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Securities Litigation & Enforcement

Step toe & Johnson LLP's securities litigation and enforcement attorneys represent clients in sensitive and complex securities matters. We serve as regulatory or special counsel to leading public companies, financial institutions, pension funds, investment banks, brokerage firms, investment advisers, hedge funds, private equity funds, accounting firms, law firms, officers, directors, board committees, and full boards across the country and overseas. By integrating the judgment of our litigators with that of our corporate and regulatory counselors, we frequently help clients avoid undue regulatory scrutiny, litigation, and other disputes – our team is well-positioned to defend if an investigation or action is brought.

The principal enforcement areas in which our lawyers practice include:

- SEC Enforcement Defense and Counseling
- Special Matters and Internal Investigations
- Foreign Corrupt Practices Act (FCPA)
- White-Collar Litigation
- Congressional Investigations

We are also deeply involved in damages litigation in the following areas:

- Securities Litigation
- Merger and Acquisition Litigation
- ERISA Litigation
- Derivatives and Swaps Litigation
- Asset-Backed Securities

SEC Enforcement Defense and Counseling

Step toe advises clients in connection with SEC enforcement matters and the many collateral risks they pose. Our SEC team represents clients for the purposes of agency rulemaking initiatives, inspections, enforcement inquiries and investigations, administrative proceedings, and federal court actions seeking injunctive and other relief – the full spectrum of matters before or involving the Commission. The firm also represents clients in related federal and state grand jury investigations and criminal proceedings, as well as in matters before CFTC and FINRA and other self-regulatory organizations. We bring to bear insights borne of extensive government service and regular appearances before federal and state regulators and prosecutors. Several of the firm's partners are former

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prosecutors with experience in securities matters. Others have served with the Securities and Exchange Commission, including a former Associate Director of its Division of Enforcement.

Special Matters and Internal Investigations

Another core segment of this practice involves assisting public companies, boards of directors, board committees, and others in conducting internal investigations, and helping clients address corporate governance matters and all forms of corporate crises. Our clients benefit from the relationships our attorneys maintain with major accounting, financial consulting, and advisory firms, which assist us in advising audit committees, other independent directors, and full boards in the exercise of their fiduciary duties as well as any situational duties that may arise. We assist clients in developing preventive and remedial measures before and after securities law issues arise. We also help clients establish compliance programs and other measures designed to detect and prevent conduct that might lead to government inquiry or enforcement action.

Foreign Corrupt Practices Act (FCPA) / Anti-Corruption

Step toe's FCPA team has counseled many US and foreign companies, their foreign affiliates, and individuals on the scope, meaning, and application of the FCPA and related laws, involving a wide spectrum of countries and issues. Our practice includes providing preventive advice and counsel and handling investigations and enforcement work, as well as advising companies investing in emerging markets, particularly in Latin America, Southeast Asia, the Middle East, and the former Soviet Union. In addition, we have substantial experience representing clients involved in anti-corruption proceedings before international financial institutions, including the World Bank.

White-Collar Litigation

Step toe's white-collar litigation team is known for taking the most difficult cases to trial. The firm has represented individual, corporate, and board committee clients in connection with many high-profile matters, including Rite Aid, Enron, WorldCom, Adelphia, and Global Crossing as well as more recent cases. We also counsel other clients with indirect interests or exposures relating to those controversies. Our nationwide representations have included criminal, civil, and enforcement matters ranging from administrative subpoenas through SEC and grand jury investigations, trials, post-trial matters and appeals, as well as corporate counseling and internal investigations.

Congressional Investigations

Step toe regularly represents corporate clients, trade associations, and individuals in major congressional investigations. Our knowledge of congressional procedure and substantive experience, coupled with a deep appreciation for the

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political dynamics involved in any particular circumstance, has enabled our team to successfully represent clients responding to Capitol Hill inquiries, or avoid involvement altogether. Steptoe has a long tradition of high-level public service, and our congressional investigations team includes attorneys and advisers with extensive connections in the House and Senate.

