



One Firm Worldwide<sup>SM</sup>



## SECURITIES LITIGATION & SEC ENFORCEMENT PRACTICE

Issues relating to the issuance and trading of corporate securities, public reporting requirements, merger and acquisition activity, and corporate management and oversight, particularly in light of diverse and increasingly active shareholder constituencies, create complex and ever-changing risks of litigation for both publicly held and private corporations. Businesses electing to operate as general or limited partnerships face many of the same challenges in responding to potential attacks from third parties and from among the partners themselves. The Securities Litigation & SEC Enforcement Practice was formed to counsel clients in managing those litigation risks and to represent them should those risks turn into the reality of a lawsuit.

Driven by the client's business objectives, the members of the Securities Litigation & SEC Enforcement Practice team draw upon Jones Day's global presence and resources and the depth of experience among the Firm's lawyers to develop and implement strategic litigation plans tailored to the specific demands of each situation.

Members of the Securities Litigation & SEC Enforcement Practice team have handled litigation matters in most areas involving the structure and management of corporations and partnerships. The team's practice has included securities compliance and public disclosure actions, takeover fights and proxy contests, and government enforcement actions. Team members

have also been active in defending attacks on management's governance of corporations and partnerships, the use of special committees, challenges to executive compensation and benefits, and the interplay of directors and officers liability insurance with claims of that kind.

## **SECURITIES COMPLIANCE AND PUBLIC DISCLOSURE**

Public companies face frequent legal challenges to the accuracy and adequacy of their public filings and disclosures, often in the form of class action proceedings. Members of the team have substantial experience with class actions and claims under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and the Public Utility Holding Company Act of 1935, and with the changes brought about under the securities reform legislation enacted by Congress in late 1995. Especially in light of those legislative changes, corporations and partnerships are also seeing an increase in state law actions under a variety of common law theories, such as fraud and negligent misrepresentation, as well as under many state securities fraud statutes. The Securities Litigation & SEC Enforcement Practice team members have a depth of experience in dealing with these state law claims. The team members also work closely with the lawyers in the Firm's business practice group to evaluate litigation risks in conjunction with prospective disclosure obligations.

## **BUSINESS COMBINATIONS AND PROXY CONTESTS**

The business world has seen a resurgence of merger and acquisition activity in the last few years. The Securities Litigation & SEC Enforcement Practice team has substantial experience in successfully representing both bidder and target companies in hostile takeover attempts. And even though today's business environment is often based upon

amicable business combinations designed to advance both companies' shared business objectives, the companies and their management may face legal challenges from shareholders, bondholders, or limited partners attacking the value of the transaction. Members of the team have frequently handled matters of this kind, working with both company officials and outside experts to defend the transaction. As shareholders, especially institutional shareholders, and limited partners who have become more active, numerous clients have relied upon the experience of team members in responding to proxy contests.

## **SEC ENFORCEMENT ACTIONS**

In today's volatile and booming market environment, the Securities and Exchange Commission and other regulatory authorities remain active in policing the conduct of market participants. Members of the Securities Litigation & SEC Enforcement Practice have experience in defending companies and individuals in investigations or enforcement actions related to regulated activities, such as disclosure, securities trading, and recordkeeping.

## **CORPORATE GOVERNANCE**

The management of both corporations and partnerships often face intense scrutiny of the actions they take in the operation of the business entity. Because officers, directors, and general partners owe fiduciary duties of care and loyalty to their shareholders or limited partners, they may face a variety of claims regarding the nature of their business decisions. Members of the Securities Litigation & SEC Enforcement Practice have handled substantial matters involving these types of claims, including charges of corporate waste, excessive compensation, usurpation of corporate opportunities, and the use of defensive corporate control mechanisms, such as shareholder rights plans.

## SPECIAL LITIGATION COMMITTEES

One possible response to a derivative lawsuit threatened or commenced by a shareholder is the use of a special litigation committee of directors. In some instances, the full board may not be sufficiently disinterested to evaluate the claim and determine whether it is in the best interests of the corporation. The board may then appoint a special litigation committee of disinterested directors to evaluate the potential claim. Effective and successful use of special committees requires that they be carefully composed, properly authorized, and actively functioning. In particular, these special litigation committees must have separate, independent counsel. Members of the Securities Litigation & SEC Enforcement Practice are experienced in advising on the establishment of such committees and on the performance of their independent reviews.

## EXECUTIVE COMPENSATION AND BENEFITS

When companies prosper, corporate and partnership executives often reap the financial benefit of that success in their own personal compensation and benefit packages. Compensation now comes in a variety of forms, especially stock options, which have grown in popularity and complexity in the last several years. In this environment, shareholders and limited partners have become increasingly aggressive in challenging the levels and types of compensation paid to executives. These challenges arise in less prosperous times as well, when compensation of executives is often viewed as overly generous in light of the economic climate. Members of the Securities Litigation & SEC Enforcement Practice have been active in defending against charges of this kind, as well as in working with lawyers in our Tax Practice to advise clients with regard to the structure of executive compensation in light of these litigation risks.

## DIRECTORS AND OFFICERS LIABILITY INSURANCE

To attract and retain qualified directors and officers, corporations must put in place liability insurance that will provide reasonable protection for the executives against many of the types of lawsuits described above. Jones Day's Securities Litigation & SEC Enforcement Practice team members are well schooled in the importance and complexity of integrating these insurance issues into an overall litigation strategy, in defending claims against directors and officers, and in resolving the coverage and allocation issues that often arise. Team members frequently counsel clients with respect to their insurance needs. In addition, team members have represented numerous clients in direct actions against insurance carriers to enforce the terms of director and officer insurance policies.

## ALTERNATIVE DISPUTE RESOLUTION

Because advancement of a client's business objectives does not always justify traditional litigation methods, members of the team are prepared to utilize alternative dispute resolution techniques, where appropriate, in order to resolve a dispute. A decision to use those techniques must take into account the strategic importance of the litigation, the complexity of the issues and the ability to address those issues adequately in an alternative setting, the offsetting benefits associated with full discovery and trial, and the costs involved in each approach. Team members are experienced with, and prepared to evaluate the benefits of, arbitration, mediation, summary jury trials, and mini-trials as alternate means to resolve conflicts.

## ADDITIONAL INFORMATION

For additional information regarding our Securities Litigation & SEC Enforcement Practice, please contact your principal Firm representative or one of the lawyers listed in this publication. General email messages may be sent using our "Contact Us" form, which can be found at [www.jonesday.com](http://www.jonesday.com).

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