSJ.com*, January 2, 2014.
- “Gibson Dunn teams with Lawyers Without Borders on Kenyan anticorruption effort,” *National Law Journal*, August 21, 2012.

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- “Pro Bono Hot List,” *National Law Journal*, January 2, 2012.
 - “The Curious Case of Nelson Obus,” *The New York Times*, Sunday Business Section Feature Article, June 5, 2011.
 - “Attorneys from Gibson Dunn Tally 9,000 Hours in Day Laborer’s Cause,” *National Law Journal*, March 24, 2011.
 - “Danbury 11,” Editorial, *The New York Times*, March 14, 2011.

Barry R. Goldsmith



200 Park Avenue, New York, NY 10166-0193

Tel: +1 212.351.2440


BGoldsmith@gibsondunn.com

Barry R. Goldsmith is a partner in the New York and Washington, D.C., offices of Gibson, Dunn & Crutcher and Co-Chair of Gibson Dunn's Securities Enforcement Practice Group. Mr. Goldsmith is also a member of Gibson Dunn's Securities Litigation Practice Group, and White Collar Defense and Investigations Practice Group. Mr. Goldsmith's practice focuses on the representation of securities firms, brokers/dealers, investment companies and investment advisers and other financial institutions, issuers and their employees in investigations and litigation with the SEC, Financial Industry Regulatory Authority (FINRA) and state securities regulators and attorneys general.

Mr. Goldsmith is consistently ranked as one of the top Securities Regulatory and Enforcement attorneys in the nation by *Chambers USA: America's Leading Lawyers for Business*, *Institutional Investor's Benchmark Litigation Guide* and *The Best Lawyers in America*®. *Best Lawyers* named him New York City Securities Regulation "Lawyer of the Year" for 2015 and 2018, in addition to 2014 New York City Litigation – Securities "Lawyer of the Year." Mr. Goldsmith was also recognized by *Washingtonian Magazine* as one of Washington's Top Lawyers for securities law. *Chambers* notes that Mr. Goldsmith is well regarded for his background at the SEC and FINRA. That he is an "exceptional lawyer" having "terrific practical implications for his advice as well as his credibility within the SEC," and has an "ability to keep the big picture in mind while paying attention to the details."

Mr. Goldsmith is a frequent speaker on securities enforcement and regulatory issues at industry, legal and media sponsored conferences. He has also authored and co-authored numerous securities industry related articles.

Mr. Goldsmith joined Gibson Dunn in 2006 after serving as Executive Vice President for Enforcement of the National Association of Securities Dealers (NASD) now FINRA, the primary private-sector regulator of the country's securities industry. Mr. Goldsmith was NASD's top enforcement official responsible for formulating its national enforcement policy and overseeing investigations and cases. Prior to his 10-year tenure at NASD, Mr. Goldsmith served as Chief Litigation Counsel at the SEC where he was responsible for all enforcement litigation brought by the agency.



Mr. Goldsmith brings a wealth of experience to Gibson Dunn. He oversaw NASD's enforcement division during a period of major change and enforcement activity on Wall Street. He was responsible for major NASD enforcement initiatives involving IPO allocation practices, research analyst conflicts of interest, fixed income abuses, variable annuity and life insurance sales practices, as well as mutual fund and hedge fund sales and marketing activities. As Chief Litigation Counsel at the SEC, Mr. Goldsmith had significant responsibilities for the SEC's landmark cases against Drexel Burnham Lambert, Michael Milken, Ivan Boesky and Paul Bilzerian. He successfully tried precedent-setting enforcement actions against Victor and Steven Posner where he obtained the first ever SEC-litigated officer and director bar and the SEC's first litigated "stock parking" case against First City Financial Corp. and Mark Belzberg.

Mr. Goldsmith joined NASD in 1996. During his tenure, he more than doubled the number of enforcement staff under his direction and significantly increased the number of new enforcement actions by NASD's 16 offices throughout the country. Prior to serving as head of enforcement at NASD, Mr. Goldsmith was at the Division of Enforcement at the SEC for 10 years, serving as Chief Litigation Counsel from 1993 to 1996 and Senior Deputy Chief Litigation Counsel from 1990 to 1993.

Prior to the SEC, Mr. Goldsmith was a litigation partner with a Washington, D.C., law firm and served as a law clerk to a federal district judge.

