

# SEC Enforcement

## Overview

Carlton Fields' lawyers routinely represent clients caught in the throes of SEC enforcement proceedings. Our team includes a core group of 12 lawyers who are former high-level SEC enforcement trial unit lawyers, assistant U.S. attorneys, state prosecutors, and securities defense lawyers from private practice.

Our team represents clients from the initial stage of an SEC informal inquiry, through formal investigations, Wells submission, at trial, whether it be an SEC administrative proceeding or a federal court proceeding (bench trial or jury trial), and on appeal to the U.S. Court of Appeals and the U.S. Supreme Court. Our team has represented clients during protracted SEC receivership proceedings, including a receivership that spanned 20 years and involved civil contempt proceedings. Our team has also served as counsel to an SEC receiver.

When SEC enforcement proceedings implicate possible criminal charges, our team of lawyers represents clients through all phases of parallel criminal cases, from grand jury proceedings through trial and appeal. As former assistant U.S. attorneys, our team is well versed in the nuances of the criminal process. Lawyers in our enforcement defense practice have handled some of the highest profile matters initiated by the SEC that were referred by the SEC for parallel criminal prosecution. Further, our team represents clients in parallel Commodity Futures Trading Commission (CFTC) matters and serves as counsel to CFTC receivers.

Our team has represented public companies, officers and directors of those companies, special committees of boards of directors, lawyers (both in-house counsel and outside counsel), accountants, investment advisers, investment companies, hedge funds, brokers, dealers, traders, stock exchanges, and cryptocurrency promoters. Our team routinely handles SEC matters against broker-dealers and investment advisers brought under the 1933 Securities Act, the 1934 Securities Exchange Act, and the 1940 Investment Advisers Act. Our lawyers have particular experience responding to requests under the Freedom of Information Act, including the release of deposition transcripts and exhibits in SEC matters.

Our attorneys have represented clients in SEC matters from virtually all industry sectors, including all aspects of the securities industry; investment banking, pension plans, offshore merchant banking,

hedge funds, venture capital firms and foreign exchange (forex) in the financial services industry; the defense, credit card, health care, and telecommunication industries; municipal school boards; international oil companies; and sports and health clubs.

Our team is supported by Carlton Fields' other practices, including its acclaimed investment advisory and investment company regulatory lawyers, which includes former SEC officials from the Division of Investment Management; its corporate practice, which includes a former special counsel in the SEC's Division of Corporation Finance; its FINRA regulatory practice group, which includes former high-level FINRA Division of Enforcement personnel; and its white collar practice.

## Experience

### General

Carlton Fields lawyers have represented:

- Officers and directors of public companies who are the subject of SEC investigations and civil enforcement proceedings for complex financial frauds and SEC reporting obligations.
- Officers, directors, and general counsel who are the subject of SEC investigations for international securities, commodities, and accounting frauds.
- Officers of public companies facing criminal charges for market manipulation and financial fraud.
- Officers sued in private actions for securities fraud in connection with IPOs and mergers.
- Public companies in SEC formal orders of investigation.
- Internal investigations of public companies, international foreign corporations with U.S. subsidiaries, and financial institutions for financial fraud, inadequate internal controls, defalcation of investor funds, Foreign Corrupt Practices Act, Foreign Agents Registration Act, insider trading, and market manipulation.
- Registered investment adviser in SEC's formal order of investigation and settlement of an administrative proceeding relating to the SEC findings of disclosure and compliance violations concerning the RIA's historical QROPS business.
- Attorney accused of aiding and abetting (1) a Ponzi scheme with his real estate investment client; (2) the sale and promotion of unregistered, non-exempt securities; (3) the sale of securities by unlicensed sales agents; and (4) the payment of commissions to unlicensed sales agents.
- Attorney in large New York firm alleged to have engaged in securities fraud in connection with options backdating for a corporate client.

- In-house general counsel of hedge fund charged with intra-account transfers of offshore feeder fund.
- Witnesses in SIGTARP and Department of Justice investigation of securities fraud in relation to public-private investment program involving residential mortgage-backed securities.
- Individuals involved in penny stock pump-and-dump schemes.
- Hedge fund principals, traders, brokers, and investment advisers who are the subject of SEC actions for unlawful sales, best execution, insider trading, undisclosed compensation, conflicts of interest, and market manipulation practices.
- Regularly represent witnesses in SEC investigations and enforcement actions across a spectrum of alleged violations of the federal securities laws and rules and regulations thereunder.
- Broker-dealer in cross-border regulatory investigation.
- Stock exchanges, in prosecuting on their behalf, floor traders and stock execution clerks in complex options and stock interpositioning and clearance and settlement schemes.
- Municipal school boards in connection with the issuance of municipal bonds.
- International publicly traded companies removed from stock indices.
- Former Kmart officer in SEC and criminal investigations.
- Former Sunbeam Corp. officer in SEC investigation, responding to Wells notice, and defending against enforcement action (settled on day of trial).
- Promoters of international cryptocurrency programs facing SEC and criminal charges.
- COO of a company engaged in a cryptocurrency initial coin offering (ICO).
- Cryptocurrency entrepreneur in a penny stock/pump-and-dump scheme involving a cryptocurrency.
- Company and individuals alleged to have committed fraud in failure of a cryptocurrency.
- Person seeking presidential pardons.

