

Quick Contact

Dan F. Laney
Partner
Direct: 404.420.4624
Atlanta

dlaney@rh-law.com

Jeffrey W. Willis
Partner
Direct: 404.420.4619
Atlanta

jwillis@rh-law.com

Stephen D. Council
Partner
Direct: 404.420.4658
Atlanta

scouncil@rh-law.com

Related Attorneys

Joshua P. Gunnemann

Fischer Reed

Jeffrey W. Willis

Related Practices

Securities Litigation

Class Actions >> Securities

Securities Litigation >> Shareholder

Class Actions

Broker-Dealer Litigation and Arbitration

Corporate Governance >> Shareholder
Derivative Actions / Officer and Director
Defense

SEC AND FINRA INVESTIGATIONS AND LITIGATION

National Capabilities and Recognition

- We represent public companies and their officers and directors, and financial institutions and their representatives in securities regulatory investigations and litigation.
- Our clients include representation from nearly all aspects of the financial markets: leading Wall Street firms, regional banks, executives of large and mid cap corporations, privately-owned small businesses, investment advisory firms and broker-dealers.
- We represent clients in court, administrative proceedings and arbitrations throughout the U.S.
- Clients work closely with our trial lawyers and former Federal regulators and prosecutors, many of whom are recognized by *The Best Lawyers in America*, *Chambers USA*, *Georgia SuperLawyers*, and other leading professional authorities.

Rogers & Hardin attorneys have significant experience representing firms and individuals in numerous investigations conducted by the SEC, DOJ, FINRA, other securities industry self-regulatory organizations, and state securities regulators. We represent clients at each stage of the investigatory process: responding to informal inquiries and document requests, preparing for and providing on-the-record testimony, and preparation and submission of the "Wells" response. We also have the experience and skills needed to obtain a successful result in a trial on the merits of the matter.

Our client representations in regulatory investigations cover a wide array of subject matters, including:

- Failure to supervise
- Insider trading
- Fiduciary obligations
- Accounting and financial reporting fraud, including:
 - Revenue recognition
 - Reserve accounting
 - Allowance for loan losses
 - Related party transactions
 - MD&A disclosure
- Pension consulting
- Research and investment banking conflicts of interest
- Market manipulation
- PIPE transactions

- Sales practices
- Market timing/late trading

DEFENSE OF AN SEC ENFORCEMENT ACTION

- **Client:** The CEO of a publicly-traded company.
- **Issue:** Defending an Enforcement Action initiated in federal district court by the SEC alleging that the client had committed fraud.
- **Challenges:** The stakes were high – the SEC sought the imposition of a large monetary penalty, a court order barring the client from serving as an officer or director of any public company, and other significant remedies.
- **Outcome:** Upon our motion, the Court granted judgment in favor of our client at the conclusion of the government’s case.
- **Our approach and staffing:** This successful outcome resulted in large part from our thorough preparation and attention to detail prior to trial. By anticipating the SEC’s shift in strategy midway through the trial, we were ready to respond with persuasive arguments based in fact and logic.

REPRESENTATION FOR EXECUTIVES AND BOARD MEMBERS

Our clients have included many executives and board members in connection with government investigations, including chief executive officers, chief financial officers, chief operating officers, and chief accounting officers of various publicly traded companies spanning a variety of industries. Representative examples of this public company experience include:

- Successfully defended an executive officer of an NYSE company in an SEC insider trading investigation related to earnings announcements. After receiving a Wells notice, we persuaded the SEC not to pursue charges against our client.
- Successfully defended the president of a NASDAQ company in an audit committee and joint DOJ / SEC investigation into credit reporting and alleged earnings smoothing. We persuaded the investigators not to file an action.
- Successfully defended an executive of a NASDAQ company in an audit committee and SEC investigation into vendor allowances and revenue recognition. We persuaded the investigators not to file an action.
- Successfully defended a chief accounting officer of an NYSE company in an audit committee and joint DOJ / SEC investigation into vendor rebates and allegations of fraud. We persuaded the investigators not to file an action.
- Successfully defended a chief financial office of an NYSE company in an audit committee and SEC investigation into stock options backdating. We persuaded the investigators not to file an action.