Mr. Goldsmith received his Juris Doctor in 1975 from Georgetown University Law Center, where he served as lead articles editor of *Law and Policy in International Business*. Mr. Goldsmith graduated *magna cum laude* in economics from the University of Pennsylvania's Wharton School in 1972.

Richard W. Grime



1050 Connecticut Avenue, N.W., Washington, DC 20036-5306

Tel: 202.955.8219

RGrime@gibsondunn.com

Richard W. Grime is a litigation partner in Gibson, Dunn & Crutcher's Washington, DC office and a member of the White Collar Defense and Investigations Practice Group. He is also a Chair of the Securities Enforcement Practice Group.

Mr. Grime's practice focuses on representing companies and individuals in corruption, accounting fraud, and securities enforcement matters before the Securities and Exchange Commission and the Department of Justice. Mr. Grime also conducts internal investigations and counsels clients on compliance and corporate governance matters.

Prior to joining Gibson Dunn, Mr. Grime spent over nine years in the Division of Enforcement at the Securities and Exchange Commission in Washington, DC. In his last four years at the Commission he was an Assistant Director. While at the SEC, Mr. Grime supervised the filing of over 70 enforcement actions covering a wide range of the Commission's activities. These included a series of FCPA cases including the first FCPA case involving SEC penalties for violations of a prior Commission order, numerous financial fraud cases involving retail, technology and financial services companies, regulated entity cases involving broker-dealers, transfer agents and investment advisers, along with multiple insider trading and Ponzi-scheme enforcement actions.

Mr. Grime is ranked nationally by *Chambers USA* as a leading attorney in FCPA and Securities Regulation: Enforcement. He is also ranked by *Chambers Global* as a leading attorney in FCPA and was recently selected by his peers for inclusion in *The Best Lawyers in America*© 2016 in the field of Criminal Defense: White Collar. Mr. Grime was recognized in *Who's Who Legal: Investigations 2018* and *2016* and was noted as "brilliant" for internal investigation, compliance and corporate governance work. Mr. Grime was recognized as one of the 3000 "Leading Lawyers in America" in *Lawdragon Magazine* 2011. He is also a longstanding and frequent speaker to legal and industry practitioners particularly on anti-corruption and securities enforcement topics.

Mr. Grime received his law degree with First Class Honors from Oxford University in 1986 and qualified as a solicitor in London. Following law school, and before joining the SEC, Mr. Grime was a litigator for 10 years in private practice.

Representative Matters

- Represented the audit committee of the board of directors of a U.S. gaming company relating to allegations of FCPA violations in an investigation conducted by the SEC and DOJ.
- Represented a natural resources company relating to allegations of accounting fraud in an investigation conducted by the SEC and DOJ.
- Represented an oil exploration company relating to allegations of FCPA violations in an investigation conducted by the SEC and DOJ.
- Represented multiple senior executives in FCPA investigations conducted by the DOJ and SEC covering the oil exploration, airline, consumer products, financial services, and beverage industries.
- Represented a publicly traded agricultural company in an investigation of potential corruption issues in Australia.
- Assisted in compliance reviews of two companies arising from two separate enforcement actions brought by the SEC and the World Bank.
- Advised a private equity firm on insider trading issues.
- Represented a broker-dealer in investigation conducted by FINRA regarding the protection of customer information.
- Represented a major bank in auction rate securities investigation before the SEC and other government agencies.
- Represented a senior executive at a financial services firm in an SEC insider trading investigation.
- Advised multiple companies regarding the creation, refinement and implementation of anti-corruption programs.

Selected Speaking Engagements and Publications

- Co-Chair “The Foreign Corrupt Practices Act and International Anti-Corruption Developments,” Practising Law Institute (2011-present).
- Co-Presenter, “Bribery and Corruption Issues for Financial Institutions,” SIFMA Legal and Compliance Conference (2009-present).
- Co-Presenter, “Legal Hot Button FCPA Issues Affecting Global Anti-Corruption Programs,” FCPA Boot Camp, American Conference Institute (2015).