### **Special Board Committees**

- Represented special investigative committee during internal investigation for financial fraud of publicly traded credit card company.
- Represented special investigative committee during internal investigation for financial fraud of publicly traded defense contractor.

- Represented special litigation committee of public company investigating claims of securities fraud, breach of fiduciary duties, and other claims totaling hundreds of millions of dollars.
- Represented special litigation committee during internal investigation of derivative lawsuits alleging misrepresentations and omissions in corporate disclosures to the SEC.

## Receiverships

- Litigated against and contested global assets freeze imposed by SEC receiver in the Martin Armstrong matter.
- Served as receiver's counsel in three receiverships venued in the U.S. District Court for the Southern District of New York wherein the Commodity Futures Trading Commission alleged that multiple defendant individuals and entities engaged in fraud regarding the sale and trade of foreign exchange futures contracts. Each case involved losses in the millions of dollars, and two involved parallel criminal proceedings.
  - Serve as receivers' counsel in six cases under "[Operation Wooden Nickel](#)"
  - [CFTC v. Richmond Global Associates, LLC](#)
  - [CFTC v. International Financial Services \(New York\) LLC](#)

## High-Profile Representations

- Representation of U.S. promoter in a high-profile international criminal cryptocurrency matter for which Steven Seagal (movie actor) was brand ambassador.
- Represented the assistant secretary-general of the United Nations in an insider trading case arising from possible merger negotiations.
- *SEC v. Martin Armstrong*: After multiple proceedings before the U.S. District Court for the Southern District of New York and the Second Circuit Court of Appeals challenging the judicial power of the district court, ultimately obtained the release of Martin Armstrong from his seven-year civil contempt sentence, the longest-running civil contempt in the federal courts.
- *SEC v. Martin Armstrong* (2019): Petition for a writ of certiorari to the U.S. Supreme Court for constitutional violations, including denial to right of counsel of choice under the Sixth Amendment and denial of due process by the court-appointed receiver in seizing and selling personal property.
- Represented Richard Scrushy, former CEO and chairman of HealthSouth, in his parallel proceedings before the SEC, DOJ, and Congress, from the inception of the SEC suit, through SEC trial, and the pretrial stages of his criminal trial.

- *SEC v. Richard Scrushy* (2003): After a three-week trial, defeated the SEC in its asset freeze and TRO proceedings against Richard Scrushy. This was the first defeat ever suffered by the SEC Enforcement Division in its history of SEC enforcement actions for asset freezes. The trial judge found that the SEC had manipulated parallel proceedings by the SEC and DOJ.
- *United States v. Richard Scrushy* (2004–2005): Served as co-criminal counsel to Richard Scrushy in the government's first indictment of a CEO under Sarbanes-Oxley and challenged, on constitutional grounds, that statute's certification requirements in a criminal context.
- *United States v. Richard Scrushy* (2015): Presidential pardon application to President Obama for the criminal conviction of Gov. Don Siegelman and Richard Scrushy for politically motivated prosecution that involved government misconduct.
- *United States v. Kristijan Krstic, John DeMarr, and Robin Enos* (2021): Represented John DeMarr in alleged \$11 million securities fraud conspiracy in connection with unregistered digital asset securities offerings.
- Represented former Kmart officer in SEC and criminal investigations.
- *SEC v. Dunlap* (2001): Represented former Sunbeam Corp. officer in SEC investigation, responding to Wells notice, and defending against enforcement action (settled on day of trial).
- Represented the former Omani oil minister and his trading company in opposing the merger in Oman of the National Bank of Oman with Bank Muscat, which was undertaken in part to conceal improper stock investment practices.
- Defended global oil company in Foreign Corrupt Practices Act (FCPA) matter; brought the matter to conclusion without charges from the SEC or DOJ.
- Represented Philadelphia Stock Exchange as a special prosecutor against options traders and stock execution clerks engaged in complex interpositioning and clearance and settlement practices.
- Represented European and Australian promoters and investors whose monies were the subject of SEC freeze orders for international prime bank trading schemes and who have been named as "relief defendants."
- Represented lawyers, who served as outside securities counsel to public companies, in connection with SEC and DOJ options backdating investigations.
- Represented general counsel of hedge funds for improper intracompany and intercompany fund transfers.
- Represented lawyers who have been the subject of SEC proceedings for issuing legal opinions on offshore Regulation S offerings and standby letters of credit.