- Successfully defended numerous directors, executives, traders, and other individuals in SEC insider trading investigations. In each case we persuaded the investigators not to file an action.

FINANCIAL SERVICES COMPANY REPRESENTATIONS

We provide financial services companies with a special depth of experience obtained through nearly four decades of service. Our work with broker-dealers, investment advisers, and their supervisors and registered representatives, as well as other regulated and non-regulated entities, has earned us a reputation as a top-tier provider. Please see our [Broker-Dealer Litigation & Arbitration](#) page for more details.

Representative examples include:

- Successfully defended a manager of a national broker-dealer/investment adviser in connection with an SEC investigation into conflicts of interest arising out of pension consulting services. After receiving a Wells notice, we persuaded the SEC not to pursue charges against our client.
- Successfully defended four managers of a national broker-dealer in a joint SEC/NYSE investigation into hedge fund market timing practices. After receiving a Wells notice, we persuaded the SEC not to pursue charges against our client.
- Successfully defended a manager of a national broker-dealer in an SEC investigation into allegations of mutual fund switching. We persuaded the investigators not to file an action.
- Successfully defended a manager of a national broker-dealer before the NASD District Business Conduct Committee. After a full evidentiary hearing, we persuaded the panel to dismiss all claims.
- Successfully defended a manager of national broker-dealer in an SEC investigation into allegations of parking and interpositioning. After pre-Wells conferences, we persuaded the SEC not to pursue charges against our client.
- Successfully defended a regional manager of a national broker-dealer in an SEC investigation into multi-class issues in the sale of mutual funds. After pre-Wells conferences, we persuaded the SEC not to pursue charges against our client.
- Successfully defended a manager of a national broker-dealer in an SEC investigation into a Ponzi scheme conducted by a broker. After Wells notice, we persuaded the SEC not to pursue charges against our client.
- Successfully defended a broker-dealer in an extensive NASD investigation into disclosure and sales practices related to Section 529 plans. We persuaded the investigators not to pursue charges against our client.
- Successfully defended a regional broker-dealer in an SEC investigation involving allegations of market manipulation. We persuaded the SEC not to pursue charges against

our client.

- Successfully defended several registered representatives in an NASD inquiry into broad-ranging issues including mutual fund share classes, churning, suitability, and sales contests. After Wells notices, we persuaded the investigators not to pursue charges against our client.
- Successfully defended a national broker-dealer and its managers in an action filed by a state securities commission alleging fraud in connection with unregistered securities and penny stocks. We obtained a favorable outcome through litigation in court and in an administrative proceeding.

Regardless of the type of engagement, our decades of experience give us a thorough understanding of the legal and regulatory environment and allow us to quickly solidify a mastery of the facts for each particular case. This enables us to give sound advice to our clients facing regulatory scrutiny. In many cases, our credibility, experience and preparation have enabled us to persuade regulators not to institute threatened enforcement actions against our clients.

Our first objective is to help our client avoid litigation, and we have frequently been successful in doing so. When a client determines to settle a matter, we immediately begin work to negotiate a fair resolution on their behalf. If necessary, we are fully equipped to proceed to trial and have frequently obtained favorable results for our clients by trial on the merits of a matter. Regardless of the stage or escalation of the investigation, all clients benefit from our extensive litigation and trial experience. It provides valuable perspective to clients as they evaluate strategy and weigh the risks of going to trial.

PUBLICATIONS

- SEC Approves FINRA Rule to Prohibit Conditioning Settlements on Expungement
- United States Court of Appeals for the Second Circuit Provides Clarification on Definition of Customer Under FINRA Rules
- Lessons from the SEC’s First “Pretaliation” Whistleblower Enforcement Action