- Co-Presenter, “An Interactive Moot Court Debate on Unsettled FCPA Issues” 31st International Conference on FCPA, American Conference Institute (2014).
- Co-Presenter, “Hedge and Private Fund Enforcement & Regulatory Developments,” Practising Law Institute (2014).
- Co-Author, “*Caveat Emptor*: Anti-Corruption Challenges and Compliance Strategies for Private Equity,” (2014).
- Co-Presenter, “WMAACCA Global Issues Forum: Detecting Red Flags When Dealing with Foreign Officials,” WMAACCA (2013).
- Co-Author, “What’s In Your Private Equity Portfolio? Not Knowing Could Result In Increased Risk of Violating The UK Bribery Act and the Foreign Corrupt Practices Act,” Practising Law Institute (2012).
- Co-Author, “Implications of the U.K. Bribery Bill for Individuals and Corporations Already Subject to the FCPA,” (2010).
- Co-Author, “Disgorgement of Profits in FCPA Enforcement Actions — Seeking a Rational Basis,” Practising Law Institute (2010).
- Co-Author, “Why the Accounting Provisions of the Foreign Corrupt Practices Act Should Concern You,” 23rd Annual National Institute on White Collar Crime (2009).
- Co-Author, “Conducting Anticorruption Due Diligence in M&A Deals,” China Business Review (2009).
- Co-Presenter, “Remediation Programs: How to Clean Up After an FCPA Investigation or Penalty, and When to Start,” 22nd National Forum on FCPA, American Conference Institute (2009).
- Co-Presenter, “Complying with the FCPA In a Heightened Enforcement Environment - What Advice You Need to Give Your Clients & When.” New York City Bar (2009).
- Co-Presenter, “Key Issues Facing Boards of Directors: International Business Regulation and Enforcement,” Directors Roundtable Panel (2009).
- Co-Presenter, “Designing Effective Internal Accounting Controls to Meet FCPA’s Books and Records Provision,” C5 Group and American Conference Institute’s India Summit on Anti-Corruption Compliance and Enforcement. (2009)
- Interviewed, PBS FRONTLINE/World: Interviewed for Documentary “*Black Money*” (aired April 7, 2009; see <http://www.pbs.org/wgbh/pages/frontline/blackmoney/>)
- Interviewed, “Discussion of FCPA Compliance Matters,” Bloomberg TV interview by Catherine Yang (May 30, 2008)

- Co-Presenter, “The Foreign Corrupt Practices Act 2009: Coping with Heightened Enforcement Risks,” Practising Law Institute (2009).
- Co-Presenter, “Identifying and Correcting Books and Records Violations,” American Conference Institute’s FCPA and International Anti-Corruption Conference for the Pharmaceutical and Medical Device Industries (2009).
- Co-Presenter, “The Reality of Having a Special Compliance Monitor: Setting the Boundaries and Making the Relationship Work,” 21st National Conference on Foreign Corrupt Practices Act, American Conference Institute (2009).
- Co-Presenter, “FCPA: Complying and Implementing Risk Management Strategies,” New York City Bar (2008).
- Co-Presenter, “Second Annual European Forum on Anti-Corruption,” American Conference Institute (2008).
- Co-Author, “Expanding Boundaries: FCPA Jurisdiction Over Foreign Entities and Individuals,” Criminal Litigation (Vol. 9, No. 1, 2008).
- Co-Author, Obvious and Not-So-Obvious Consequences from the Rise in FCPA Enforcement, 22nd Annual National Institute on White Collar Crime (2008).
- Co-Presenter, “Waiver vs. Protection of Attorney-Client Privilege: Ensuring a Deliberate Approach,” American Conference Institute’s Sixth National Forum on Conducting, Managing and Responding to Corporate Investigations (2008).
- Co-Presenter, “The Foreign Corrupt Practices Act: Developing a Compliance Program,” West Legalworks (2008).
- Co-Presenter, “Practical Guide to the Foreign Corrupt Practices Act,” The District of Columbia Bar (2008).
- Co-Presenter, “The Nuts and Bolts of Conducting an Internal Investigation,” Foreign Corrupt Practices Act 2008: Coping with Heightened Enforcement Risks” Practising Law Institute (2008).
- Co-Presenter, “Voluntary Disclosures: How the Government Evaluates Them and What to Include,” 19th National Conference on the Foreign Corrupt Practices Act, American Conference Institute (2008).
- Co-Presenter, “The Foreign Corrupt Practices Act at 30 Years,” 22nd Annual National Institute on White Collar Crime, American Bar Association (2008).
- Co-Presenter, “Insider Trading Issues,” Hedge Fund Enforcement Issues and Regulatory Developments 2007, Practising Law Institute (2007).