Securities Litigation

Steptoe's securities lawyers are regularly involved in shareholder derivative and class action litigation cases arising from both public and private securities offerings and acquisitions, as well as secondary trading activity. Steptoe litigators regularly represent officers, directors, independent committees, investment bankers, accounting firms, and law firms in high-stakes securities litigation. Our attorneys also represent national and regional brokerage firms and account representatives in litigation and arbitrations involving allegations of securities fraud and account mismanagement, and have significant experience in securities and shareholder litigation involving financial services and asset management firms and funds.

Merger and Acquisition Litigation

We assist buyers and sellers in both stock and asset purchase agreements, handling claims for specific enforcement, rescission or damages under the contract, failure of material adverse effect or material adverse change or other conditions, breach of warranties, or failure of express representations in such agreements. We litigate claims under earn out, holdback, and claw back provisions, in addition to tort and other claims related to such agreements, including securities fraud, common law fraud or negligent misrepresentation, breach of fiduciary duty, conversion, and racketeering claims, including officer and director liability in such situations.

ERISA Litigation

Steptoe's ERISA practice represents public and private pension plans, plan sponsors, plan fiduciaries, actuaries, and other plan consultants, banks, insurers, investment entities, and trade associations that focus on ERISA issues. Our litigation cases involve matters pertaining to fiduciary responsibility and prohibited transactions. We have handled many high-profile cases alleging breach of ERISA fiduciary duty in connection with the offering of employer securities as an investment option in 401(k) plans and other individual account plans, which often are brought in tandem with more traditional securities fraud actions involving the employer plan sponsor's stock. The firm also regularly provides advice and counsel to clients on fiduciary and prohibited transaction issues arising under Title I of ERISA. We represent clients on such matters before the US Department of Labor in connection with audits and special investigations involving market timing, use of affiliated products, cross trading,

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employer stock issues, and receipt of fees.

Derivatives and Swaps Litigation

Lawyers in Steptoe's US and European offices handle a wide range of derivatives and swaps litigation and arbitrations for clients that have been "buy-side" end-users including insurance companies, pension funds, and a variety of other US and foreign derivatives and swaps purchasers. The securities involved have included asset-backed securities such as collateralized debt obligations and a variety of derivatives, including options, interest rate derivatives, total return swaps, and credit default swaps.

Asset-Backed Securities

Steptoe attorneys are experienced in handling the most complex mortgage and asset securitization and structured finance issues. This knowledge allows us, for example, to represent a major Washington-based trade association involved in commercial mortgage asset securitization issues in public policy, legislative, and amicus brief matters. We also handle residential mortgage securitization-related issues and public policy and legislative matters for a congressionally chartered corporation. Steptoe also offers clients a team with deep experience handling the disclosure of environmental liabilities in structured finance transactions, in both due diligence matters and in litigation. Our attorneys have represented issuers of more than several billion dollars of asset-backed securities.

Representative Matters

SEC Enforcement Defense and Counseling

- Represented a hedge fund trader in connection with well-publicized insider trading investigations and proceedings by the SEC and prosecutions by the US Attorney's Office for the Southern District of New York.
- Represented the former CEO of a leading global IP solutions provider for purposes of SEC and criminal investigations following the collapse of the company, related congressional inquiries, bankruptcy proceedings and shareholder class action, derivative and ERISA litigation in the United States, and related officer and director proceedings overseas.
- Represented a former regional vice president of a crop ingredients subsidiary of a *Fortune 100*, NYSE-listed food packaging firm in an SEC investigation of revenue recognition issues relating to deferred deliveries, which had led to a restatement of several years' financials by the parent corporation.

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- Represented an entertainment company's business partners in connection with SEC and DOJ investigations regarding its accounting for barter transactions with those business partners, among others.
- Represented a financial services firm and its analysts who had provided coverage for the company in connection with financial fraud investigations and actions by the SEC and New York federal prosecutors.
- Represented a public telecommunications company in an SEC investigation and settlement regarding financial reporting and auditor independence issues following its restatement stemming from acquisition accounting deficiencies. Also advised the company on disclosure issues in connection with its restatement filings, and then-pending secondary offering and proposed merger.
- Represented a business intelligence company and its associated individuals for the purposes of resolving SEC and DOJ investigations of its restatement and its improper accounting for certain multi-element software sales. Also advised the company in connection with its various restatement filings.
- Represented a Canadian public financial services firm in connection with investigations by the SEC and New York federal prosecutors regarding, among other things, the company's failure to disclose material side deals to its largest revenue-generating transactions.

