

Investment Management Litigation

Skadden

The investment management litigators at Skadden have been entrusted with many of the most complex and high-stakes disputes affecting investment advisers, private and registered funds, fund boards, investment banks, broker-dealers and diversified financial service firms.

Clients rely on our team to provide innovative solutions and achieve remarkable results in both litigation and regulatory enforcement matters. We have regularly prevailed 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 and has litigated important investment management issues in the U.S. Supreme Court. Our wins include multiple precedent-setting decisions, including those under the laws of Delaware, Massachusetts and Maryland, where thousands of funds are domiciled, and federal securities laws, such as the Investment Company Act. We often proactively resolve disputes before they reach the courts, convincing potential plaintiffs and their counsel to abandon or narrow their claims.

Our successes stem from understanding the unique challenges faced by investment management clients, as well as their funds, structures, management and operations. 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*, *Lawdragon* and *Massachusetts Lawyers Weekly*.

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 their key matters. The group's capabilities have been cited regularly by *The Best Lawyers in America*, *The Legal 500 United States* and *IFLR1000*.

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. This includes being named the *New York Law Journal's* 2021 Litigation Department of the Year and being named a finalist in its 2024, 2023 and 2022 Litigation Department of the Year competitions. Skadden also was selected as a finalist in *The American Lawyer's* 2021 Litigation Department of the Year competition. In addition, we have been recognized repeatedly among BTI's Fearsome Foursome — the top four firms that clients “don't want to litigate against.”

Select Representative Experience

Fiduciary Duty and Derivative Litigation

- Fidelity and certain executives in a federal class action alleging breach of fiduciary duty regarding fees charged to shareholders in different classes of a \$300+ billion money market fund.
- MassMutual's brokerage subsidiary in litigation alleging breach of fiduciary duty and other claims related to its cash sweep program.
- a large fund adviser in litigation and arbitration with former senior executives and portfolio managers regarding deferred compensation and breach of fiduciary duty claims.
- Putnam Investments in prevailing after an eight-day jury trial on all claims brought by a former executive and breach of fiduciary duty counterclaims.

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- the independent directors of Tortoise Capital Advisor's closed-end funds:
 - in securing the dismissal with prejudice of a shareholder suit in Maryland Circuit Court seeking more than \$1 billion in damages and alleging that the trustees had breached their fiduciary duties in connection with their management of the funds during the 2020 market volatility; 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.
 - Invesco in a foreign business 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.
 - 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 in a consolidated MDL of 80 class actions alleging, among other things, violations of the federal securities laws in connection with market-timing allegations.
 - 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.

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 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;
 - 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.

Closed-End Fund Activism

- ASA Gold & Precious Metals Ltd. and its board in securing a precedent-setting ruling that the Investment Company Act of 1940 permits closed-end funds to use shareholder rights plans.
- 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 Thomas Faust, Jr.:
 - 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 by-laws; and
 - in successfully obtaining a precedent-setting trial decision upholding a defensive by-law under Massachusetts law and the Investment Company Act of 1940.

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- FS Credit Opportunities Corporation in defending against a challenge to the fund's adoption of a defensive by-law, including obtaining Supreme Court review of a private right of action issue under the Investment Company Act.
 - Nuveen's closed-end funds in connection with litigation challenging the funds' adoption of defensive by-laws.
 - the independent directors of Tortoise Capital Advisor's closed-end funds:
 - in a suit challenging the adoption of a defensive by-law; 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 of 1940.
- 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.

Regulatory Investigations

- an investment manager in defending against regulatory investigations by the SEC, DOJ and CFTC related to alleged cherry-picking.
- 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.
- Putnam 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.