

Financial Services Investigations & Litigation

The recent financial crisis has led to an environment of increased regulatory scrutiny, criminal and civil enforcement activity, and private litigation. Financial institutions increasingly need firms capable not only of responding to subpoenas and other enforcement-related inquiries and investigations, but capable also of identifying the broader challenges and developing early strategies to help clients navigate through these investigations and the private litigation that almost inevitably follows.

Coordinating efforts with other members of the financial services team, Sullivan & Cromwell's litigation and investigations lawyers—many of whom have worked in government—are positioned to serve clients during challenging times. S&C regularly advises clients in regulatory, legislative and criminal inquiries, investigations and enforcement actions, and related shareholder derivative litigations and securities class actions. S&C is also a go-to firm for antitrust litigation, merger analysis and review, and counseling. This breadth of practice—the insights and knowledge developed from the volume and variety of high-profile financial services matters the Firm has handled—has made it a one-stop shop for clients.

SELECTED REPRESENTATIONS

Selected S&C investigations and litigation experience includes representing:

- **Barclays**, in international, multiagency investigations into benchmark interest rates, including the London Interbank Offered Rate (Libor) and the Euro Interbank Offered Rate (Euribor). S&C was engaged by Barclays to conduct an internal investigation regarding conduct relating to benchmark interest rates. In 2012, Barclays entered into settlements with the U.S. Commodity Futures Trading Commission, the U.S. Department of Justice Fraud Division and the U.K. Financial Services Authority. S&C also represented Barclays in obtaining conditional leniency from the Antitrust Division of the U.S. Department of Justice with respect to financial instruments referenced to Euribor. In addition, S&C represents Barclays in the related civil litigation. The litigation includes class action suits involving USD Libor, Yen Libor and Euribor alleging violations of federal antitrust laws and violations of the Commodity Exchange Act, as well as violations of the Racketeer Influenced and Corrupt Organizations Act and various state laws.
- **Barclays**, in the Enron securities class action—widely considered to be the most complex and largest securities class-action litigation ever—for more than nine years. The Firm's defense strategy proved highly successful: The U.S.

PRACTICES & CAPABILITIES

General Practice/Corporate Law

Financial Services

- **Bank Regulatory**
- **Broker-Dealer**
- **Corporate Governance**
- **Economic Sanctions and Financial Crime**
- **Exchange/Alternate Trading Systems**
- **Financial Services Capital Markets**
- **Financial Services Investigations & Litigation**
- **Financial Services Mergers & Acquisitions**
- **FinTech**
- **Insurance**
- **Investment Management**
- **Payments**

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Court of Appeals for the Fifth Circuit reversed the class certification order. In March 2009, Barclays achieved a successful final result of that litigation, obtaining summary judgment from the district court dismissing the securities fraud claims brought by the class against Barclays and Barclays' co-defendants, Credit Suisse and Merrill Lynch. Other financial institution defendants had settled these claims, agreeing to pay a total of \$6.6 billion to plaintiffs in 2005.

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- **Goldman Sachs**, in investigations and related litigation involving residential mortgage-backed securities (RMBS) and collateralized debt obligations (CDOs). Both the DOJ and the Securities and Exchange Commission concluded lengthy investigations without taking action against Goldman Sachs or its employees. Recent litigation victories include a dismissal of fraud claims brought by an investor in a CDO offering by the Appellate Division, First Department of the New York Supreme Court; a dismissal of fraud claims brought by another CDO investor in a decision affirmed by the U.S. Court of Appeals for the Second Circuit; and dismissal of a shareholder derivative action by the Delaware Supreme Court that resulted in the dismissal of eight related derivative matters filed in the U.S. District Court for the Southern District of New York.

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- **Goldman Sachs, JPMorgan Chase, Barclays, Nomura and First Horizon**, in separate actions brought by the Federal Housing Finance Agency (FHFA) on behalf of Fannie Mae and Freddie Mac. The cases are among 18 suits brought by FHFA alleging that the banks fraudulently issued or underwrote hundreds of mortgage-backed securities prior to the subprime collapse.

Together, these cases constitute one of the highest-profile securities litigations arising out of the financial crisis, with hundreds of billions of dollars in securities at stake. Barclays, First Horizon, Goldman Sachs and JPMorgan recently settled these claims.

- **a group of financial institutions**, as plaintiffs in New York State Court in challenging the \$5 billion restructuring of MBIA Insurance, including on a successful, precedent-setting appeal to New York's highest court.
- **ING Group, HSBC Group and Standard Chartered Bank**, in the successful resolutions of multiagency criminal and regulatory investigations relating to their compliance with economic sanctions and/or anti-money-laundering regulations. After lengthy investigations spanning years and involving activities around the world, each of S&C's clients avoided criminal prosecution by resolving these matters through the entry of deferred prosecution agreements and the payment of fines.
- **JPMorgan Chase**, as national coordinating counsel in the company's residential mortgage-backed securities litigation, which includes litigation arising from securitizations issued by Washington Mutual and Bear Stearns. As such, the Firm has responsibility for developing the strategy and overseeing more than 70 cases pending in multiple state and federal

jurisdictions, as well as various regulatory matters. S&C played a key role in leading JPMorgan through its recently announced \$13 billion settlement with the U.S. Department of Justice.

- **Moody's**, in a coordinated shareholder class action. After defeating class certification, S&C obtained full dismissal on summary judgment of the actions brought against Moody's that alleged that Moody's made false and misleading statements concerning its rating methodologies and its management of conflicts of interest in connection with ratings of subprime residential mortgage-backed securities and other structured finance products that suffered downgrades during the financial crisis. The plaintiffs sought recovery for a more than 50-percent decline in Moody's share price and the loss of more than \$7 billion in market capitalization.
- **leading banking associations**, in obtaining a favorable ruling from the U.S. Supreme Court barring "scheme" liability under Section 10(b) of the Securities and Exchange Act in *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, which made clear that plaintiffs cannot seek to impose liability on secondary actors—such as investment banks, auditors and vendors—in a so-called scheme to defraud.
- **Regions Financial**, in a class-action complaint brought against it under sections 11, 12 and 15 of the Securities Act of 1933. The plaintiffs asserted that the registration statement and prospectus for an April 2008 bond offering were false and misleading because they allegedly understated loan loss reserves and overstated goodwill. The U.S. Court of Appeals for the Second Circuit unanimously affirmed the district court's dismissal, holding that Regions' statements of goodwill and loan loss reserves were matters of opinion and estimation, not misstatements of material fact, and therefore were not actionable.
- **UBS**, in a variety of regulatory inquiries, investigations, tax matters, and private litigation arising from the recent financial crisis and losses related to mortgage-backed securities. Most recently, S&C advised UBS in obtaining the dismissal of all federal securities claims by UBS shareholders that acquired shares outside the U.S. arising out of UBS's subprime losses. This decision eliminated billions of dollars of potential liability.
- **55 underwriting firms**, in a groundbreaking decision that denied class certification in 306 IPO cases. S&C acted as liaison counsel for the firms. The Second Circuit's opinion in *In re IPO Securities Litigation* set the stage for a favorable settlement that was approved in 2009.