Special Matters and Internal Investigations

- Represented the special review committee of the Board in its review of certain funds of a commercial insurance company and fraudulent marketing kickback schemes involving 27 investment advisers and mutual fund families. Representation included a five-month investigation and remediation of related issues, presentations to the SEC staff, and governance and transactional advice.
- Represented a number of fund boards and committees that investigated marketing-related and other misconduct issues, conducting additional investigations of those fund complexes, securing related remedies and relief for shareholders as well as dealing with the SEC staff in connection with its ongoing investigation.

Securities Litigation & Enforcement

- Represented the Audit Committee of the Board of an electronic payment solution company, which conducted a six-month investigation in connection with the company's restatement of its prior period financials and disclosures regarding earning management. Representation also included addressing SEC investigative issues, stock exchange delisting proceedings, audit and restatement issues, and governance issues associated with the dismissal of the company's CEO.
- Represented the Special Review Committee of the Board of a bank's funds, regarding mutual fund market timing issues. Representation included assistance in the investigation and remediation of related issues, related dealings with regulators, and governance and merger advice to the board in connection with the bank's acquisition by another company.
- Conducted an internal investigation at a publicly traded utility concerning allegations of accounting irregularity made by a purported whistleblower.
- Conducted an internal investigation at a venture capital firm following published suggestions of its participation in a "pump and dump" scheme and other improprieties.
- Represented an executive vice president of a large commercial bank in connection with an internal investigation of accounting issues relating to the valuation and classification of certain mortgage-backed securities.

Foreign Corrupt Practices Act (FCPA)

- Litigated the Kay case, one of the few recent litigated cases and a leading decision construing the scope of the FCPA.
- Conducted cross-border investigations and managed local law issues and investigations arising from anti-corruption allegations.
- Represented clients before the DOJ and SEC.
- Performed FCPA-related due diligence in mergers and acquisitions, portfolio investments, and joint ventures.
- Helped companies develop and implement compliance programs.
- Advised clients on issues arising in their foreign operations and on anti-corruption compliance matters more generally.

Securities Litigation & Enforcement

White-Collar Litigation

- Represented the former general counsel of one of the nation's leading drugstore chains in an SEC and grand jury investigation and subsequent criminal trial on securities fraud, false filings, false books and records, and related charges.
- Represented the former general counsel of an electronics company in a state grand jury investigation and subsequent trial on grand larceny charges, as well as in parallel SEC proceedings and parallel shareholder class action and derivative suit litigation.
- Represented the former CEO of a leading long-distance phone company in an SEC and grand jury investigation and subsequent criminal trial on securities fraud, false filings, false books and records, and related charges, as well as in parallel SEC proceedings.
- Represented the former chief accounting officer of an American energy company in an SEC and grand jury investigation and subsequent trial on securities fraud, false filings, and false books and records charges, as well as in parallel civil proceedings.

Congressional Investigations

- Represented a financial institution in a major anti-money laundering investigation by several House and Senate Committees.
- Represented investment advisory firms in connection with domestic and foreign tax-advantaged investments before the Senate Permanent Subcommittee on Investigations.
- Represented professional service firms in connection with tax shelter and influence peddling investigations by multiple Senate Committees.