- Co-Presenter, “Voluntary Disclosures: How the Government Evaluates Them and What to Include” 18th National Conference on the Foreign Corrupt Practices Act, American Conference Institute (2007).
- Co-Presenter, “Lessons Learned from Recent DOJ and SEC Enforcement Actions,” “Doing Business Under the Foreign Corrupt Practices Act,” New York City Bar (2007).
- Co-Presenter, “Roundtable of Hypothetical Cases with Enforcement Officials and Defense Counsel,” The Practising Law Institute (2007).
- Co-Author, “Voluntary Disclosure -- Evaluating the Benefits and Burdens.” 18th National Conference Foreign Corrupt Practices Act, American Conference Institute (2007).
- Co-Author, “New Issues And Old Tools; How The SEC Is Responding To Insider Trading By Hedge Funds, Hedge Fund Enforcement Issues and Regulatory Developments,” Practising Law Institute (2007).

Mark K. Schonfeld



200 Park Avenue, New York, NY 10166-0193

Tel: +1 212.351.2433

MSchonfeld@gibsondunn.com

Mark K. Schonfeld is a litigation partner in the New York office of Gibson, Dunn & Crutcher and Co-Chair of Gibson Dunn's Securities Enforcement Practice Group. He is also a member of the Crisis Management and the White Collar Defense and Investigations Practice Groups.

Mr. Schonfeld's practice focuses on the representation of financial institutions, public companies, hedge funds, accounting firms and private equity firms in investigations conducted by the Securities and Exchange Commission (SEC), Department of Justice (DOJ), States Attorneys General, Financial Industry Regulatory Authority (FINRA) and other regulatory organizations. Mr. Schonfeld also conducts internal investigations and counsels clients on compliance and corporate governance matters.

Benchmark Litigation recognizes Mr. Schonfeld as a "Litigation Star," and he has been ranked as a leading lawyer in Securities Regulation and Enforcement by *Chambers USA: America's Leading Lawyers for Business*. *Chambers* highlighted client praise for Mr. Schonfeld's "invaluable current knowledge of agency practice, procedure and personalities active at the SEC" and noted he is "a very strategic, seasoned professional. He's measured, thoughtful and incredibly proactive in terms of keeping clients updated. He's detail-oriented and produces extremely high quality work."

Prior to joining Gibson Dunn, Mr. Schonfeld concluded a 12-year career with the SEC, the last four years as the Director of the New York Regional Office, the largest of the SEC's regional offices. Mr. Schonfeld oversaw professional staff of nearly 400 enforcement attorneys, accountants, investigators and compliance examiners engaged in the investigation and prosecution of enforcement actions and the performance of compliance inspections of more than 4,000 SEC registered financial institutions in the region. Mr. Schonfeld led the New York Office through one of the most vibrant and rapidly evolving periods in the history of the SEC and securities law enforcement and brought many of SEC's major landmark cases dealing with complex accounting fraud, mutual fund trading, hedge fund abuses, foreign bribery, insider trading and market manipulation.

Mr. Schonfeld received his Juris Doctor, *cum laude*, from Harvard Law School in 1988 and his Bachelor of Arts degree, *summa cum laude*, and with Highest Distinction from the University of Rochester in 1984. Following law school, Mr. Schonfeld was a law clerk for the Honorable Ellsworth A. Van Graafeiland

of the U.S. Court of Appeals for the Second Circuit. Following his clerkship and before joining the SEC, Mr. Schonfeld was a litigator in private practice.

Mr. Schonfeld is a frequent public speaker to legal and industry practitioners and commentator on television and radio, and has participated in international training programs for foreign financial regulators and law enforcement agencies. He is a past recipient of the SEC Chairman's Award for Excellence and the Capital Markets Award. He is a member of the New York and Massachusetts State Bars, the New York State Bar Association and the Committee on White Collar Criminal Litigation, the Association of the Bar of the City of New York and the Federal Bar Council.

