Investment Management Litigation

Skadden

The asset management industry is operating in an environment where product innovation, litigation risk and regulatory scrutiny increasingly overlap. Across this evolving landscape, Skadden's asset management litigators advise and defend clients on some of the industry's most consequential disputes and investigations.

Our wins include multiple precedent-setting decisions for clients and the industry. These successes were under the Investment Company Act and other federal securities laws, as well as the laws of Delaware, Massachusetts and Maryland, where thousands of funds are domiciled.

Most recently, on June 11, 2026, Skadden secured a landmark U.S. Supreme Court victory for '40 Act registered and regulated funds. In *FS Credit Opportunities Corp. v. Saba Capital Master Fund Ltd.*, agreeing with Skadden, the Supreme Court held that Section 47(b) of the '40 Act does not create a private right of action. The Court's opinion is a significant win for the fund industry because it preserves the near-exclusive authority of the SEC to enforce the '40 Act and prevents private plaintiffs from doing so through suits to rescind fund contracts on the grounds that their performance violates any provision of the '40 Act.

Drawing on experience honed over decades of leading the asset management industry's most complex and high-stakes matters, we regularly prevail at the pleadings and summary judgment stages, as well as in arbitrations, jury trials and bench trials. Our team also has a record of success in the state and federal appeals courts. We often proactively resolve disputes before they reach the courts, convincing potential plaintiffs and their counsel to abandon or narrow their claims.

Market evolution — including the "retailization" of alternative assets, developments in the private credit markets and activist disruption — increasingly requires deep experience handling the full spectrum of litigation, regulatory and advisory matters affecting the industry.

Our advantage stems from understanding the unique challenges faced by investment management clients, as well as their funds, structures, management and operations. We represent investment advisers, private and registered funds, fund boards, banks, broker-dealers and other firms. We are adept at navigating issues related to fixed-income and other trading; fund accounting; NAV calculations; mutual fund cost allocation; distribution channels; and subadvisory, custodial and transfer agent services. Leveraging this industry-specific knowledge, our team crafts tailored litigation strategies for matters involving, among other things, prospectus and other disclosure liability, fiduciary issues of all types, closed-end fund activism, excessive fee claims and valuation and liquidity issues.

Marrying our litigation prowess with a deep knowledge of the regulatory regimes for funds, we guide clients through complex regulatory and enforcement matters in front of federal and state regulatory bodies. We regularly represent clients in 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, NYSE and state regulators.

Our work has earned our investment management litigators noteworthy accolades from a variety of publications, including the *Financial Times*, *The American Lawyer*, *The National Law Journal* and *Massachusetts Lawyers Weekly*.

Our investment management litigation team is also part of our broader Litigation Group, which has been widely recognized for our successes on behalf of clients. Skadden was selected as a finalist in *The American Lawyer*'s 2021 Litigation Department of the Year competition. We were named the *New York Law Journal*'s 2021 Litigation Department of the Year and shortlisted in its 2026, 2024, 2023 and 2022 Litigation Department of the Year competitions.

Consistent with Skadden's commitment to taking a collaborative approach to matters, we work closely with the firm's Investment Management Group, which, for the last three decades, has represented many of the largest asset management firms in matters related to formation, operation, governance, disclosure, transactions and regulations. That institutional knowledge gives our litigators, enforcement lawyers and regulatory counsel added practical understanding of how funds and advisers operate, how investment products are structured and marketed, and how governance, valuation, liquidity, conflicts and disclosure issues are assessed before they become the subject of disputes or regulatory scrutiny. The Investment Management Group's capabilities have been cited regularly by *The Best Lawyers in America*, *The Legal 500 U.S.* and *IFLR1000*.

Select Representative Experience

Fiduciary Duty, Derivative and Business Litigation

- Fidelity Management & Research LLC and certain Fidelity trustees and officers in a putative class action by shareholders in a $480 billion money market fund alleging breaches of fiduciary duty, a breach of the implied covenant of good faith, aiding and abetting and unjust enrichment.
- MassMutual's brokerage subsidiary in a class action in the U.S. District Court for the District of Massachusetts involving alleged breaches of fiduciary duty and associated contractual claims arising from its cash sweep program.
- Putnam Investments in securing a complete trial victory on claims it breached fiduciary duties under ERISA by including proprietary mutual funds in its $600 million 401(k) plan, the first decision on the merits in such cases (partially affirmed and partially reversed on appeal).
- The independent directors of Tortoise Capital Advisors' closed-end funds:
  - in securing the affirmance of the dismissal with prejudice of a $1 billion shareholder suit alleging breaches of fiduciary duty before the Appellate Court and Supreme Court of Maryland. The court's ruling further developed Maryland's strict pre-suit demand requirement, confirming that exceptions remain extraordinarily narrow and concluding that the rule is "near universal"; and
  - in a suit filed by shareholders concerning alleged breaches of fiduciary duty in connection with the composition of the board and a trustee election.
- Eaton Vance in fiduciary duty claims involving auction-rate preferred securities in the wake of the 2008 auction market failure.
- A large asset manager in defense of racketeering, racial discrimination and unfair competition claims involving an alternative investment mandate awarded to the manager by a pension fund.
- Invesco in a foreign corporate counsel dispute involving one of its funds.
- Former investment advisers and officers of five Invesco Van Kampen Funds in securing the dismissal of a New York state shareholder derivative suit alleging breach of fiduciary duties and wasted corporate assets by causing the funds to redeem auction rate preferred securities at par value.
- Invesco in obtaining a rare pleading-stage dismissal of claims that it violated ERISA by including proprietary funds in its $3 billion-plus 401(k) plan.
- An institutional money manager in the successful defense of $360 million fraud, RICO, breach of contract and other claims brought by a corporate pension plan in a private arbitration.
- An adviser in securing summary judgment dismissal, affirmed on appeal, of $180 million state court fraud, breach of fiduciary duty and other claims brought by the Employee Retirement System of Texas.
- Investment advisers in more than $150 million in employment disputes involving fiduciary duty, wrongful termination, deferred compensation and contract claims.