Securities Litigation

Securities Litigation & Enforcement

- Represented a national brokerage firm in an alleged charitable gift annuity investment fraud, which led to \$50 million in investor losses. The founder of the charity maintained a maze of brokerage and bank accounts. The firm, one of its brokers, and an office manager were sued by a class, an SEC receiver, and an individual plaintiff for securities fraud, negligence, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and conversion. The plaintiffs claimed that the brokerage firm had failed to require the charity to keep investor funds segregated, had failed to monitor the charity's activities, and had failed to report suspicious activity to regulatory authorities. Steptoe defeated class certification and settled the receiver action. Individual cases remain pending.
- Represented 11 broker-dealers in a putative national class action seeking to compel the payment of interest on free credit balances and to enjoin account transfer practices that have been approved by the SEC. Plaintiffs' counsel claimed that class damages exceeded \$1 billion. Steptoe obtained dismissal on forum non convenient grounds.
- Represented a national brokerage firm in two related actions arising from trading in stock index options. Steptoe also represented the broker in CBOE disciplinary proceedings.
- Represented a regional brokerage firm in five actions brought by more than 100 investors in oil and gas limited partnerships sponsored by the same general partner. The investors alleged violations of state and federal securities laws, racketeering, and common-law claims based on alleged misstatements in prospectuses.
- Represented a national brokerage firm in an action against the founders of a failed local brokerage and one of its customers. The national firm, a clearing broker, alleged that the local firm had breached its contractual responsibilities and that its officers and directors had been negligent in failing to conduct financial due diligence on a margin account customer. After losses in several positions, the unmet margin calls led back to capital deficiency and closure of the defendant firm. The action led to a significant payment by the defendant firm and payments by its officers and directors and the margin customer to our client.

Securities Litigation & Enforcement

- Represented a national accounting firm in a class action securities and professional malpractice litigation arising from the bankruptcy of a major national homebuilder. Plaintiffs alleged errors in accounting for net realizable value write-offs and deferred tax asset estimates, among other issues. Plaintiffs sought \$95 million in actual damages and \$1 billion in punitive damages. After a 66-day jury trial, the matter ended in a defense verdict. Steptoe also represented the firm and two of its partners in related State Board of Public Accountancy proceedings.
- Represented a national accounting firm and two of its partners in a stockholder lawsuit arising out of the failure of a life insurance company and an associated insurance service agency involving alleged failures in accounting for life insurance premiums and calculating required reserves.
- Represented a national accounting firm and one of its partners in an action brought by foreign investors in British Virgin Islands corporations that owned US real estate, alleging breach of fiduciary duty, fraud, and racketeering arising from alleged improper disclosures regarding asset sales, erroneous financial statements, and erroneous tax planning and advice.
- Represented an insurance company in securities and racketeering litigation related to the financing of real estate limited partnerships. The insurer had issued financial guaranty bonds and was involved in litigation with the investors, the real estate syndicator, bond lenders, attorneys, accountants, appraisal firms, and reinsurers, as well as parallel criminal proceedings involving aggregate losses of more than \$100 million.
- Represented a national bank that served as indenture trustee for electric utility first mortgage bonds in two bondholder class actions arising out of the redemption of certain bonds at par value. The bondholders claimed the bonds should have been redeemed at a premium and sought more than \$25 million in damages for claims brought under the federal securities laws and contract principles.
- Represented the former CEO of a leading tires manufacturer in a private securities fraud class action arising out of the recall of allegedly defective tires.

Securities Litigation & Enforcement

- Represented the bankruptcy trustee of a failed publicly traded savings and loan holding company challenging the settlement of a derivative claim for no consideration on the eve of bankruptcy, recovering more than \$55 million in damages against former officers, directors, and attorneys for the company. The case involved disastrous investments by the savings and loan in both consumer loans and junk bonds. The litigation took place in several courts on both coasts and produced 16 published opinions.
- Represented a national accounting firm and two of its partners in an action filed by a bankruptcy trustee of a NASDAQ-listed national distributor of personal care products. Plaintiff sought more than \$100 million in damages, alleging the improper auditing and application of revenue recognition criteria and errors in the installation of a major ERP system impacting financial statements, customer relationship management, and supply chain management.

Merger and Acquisition Litigation

- Represented the former chief executive of an aerospace avionics firm in a \$350 million lawsuit filed by the purchaser in a \$1 billion merger and acquisition transaction. The suit alleged that there were misrepresentations in financial statements arising from the improper application of SOP 81-1 and sought recovery under federal and state securities law for violations of the sale agreement and various tort claims. After extensive fact and expert discovery and motion practice, the matter was successfully mediated on the eve of trial, with our client contributing no funds to the settlement.
- Represented sellers in an arbitration proceeding regarding a merger and acquisition transaction involving the sale of a computer software applications services business. The buyer sought rescission of the sale agreement based upon violation of the material adverse change and material adverse effects clauses in the asset purchase agreement and alleged misrepresentations involving projections and damages for alleged breach of non-solicitation agreements contained in the asset purchase agreement and related employment agreements. The seller sought enforcement of the asset purchase agreement and the payment of deferred consideration.