- Represented Nasdaq companies whose securities are the subject of market manipulation practices, such as private investment in public equities (PIPEs), "toxic convertibles," and "death spirals."
- Represented offshore bank and domestic broker under SEC investigation for sales of foreign CDs.
- Represented investment advisers in New York attorney general's "pay to play" investigations.
- Represented officer of an oil company that was directed to sell stock of the company for working capital.
- Presidential pardons of CEO for first financial fraud charged under the Sarbanes-Oxley Act.

## Insights

04.19.2024

Rethinking the Scope of Insider Trading: A Closer Look at the SEC's "Shadow Trading" Win  
*ABA Litigation Newsletter*

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03.12.2024

SEC Seeks to Extend Insider Trading Law to 'Shadow Trading' in SEC v. Panuwat  
*Daily Journal*

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09.28.2023

SEC Folds on Swing Pricing for Money Market Funds: Odds Lengthen Against Swing Pricing for Other Fun

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06.01.2023

SEC Releases Five-Year Strategic Plan  
*The Investment Lawyer*

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05.25.2023

Reg BI Cooking Instructions: Based on SEC/FINRA Exams

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05.11.2023

Victims With "Dirty Hands" Cannot Recover Under the Mandatory Victims Restitution Act in Second and Eleventh Circuits

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04.28.2023

Axon, Gibson, Jarkey: Continuing Challenges to SEC's Administrative Citadel

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03.23.2023

Corporate Executive Charged in First-of-Its Kind 10b5-1 Insider Trading Case

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03.04.2023

SEC's Order Competition Rule Is Regulation by Speculation

*Law360*

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02.16.2023

Digital Assets: An Expanding Arena for Insider Trading and Market Manipulation

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02.16.2023

SEC and CFTC Fines for Texting Augur Billions More from DOJ

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02.01.2023

The SEC's First Regulation Best Interest Action and the Challenges of Regulating By Enforcement

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01.19.2023

FINRA Issues 2023 Report on Examination and Risk Monitoring Program

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09.08.2022

SLUSA Dismissal Affirmed in Variable Annuity Class Action: Eleventh Circuit Looks Behind Artful Pleading

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09.08.2022

What's Up With WhatsApp and Text Messaging? SEC and FINRA Weigh In

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09.08.2022

Attacks on the SEC Administrative Citadel

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08.24.2022

Takeaways for Broker-Dealers After SEC's Reg BI Action

*Law360*

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03.14.2022

The SEC Has Proposed a New Cyber Disclosures Rule for Public Companies

*ABA Securities Litigation Practice Points*

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03.11.2022

Four Takeaways From the SEC's Proposed Cyber Rule for Public Companies

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01.11.2022

Admissions of Wrongdoing Back in Vogue: SEC Enforcement Pendulum Swings

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01.11.2022

Gag Orders, Part II: When the SEC Silences Critics

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11.05.2021

The SEC May Soon Propose Changes to Equity Market Structure: What Traders Should Know

*Traders Magazine*

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10.11.2021

Payment for Order Flow (PFOF): Your Questions Answered

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10.05.2021

SEC's Upcoming Report on GameStop and Payment for Order Flow: What to Watch

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10.04.2021

Making Good on Its Promise: SEC Pursues Cyber Enforcement Actions Against Financial Services Companies

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09.10.2021

SEC Targets Payment for Order Flow: What Broker-Dealers and Wholesale Market Makers Should Know

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07.26.2021

Regulators Consider Payment for Order Flow and the Gamification of Trading After GameStop

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03.02.2021

SEC Limits Need for Substitution Applications

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07.07.2020

The "Compass Rose" Method for Corporate Witness Interviews

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04.13.2020

Cases of Purloined Company Documents: When Terminated Employees Steal

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07.03.2019

What to Do If the SEC Comes Knocking on Your Door

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## Our Team

## Key Contacts



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## Related Capabilities

### Practices

- Corporate Law and Governance
- Financial Services Regulatory
- FINRA Enforcement, Arbitration, and Appeals
- Global Anti-Corruption
- Institutional Investment and Finance
- Internal Investigations
- Investment Funds
- Private Equity and Venture Capital

### Industries

- Insurance
- Securities & Investment Companies
- Life, Annuity, and Retirement Solutions
- Life, Annuity, and Retirement Solutions

- White Collar Crime & Government Investigations
- Insurance
- Insolvency-Related Directors and Officers (D&O) Litigation
- Life, Annuity, and Retirement Solutions
- Securities Litigation and Enforcement
- Securities Transactions and Compliance
- International Privacy Compliance
- Cannabis Law