Representative Matters

- Represented Och-Ziff Capital Management Group in a five-year FCPA investigation by DOJ and SEC. Successfully negotiated deferred prosecution agreement for parent corporation.
- Represented Hewlett-Packard Company in FCPA investigation by DOJ and SEC.
- Successfully represented one of the nation's largest public companies in an investigation by SEC of company disclosures. Following presentations to the staff, the SEC closed the investigation.
- Successfully represented a Fortune 500 company in an SEC investigation of its financial reporting of non-GAAP measures. Following a presentation to the staff, the SEC closed the investigation.
- Represented CEO of public company in an SEC investigation of the company's financial disclosures.
- Represented several of the nation's largest hedge fund advisers in investigations of insider trading in equities and derivatives and information disclosure practices among financial institutions.
- Successfully represented several private equity fund managers in SEC examinations of disclosures and fee and expense practices. Following presentations to SEC staff, the examinations were concluded without referral to Enforcement.
- Successfully represented managing director of major investment bank in investigations by SEC, DOJ and New York Attorney General of structuring and sale of mortgage-backed securities. Following Wells submission and presentations to government, no enforcement actions were filed.
- Successfully represented major investment bank in investigation of arrangement and syndication of commercial real estate loans to lenders. Following presentation of findings to the staff, regulator closed the investigation.
- Successfully represented former managing director of major investment bank in investigation of proprietary trading of credit derivatives. After receiving a Wells notice, persuaded staff not to pursue enforcement action.

- Successfully represented Fortune 100 corporation in investigation of timing of corporate disclosures relating to product defect. Following presentation to staff, SEC closed the investigation.
- Successfully represented client in investigation of valuation of collateralized debt obligations by hedge fund adviser.
- Represented major investment bank in regulatory review of “flash crash.”
- Represented several hedge fund advisers in SEC investigations of trading in advance of public offerings and compliance with Rule 105.
- Represented hedge fund adviser in investigation of potential market manipulation.

Speaking Engagements and Publications

- Moderator and Presenter, “Hedge Fund and Private Equity Enforcement and Regulatory Developments,” Practising Law Institute (November 2017).
- Moderator, “Directors Institute on Corporate Governance – What Boards and Their Counsel Need to Know About Enforcement and Compliance Under the New Administration,” Practising Law Institute (November 2017).
- Moderator, “Perspectives on SEC enforcement Past, Present and Future,” Gibson Dunn (October 2017).
- Presenter, “Regulatory Enforcement of the Securities Laws: Ethical Issues Associated with Internal and Governmental Investigations,” American Law Institute Securities and Shareholder Litigation Developments (October 2017).
- Presenter, “Storming the Gatekeepers: When Compliance Officers and In-House Lawyers Are at Risk,” Practising Law Institute (September 2017).
- Author, “The Regulatory Risks of a Deregulatory Environment,” *Law360* (September 2017).
- Presenter, “Examining FCPA Issues for Fund Managers,” Managed Funds Association Legal and Compliance Conference (May 2017).
- Presenter, “Managing FCPA, Compliance and Enforcement Issues: Directors as Gatekeepers or Overseers,” Practising Law Institute Directors Institute on Corporate Governance (November 2016).
- Presenter, “Developments in DOJ and SEC Enforcement,” American Law Institute (March 2016).
- Presenter, “SEC Enforcement Hot Topics,” IA Watch (November 2015).

- Presenter, “Hot Topics in SEC Enforcement: Whistleblowing, Insider Trading, FCPA & More,” Association of the Bar of the City of New York (March 2013).
- Presenter, “Hedge Fund Enforcement & Regulatory Developments,” Practising Law Institute (March 2013).
- Presenter, “SEC Whistleblower Initiative: Update and Perspective,” Association of the Bar of the City of New York (January 2013).
- Presenter, “SEC Enforcement Update,” Society of Corporate Secretaries and Governance Professionals, Fall Conference (October 2012).
- Presenter, “Hot Topics in SEC Enforcement,” Association of the Bar of the City of New York (March 2012).
- Presenter, “Hot Topics in SEC Enforcement: Investigations in a Time of Turmoil,” Association of the Bar of the City of New York (March 2012).
- Presenter, “SEC Whistleblower Rules,” IA Week Annual Compliance Summit (March 2012).
- Co-Author, “Is This an Inspection or an Investigation? The Blurring Line Between Examinations of and Enforcement Actions Against Private Fund Managers,” *Hedge Fund Law Report*, Volume 5, Number 13 (March 2012).
- Presenter, “Hedge Fund Registration and Compliance,” Practising Law Institute (January 2012).
- Presenter, “SEC Enforcement Update,” NYSBA Securities Regulation Committee (February 2011).
- Presenter, “SEC Hot Topics 2011 Luncheon,” Sandpiper Partners LLP (January 2011).
- Presenter, “SEC Enforcement Update for Directors,” Mutual Fund Directors Forum (January 2011).
- Presenter, “SEC Enforcement Update: Navigating the Seas of Heightened Enforcement,” Mutual Fund Directors Forum (November 2010).
- Presenter, “SEC Enforcement Actions: Understanding the Legal & Equitable Remedies That the SEC Can Use Against Your Clients,” Association of the Bar of the City of New York (October 2010).
- Program Chair, “Impact of the Dodd-Frank Act on the Securities Industry — What Broker-Dealers and Investment Advisers Need to Know,” Association of the Bar of the City of New York (October 2010).
- Presenter, “SEC Update: Navigating the Seas of Heightened Enforcement,” Center for Corporate Reporting & Governance, Ninth Annual SEC Financial Reporting Conference (September 2010).

