



Representation of Public Companies and their Officers and Directors in Regulatory Investigations and Civil Litigation

Our Litigation Group has extensive experience in representing public companies and their officers and directors in internal investigations, investigations and enforcement proceedings before the SEC and state regulators, inquiries by FINRA market regulation and other securities exchanges and in civil shareholder litigation and arbitrations.

We have represented clients on a wide range of SEC investigations, including as to disclosure and accounting issues; insider trading; market manipulation, and compliance with requirements for offering unregistered securities and other issues surrounding private placements. We have achieved favorable results in related class action and derivative litigation, including dismissals before discovery is begun and have negotiated and obtained court approval for settlements favorable to the client.

Our complementary experience representing broker-dealers and investment advisors contributes to our deep understanding of technical trading issues and capital markets, which can be critical in identifying insider trading and market manipulation issues of concern to public companies. We also draw on the unique expertise of our Corporate Group, which currently represents approximately 50 public companies (15 of which are Chinese) and has played a leadership role in the establishment of new securities programs, such as PIPEs, SPACs and reverse mergers, assisting issuers in the creation, formation and strategies relating to those financings.

We have the necessary experience to develop a plan of action and mobilize quickly, whether conducting expedited internal investigations or responding to regulatory subpoenas. We know how to engage securities regulators and opposing counsel in productive discussions, and when appropriate, our litigators collaborate with our firm's regulatory attorneys to design and implement enhanced policies and procedures that successfully address SEC and other regulators' concerns regarding internal controls and compliance procedures. In our related broker-dealer practice, we have represented firms in a significant number of investigations by the SEC, FINRA and other securities regulators as well as in a broad range of employment and customer arbitrations.

Representative matters include:

- Represent public company in merger transaction as well as in litigation brought by shareholders contesting proxy disclosures. Shareholders based claims on assertions by hostile bidder that independent directors had followed unfair process. Achieved favorable disclosure-only settlement, and majority of shareholders voted in favor of merger.
- Represent investment bank and senior employee in SEC investigation of possible insider trading related to merger transaction for which bank provided fairness opinion. Matter was closed without action as to our client.

- Represent broker-dealer and research analyst in SEC investigation of Reg F-D violations. Matter closed without action as to our client; the public company and its officers reached a highly publicized settlement with the SEC.
- Represent President and CFO of public internet service provider in SEC investigation relating to revenue recognition and classification of contingencies in financial statements. No action taken by regulators as to our client.
- Represent former CFO and controller of public company relating to revenue recognition on financial statements and possible payments in violation of the Foreign Corrupt Practices Act. Favorable settlement achieved for officers; achieved favorable resolution of class action for the public company.
- Represent public company in delisting proceeding. Favorably resolved with company able to maintain listing.
- Represent investment bank that served as lead underwriter of secondary public offering. Dismissal affirmed by U.S. Federal Court of Appeals, Second Circuit.
- Represent fund distributor in arbitration brought by its largest shareholder. Demonstrated at hearing that all investments made by fund were consistent with prospectus disclosures.
- Represented international investment bank in securities class action that consolidated 309 separate actions involving trading practices surrounding initial public offerings. Achieved favorable resolution for client.
- Represent public company in market timing investigation by New York Attorney General's office. The matter was resolved without charges or penalty.
- Represent investment advisor and mutual funds in shareholder class action and arbitrations (against related fund distributor) brought by significant shareholders in wake of fund disclosing that bonds held by fund portfolios had been inaccurately valued. Achieved global settlement for class and all shareholders who initially had opted out.
- Represent 20% passive shareholder against allegations made by securities class action plaintiff that it secretly controlled company and should therefore have control liability. U.S. District Court granted summary judgment in response to motion to dismiss; two motions for rehearing upon discovery of new evidence denied.

For further information, please contact Ted Poretz, tporetz@egsllp.com; Adrienne Ward, award@egsllp.com; or Irwin Weltz, iweltz@egsllp.com.

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