

# Investment Management Litigation

The investment management litigators at Skadden are frequently called on by investment advisers, private and registered investment funds, investment banks, broker-dealers and diversified financial service firms to tackle their most significant disputes and regulatory matters.

Our civil litigation experience covers the full range of issues that asset managers may find themselves faced with, including a wide variety of disclosure litigation, ERISA claims, class actions, derivative lawsuits, securities litigation, general business litigation, fiduciary duty litigation and litigation brought under Section 36(b) of the Investment Company Act.

Our experience extends beyond the courtroom, as we are equally adept in handling the regulatory issues that arise for our clients. We have represented funds, advisers and broker-dealers in state and federal regulatory actions relating to investment management, distribution, operations and whistleblower issues, including SEC-related actions and enforcement proceedings; CFTC investigations; FINRA investigations and enforcement proceedings; criminal insider trading and market manipulation investigations; and inquiries by the FDIC and NYSE. Our experience also includes representing asset managers in investigations by state regulators around the country.

We work closely with our general Investment Management Group, which, for the last three decades, has represented many of the largest asset management firms in their key matters. Our group's capabilities have been cited regularly by *The Best Lawyers in America*, *The Legal 500 United States* and *IFLR 1000*.

In addition to this deep industry experience, our investment management litigation team is part of our broader Litigation Group, which has been widely recognized for our successes on behalf of clients. This includes being named *New York Law Journal's* 2021 Litigation Department of the Year and being named a finalist in its 2022 Litigation Department of the Year competition. Skadden also was selected as a finalist in *The American Lawyer's* 2021 Litigation Department of the Year competition. In 2022, Skadden was again named to the BTI Consulting Group's list of top litigation law firms: The BTI Fearsome Foursome.

## Experience

### Securities Class Actions / Derivative, Disclosure and Fraud Litigation

- Asset Alliance Corporation in connection with several related litigations arising out of the collapse of the hedge funds managed by Beacon Hill Asset Management as a result of Beacon Hill's inflation of reported fund NAVs.
- BlackRock Financial Management:
  - in the dismissal of purported class and derivative claims brought by common stockholders of closed-end funds alleging that fund directors breached their fiduciary duties in connection with redemption of auction rate preferred securities;
  - in defeating an effort by shareholders to enjoin two closed-end funds from redeeming more than \$400 million of their auction rate preferred securities in New York state court;
  - in connection with a shareholder challenge to a proposed merger of certain mutual funds; and
  - in the defense of claims under Sections 11 and 12 of the Securities Act of 1933 alleging misleading statements in the prospectuses of certain exchange traded funds.
- FMR LLC and Fidelity Brokerage Services LLC in a federal securities class action regarding high-frequency trading.
- the independent directors of Heartland Funds in connection with regulatory proceedings and civil litigation arising out of alleged mispricing of fund securities.
- International Fund Services, Inc. in successful defense of a case alleging fraudulent inducement of hedge fund investments.
- Pioneer Alternative Investment Management Limited in successful defense of motions to dismiss claims asserted in Madoff-related litigation, including securing the dismissal of claims brought by Irving Picard, the trustee for the Securities Investor Protection Act

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liquidation of Bernard L. Madoff Investment Securities LLC and purported class claims.

- Putnam Investments in a consolidated MDL of 80 class actions.
- SunAmerica Funds in an arbitration challenging its right to terminate a contract with one of its investment advisers.
- Tweedy Browne in an NASD arbitration alleging breach of contract to pay referral fees.
- Van Kampen in connection with a wide variety of matters, including class action litigation alleging violation of the federal securities laws in connection with valuation of fund assets.
- Waddell & Reed in successfully defending a proceeding to vacate a \$25 million punitive damages award rendered against it in an NASD arbitration, the highest such award ever rendered in a broker termination dispute.

## Excessive Fee Litigation

- Baron Funds in successfully defending litigation alleging excessive 12b-1 fees in violation of Section 36(b) of the ICA.
- BlackRock:
  - certain of its subsidiaries in securing dismissal on all counts of excessive fee claims after an eight-day bench trial in the District of New Jersey. The case, one of the largest involving claims against mutual funds, was brought by investors in two of BlackRock's largest mutual funds, alleging that the funds paid BlackRock excessive compensation as the investment manager to the funds. The plaintiffs claimed that the compensation violated Section 36(b) of the Investment Company Act of 1940 and sought up to \$1.55 billion in damages;
  - in successful defense of litigation alleging violation of Section 36(b) of the Investment Company Act on a theory that a majority of fund trustees were interested on the ground they served on multiple BlackRock fund boards;
  - in defense of four pending consolidated actions brought by mutual fund investors alleging that advisory fees paid to BlackRock by BlackRock-sponsored mutual funds are excessive in violation of Section 36(b) of the Investment Company Act (ICA) when compared with sub-advisory fees paid to BlackRock by unaffiliated funds employing the same investment strategy; and
  - in the successful defense of an action brought by mutual fund investors alleging that securities lending fees charged to mutual funds are excessive in violation of Section 36(b) of the ICA.
- MuniEnhanced Fund, Inc. and other municipal bond funds successfully defending an action in federal court in New Jersey alleging violation of Section 36(b) of the ICA.
- Putnam Investments:

- in successfully defending market timing litigation alleging, among other things, excessive advisory fees in violation of Section 36(b) of the ICA; and
- in the favorable resolution of an action alleging excessive advisory fees in violation of Section 36(b) of the ICA in light of lower fees charged to institutional clients.

## Other Fiduciary Duty Litigation

- Putnam Investments in prevailing after an eight-day jury trial on all claims brought by a former executive and breach of fiduciary duty counterclaims.
- Eaton Vance in fiduciary duty claims involving auction-rate preferred securities in the wake of the 2008 auction market failure.

## Regulatory Investigations

- the independent directors of Fundamental Funds in connection with an SEC investigation relating to the pricing of illiquid securities.
- Putnam Investments in SEC investigations of alleged mispricing, late trading, market timing, disclosure questions and a wide range of other matters.
- a large asset management firm in SEC enforcement proceedings concerning a portfolio manager's outside business activities and related compliance controls.
- Tremont Capital Management in successfully defending multiple investor litigations and regulatory investigations arising out of investments made with Bernard Madoff.
- an investment management firm in successfully defending against regulatory investigations and litigation arising out of alleged directed brokerage/"shelf space" arrangements.
- a financial services corporation regarding SEC insider-trading investigations of portfolio managers and an investigation into performance reporting and performance fees.
- a financial services corporation regarding in SEC inquiry concerning trading on the Hong Kong Stock Exchange.
- a financial services company in SEC and DOJ investigations into alleged "pay-to-play" schemes in order to secure government business.
- a client in an SEC investigation related to Guaranteed Minimum Income Benefit Riders and the effect of cash withdrawals taken by contract owners of variable annuities.
- a mutual fund company in response to an informal investigation by Boston District Office of the SEC regarding ARPS.
- several financial services firms in multiple whistleblower matters.
- several asset management firms in investigations by state regulators including New York, Massachusetts, West Virginia and Florida.