

White Collar Group Of The Year: Sullivan & Cromwell

By **Elliot Weld**

Law360 (March 7, 2023, 2:02 PM EST) -- Sullivan & Cromwell LLP guided crypto lender BlockFi through a first-of-its kind regulatory action with the U.S. Securities and Exchange Commission and several dozen state regulators, and reached a quick \$5.8 billion settlement for insurance giant Allianz in what it called one of the largest corporate criminal cases ever, earning a spot in Law360's 2022 White Collar Groups of the Year.

With 875 attorneys worldwide, the firm keeps to a generalist model and avoids compartmentalizing attorneys into one specific type of case, which serves as a strength when dealing with massive, multijurisdictional or even international cases, according to Bob Giuffra, the firm's co-chair.

At many other firms of similar size, attorneys might specialize in dealing with specific agencies such as the U.S. Department of Justice, or working only on the civil or criminal side of a case.

"Here we try to have our lawyers be generalists who can handle any part of the problem because these problems are very much like Rubix cubes," Giuffra said, referring to the complexity and multifacetedness of many of the cases the firm takes on.

The firm's generalist approach has also helped in Sullivan & Cromwell's role as bankruptcy counsel to FTX, Giuffra said, another embattled crypto firm that has made headlines in recent months.

A further challenge: Sullivan & Cromwell tends to take cases that don't have a direct precedent, said Katy McArthur, a partner at the firm.

"What I think we bring to it is a breadth of experience of solving big problems, and we solve those problems best as a group," McArthur said.

McArthur said there is "a lot of new ground" being broken currently in the digital assets sector, but what made the BlockFi case notable was that it provided both an enforcement resolution — in which the company paid \$100 million — and also "a framework for registration going forward" for a relatively novel form of lending in cryptocurrency.

Sullivan & Cromwell's team in the BlockFi case was led by Steven Peikin, a former co-director of the SEC's



enforcement division, and Jamie McDonald, a former director of enforcement at the U.S. Commodity Futures Trading Commission. Sullivan & Cromwell attorneys met almost daily with the SEC and to negotiate the settlement, the firm said.

Sullivan & Cromwell has represented Germany's Allianz, the world's largest insurance corporation, for "a very long time," Giuffra said. When global markets were upended in March 2020, the company's U.S. asset management unit's "Structured Alpha" investment funds lost over \$7 billion.

Initially, it was believed to have been caused by market forces, Giuffra said. Over the next year, Sullivan & Cromwell undertook a forensic investigation that took 17,000 hours of attorney and expert time "reviewing very complicated trading records." The company, along with two of three accused portfolio managers, ultimately pled guilty to an elaborate scheme to defraud investors in the funds. Lead portfolio manager Gregoire P. Tournant was indicted in the Southern District of New York in relation to the scheme.

"Once it became clear that this was a criminal matter, our goal was to try to achieve the fastest possible global settlement," Giuffra said.

The firm succeeded in securing the settlement to end the investor lawsuits and the actions brought against the company by the DOJ and SEC.

"Rather than have years and years of civil litigation plus a very lengthy criminal investigation, we were able to put it behind the company relatively quickly and have the civil resolutions be beneficial to the criminal resolutions," Giuffra said. "The other piece of the case that I think is significant is the wrongdoing was contained to the managers of the investment fund; it didn't affect the rest of the Allianz Group."

In June, Sullivan & Cromwell successfully negotiated a settlement for Luxembourg-based steel pipe manufacturer Tenaris with the SEC, agreeing to pay a reduced fine of \$78 million related to alleged payments made to Renato Duque, an official at the Brazilian state-owned oil company Petrobras. The SEC declined to impose a compliance monitor on Tenaris and, significantly, the company did not have to admit or deny any wrongdoing as a part of the settlement. The DOJ agreed to close its criminal investigation without taking action in congruence with the SEC settlement.

"I think the Tenaris case is significant because it's just another example of our firm doing cross-border cases," Giuffra said. "Over 50% of our clients are located outside the United States."

Another of those international clients was Japanese finance company Nomura, which Sullivan & Cromwell served as lead counsel for in parallel settlements with the SEC and CFTC over investigations into recordkeeping and off-platform communications by Nomura traders. McArthur, who was one of the attorneys serving as lead counsel in the case, said it was indicative of trends in white collar matters.

"I think the matter is significant when you think about the trend that it speaks to," she said. "When you think about, where do we see white collar enforcement going? I think one of the major trends that we've seen over the last few years is the focus of the enforcement authorities on data quality and data availability."

McArthur said the case reflects enforcement authorities' focus on having internal company communications available to monitor when questions arise in regulated industries, and noted that focus has even led to the DOJ weighing in on what the expectations are for companies to retain communications and information related to trading activity.

Sullivan & Cromwell assisted in concluding the last major action that arose from an emissions scandal that spanned multiple years involving vehicles made by Fiat Chrysler in June. Giuffra said in some ways the case was emblematic of the Volkswagen "Dieselgate" scandal from years earlier, which Sullivan & Cromwell was also involved in.

The trucks that caused the problems in the scandal — light duty trucks with an EcoDiesel V-6 engine — were manufactured in the U.S., but their software was made in Italy, meaning, similarly to the Volkswagen case, it involved cross-border issues, Giuffra said. The goal, as in many of Sullivan & Cromwell's cases, was to secure a global settlement in the fastest time frame possible.

"It's another one of these cases where you're trying to make the best of a hard situation by making sure that all of the pieces fit together in a way that resolves in the best possible outcome for the client," Giuffra said.

For much of the 1960s and '70s, Sullivan & Cromwell, like many other large New York law firms, did not get involved in white collar cases, Giuffra said. It wasn't until the 1980s that two partners "basically got the firm into white collar cases" by taking on a series of insider trading cases, according to Giuffra.

Gradually, the firm took on higher-profile cases in the white collar sector, "and the rest," Giuffra said, "is history."

--Additional reporting by Stewart Bishop and Dave Simpson. Editing by Dave Trumbore.