- Presenter, “The Impact of the Dodd-Frank Act on the SEC’s Enforcement Program,” Association of the Bar of the City of New York (September 2010).
- Speaker, “Riding Herd on Complex Products: Learn About the SEC Enforcement Division’s Newly Created Structured & New Products Unit,” Association of the Bar of the City of New York (April 2010).
- Co-Author, “Recent Developments in SEC Insider Trading Cases,” *Securities Litigation Report*, Vol. 7, Issue 4 (April 2010).
- Panelist, “Getting Governance Right: Listening for the Early Warning Signals,” Operational Risk Committee and International Association of Financial Engineers Spring 2010 Panel at PricewaterhouseCoopers in New York (March 2010).
- Presenter, “The SEC’s New Cooperation Policy—What You Need to Know to Navigate the New Guidelines,” Association of the Bar of the City of New York (February 2010).
- Presenter, “Insider Trading: Looking for the Bright Line,” Institutional Investor Legal Forum Winter Roundtable (February 2010).
- Presenter, “Insider Trading: Navigating Murky Waters,” Institutional Investor Trader Forum Winter Workshop and Equity Summit (January 2010).

Our Offices

Beijing

Unit 1301, Tower 1
China Central Place
No. 81 Jianguo Road
Chaoyang District
Beijing 100025, P.R.C.
+86 10 6502 8500

Brussels

Avenue Louise 480
1050 Brussels
Belgium
+32 (0)2 554 70 00

Century City

2029 Century Park East
Los Angeles, CA 90067-3026
+1 310.552.8500

Dallas

2100 McKinney Avenue
Dallas, TX 75201-6912
+1 214.698.3100

Denver

1801 California Street
Denver, CO 80202-2642
+1 303.298.5700

Dubai

Building 5, Level 4
Dubai International Finance Centre
P.O. Box 506654
Dubai, United Arab Emirates
+971 (0)4 318 4600

Frankfurt

TaunusTurm
Taunustor 1
60310 Frankfurt
Germany
+49 69 247 411 500

Hong Kong

32/F Gloucester Tower, The Landmark
15 Queen's Road Central
Hong Kong
+852 2214 3700

Houston

811 Main Street
Houston, TX 77002
+1 346.718.6600

London

Telephone House
2-4 Temple Avenue
London EC4Y 0HB
England
+44 (0) 20 7071 4000

Los Angeles

333 South Grand Avenue
Los Angeles, CA 90071-3197
+1 213.229.7000

Munich

Hofgarten Palais
Marstallstrasse 11
80539 Munich
Germany
+49 89 189 33-0

New York

200 Park Avenue
New York, NY 10166-0193
+1 212.351.4000

Orange County

3161 Michelson Drive
Irvine, CA 92612-4412
+1 949.451.3800

Palo Alto

1881 Page Mill Road
Palo Alto, CA 94304-1125
+1 650.849.5300

Paris

166, rue du faubourg Saint Honoré
75008 Paris
France
+33 (0)1 56 43 13 00

San Francisco

555 Mission Street
San Francisco, CA 94105-0921
+1 415.393.8200

São Paulo

Rua Funchal, 418, 35º andar
Sao Paulo 04551-060
Brazil
+55 (11)3521.7160

Singapore

One Raffles Quay
Level #37-01, North Tower
Singapore 048583
+65.6507.3600

Washington, D.C.

1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
+1 202.955.8500