Securities Class Action and Disclosure 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:
  - in connection with a shareholder challenge to a proposed merger of certain mutual funds;
  - in obtaining the dismissal of a putative class action brought on behalf of shareholders in iShares ETFs under Sections 11 and 12 of the Securities Act of 1933 for alleged misstatements and omissions in offering documents related to the risks of so-called "flash crashes";
  - 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; and
  - 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.
- Fidelity in a federal securities class action regarding high-frequency trading.
- Franklin Templeton and Western Asset Management in a federal securities class action regarding alleged cherry-picking by a senior executive and portfolio manager.
- The independent directors of Heartland Funds in connection with regulatory proceedings and civil litigation arising out of alleged mispricing of fund securities.
- Pioneer Alternative Investment Management Ltd. 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 liquidation of Bernard L. Madoff Investment Securities LLC and purported class claims.

- Putnam Investments and Putnam Fiduciary Trust Company in obtaining a favorable jury verdict in Massachusetts business court in an action brought by a former executive involving deferred compensation and other claims, including successfully obtaining a jury finding on counterclaims that the former executive breached fiduciary duties.
- Putnam Investments in securing summary judgment dismissal of a $440 million claim alleging Rule 10b-5 fraud claims in an MDL proceeding consolidating more than 80 putative class actions.
- Templeton Global Income Fund and a significant shareholder as plaintiffs in litigation brought against Saba Capital Management alleging a false and misleading proxy statement.
- UBS Financial Services Incorporated of Puerto Rico, UBS Trust Company of Puerto Rico and Carlos Ortiz in successfully opposing class certification in a federal putative securities class action alleging that UBS Puerto Rico systematically misled its customers about the liquidity of shares of closed-end mutual funds that primarily invested in Puerto Rico securities and misrepresented the funds as safe investments.
- 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.

Closed-End Fund Activism

- FS Credit Opportunities Corp. in the milestone case *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, in which the Supreme Court held that Section 47(b) of the Investment Company Act does not create a private right of action.
- ASA Gold and Precious Metals Ltd. and its board in successfully obtaining a decision from the Southern District of New York that the fund's adoption of a shareholder rights plan (poison pill) did not violate the Investment Company Act.
- BlackRock in securing a favorable ruling by the Delaware Supreme Court in litigation opposing a shareholder's nomination of a dissident slate of directors to three of its registered closed-end funds.
- Eaton Vance Management and its CEO:
  - in securing dismissal of claims that Eaton Vance had, among other things, aided and abetted breaches of fiduciary duty by the board of certain closed-end funds in connection with those funds' adoption of certain defensive bylaws; and
  - in successfully obtaining a precedent-setting trial decision upholding a defensive bylaw under Massachusetts law and the Investment Company Act.
- Nuveen's closed-end funds in connection with litigation challenging the funds' adoption of defensive bylaws.
- The independent directors of Tortoise Capital Advisors' closed-end funds:
  - in a suit challenging the adoption of a defensive bylaw; and
  - in providing strategic advice regarding corporate governance, compliance and regulatory matters in connection with activist issues.

Excessive Fee Litigation

- BlackRock:
  - in securing dismissal on all counts of Section 36(b) excessive fee claims after an eight-day bench trial in the District of New Jersey in a case brought by investors in two of BlackRock's largest mutual funds, alleging that the funds paid BlackRock up to $1.55 billion in excessive compensation as the investment manager to the funds;
  - 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; 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.
- Baron Funds in successfully defending litigation alleging excessive 12b-1 distribution fees in violation of Section 36(b) of the Investment Company Act.
- 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.

Investment Management Litigation

Continued

Regulatory Investigations

- A large adviser in the multiyear SEC, DOJ and CFTC investigations of an alleged $600 million trading fraud by its chief investment officer.
- A large recordkeeper in investigations by state and federal regulators regarding revenue sharing agreements.
- The independent directors of Fundamental Funds in connection with an SEC investigation relating to the pricing of illiquid securities.
- Putnam in SEC proceedings concerning a portfolio manager's pre-arranged cross-trades in mortgage-backed securities.
- 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 large asset manager in SEC investigations of alleged mispricing, late trading, market timing, disclosure questions and a wide range of other matters.
- A financial services corporation regarding an 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.
- Several financial services firms in multiple whistleblower matters.
- A special committee of the board of directors of a large custody bank in an independent investigation of pay-to-play allegations.