Securities Litigation & Enforcement

- Represented the buyer in an arbitration and related bankruptcy proceedings relating to its purchase of an information services company using a stock purchase agreement with a cash-down payment and deferred purchase price earn out provision conditioned on achieving certain EBIT targets. During the arbitration, the company established that the seller had created false invoices, engaged in fictitious transactions, made false entries in the company books and records, and made misrepresentations and omissions of material fact in thereby receiving fraudulently inflated overpayments. The arbitrators rendered a decision finding fraud, resulting in a fraud judgment.
- Represented the NASDAQ-listed buyer of a multi-state data entry firm using a stock purchase agreement with a down payment, holdback payments, and deferred purchase price in an arbitration proceeding as to alleged misrepresentations in the earn out process by the seller.

ERISA Litigation

- The firm has had lead defense roles in such high-profile cases as *Tittle v. Enron Corp. (In re Enron Corp. Sec. Derivative & ERISA Litig.)*, *In re Dynegy, Inc. ERISA Litigation*, *In re Williams Companies ERISA Litigation*, and *In re Qwest Savings and Retirement Plan Litigation*, and has defended class actions raising these issues in the energy, automotive, retail, and insurance industries.

Derivatives and Swaps Litigation

- Represented the bankruptcy trustee of a failed publicly traded savings and loan holding company challenging the settlement of a derivative claim for no consideration on the eve of bankruptcy, recovering more than \$55 million in damages against former officers, directors, and attorneys for the company. The case involved disastrous investments by the savings and loan in both consumer loans and junk bonds. The litigation took place in several courts on both coasts and produced 16 published opinions.
- Represented a foreign government in a failed derivative swap transaction against a major Wall Street investment firm.
- Represented three Korean financial agencies in investor disputes with a large investment bank and derivatives dealer over failed derivative transactions.

Securities Litigation & Enforcement

- Represented a Korean insurance company and a Korean investment firm in disputes over failed derivative transactions.
- Represented an insurance company prosecuting a breach of contract claim arising out of a series of total return swaps with bank counterparty.
- Represented an EU insurer in a dispute with an investment bank regarding the bankruptcy termination provisions of the ISDA Master Agreement.
- Represented an affiliate of an insurance carrier concerning potential exposure on a credit risk policy insuring more than \$100 million dollars in securitized mortgage obligations. These obligations were issued through a complex series of trusts and were ultimately secured by a pool of loans made to nursing home properties around the country. The team was able to structure a workout resolving the matter without litigation.
- Represented a broker dealer in connection with litigation filed by several school districts over the sale of synthetic collateralized debt obligations (CDOs) designed to address certain funding issues.
- Represented a partially owned subsidiary of an insurance client in a workout of reinsured financial guarantees issued by monoline carriers on credit default swaps, derivative securities exposures, and litigation, including loss and trust funding exposures.
- Represented an investment adviser charged with breach of fiduciary duty involving derivatives transactions.
- Represented reinsurance carriers and mutual funds in exposures arising from insurance of credit default swap obligations of swap sellers and securities litigation arising from losing derivative securities investments.
- Represented an accountant in New York in connection with a federal criminal investigation into the accuracy of financial data provided in support of a series of high-value mortgage originations related to a structured finance transaction.
- Represented a Korean investor holding credit default swaps seeking a return of its capital in the Lehman Brothers bankruptcy.

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- Represented an employee-owned wealth management, capital markets, asset management, and private equity firm to liquidate its collateral in the case of a bankrupt subprime mortgage lender and servicer.

Asset-Backed Securities

- Represented a hedge fund investment manager in connection with the liquidation and dissolution of several funds composed of highly rated residential and commercial mortgage-backed and other asset-backed securities.
- Represented a Wall Street investment bank in litigation alleging lack of disclosure of environmental contamination in retail shopping centers subject to commercial loans included in mortgage-backed securities.