



Howard R. Elisofon

Partner; Co-Chair, Securities Litigation and Enforcement

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Howard Elisofon is a nationally renowned litigator with more than 35 years of experience in securities law and enforcement.

Howard began his career as trial counsel for the SEC's Division of Enforcement. He subsequently worked in a variety of senior legal positions at Prudential Securities and First New York Securities, where he obtained his Series 7 and Series 24 licenses, and then in private practice at Greenberg Traurig LLP, where he was a founding member of the firm's New York office.

As co-chair of Herrick's Securities Litigation and Enforcement practice, Howard focuses on securities and commodities litigation, arbitration, mediation and investigations for broker-dealers, brokerage firms, investment advisers, investment companies, venture capital firms and insurance companies, as well as securities traders and industry executives. He represents clients in a wide variety of complex commercial litigation matters, as well as enforcement proceedings before the SEC, the Offices of the U.S. Attorneys, the New York State Attorney General and New York State District Attorneys, as well as FINRA and various exchanges, and state securities and insurance regulators.

A frequent speaker on securities and enforcement related topics, and a sought-after authority on broker-dealer issues, Howard's commentary is often featured in major media outlets.

High-Profile Government Investigations and Litigation

Howard has defended clients in numerous high-profile government investigations, including the Drexel Burnham/Ivan Boesky insider trading matter, the Prudential Securities limited partnership fraud scandal, the Prudential market timing investigation and the Stanford Ponzi scheme. He was also lead counsel in the historic *Molchatsky v. United States of America* lawsuit, brought by Madoff investors against the U.S. government and the SEC. Howard's work on the case led to significant changes in SEC policies and practices regarding investigations, as well as changes in the tax law to provide greater tax relief to Ponzi scheme victims.

Compliance Counseling

Howard frequently counsels clients on sales and trading issues, and on the development of comprehensive compliance programs. He has advised clients on diverse issues including firm and branch office supervisory procedures, clearing issues and practices, communications with the public, conflict of interest reviews, equities and options sales practices, FINRA and state licensing issues, margin rules, suitability and churning, trading practices rules, variable annuity suitability and compliance, private placements, records retention and gifts and gratuities compliance.

Employment Counseling and Litigation

Howard represents firms and employees in the securities industry in a wide range of employment concerns, including compensation matters, employment and severance agreements, wrongful termination cases, Form U-5 issues, recruitment disputes and discrimination cases.

Services

- Litigation
- Alternative Dispute Resolution
- Employment Litigation
- Securities Litigation and Enforcement

Education

- University of Miami School of Law (J.D., *with honors*, 1973)
- Brooklyn College (*with honors*)

Memberships & Associations

- Securities Industry and Financial Markets Association

Publications

June 2018

Second Circuit Amends Martoma Insider Trading Decision

August 2017

Second Circuit's Martoma Decision Enhances the Government's Ability to Prosecute Insider Trading Cases

August 2017

First Appellate Decision Involving Federal Anti-Spoofing Provision Sends Clear Message to the Market

June 2016

SEC Fines Morgan Stanley \$1 Million for Failing to Secure Client Data

June 2016

FINRA Adopts New Rule 2272 Regarding Securities Offers and Sales on Military Installations

June 1, 2016

Divided Appellate Court Rebuffs Challenges to the SEC's Administrative Proceedings

February 20, 2014

Court Decision Makes Fund Managers Engaged in Insider Trading Personally Liable for Fund Trading Profits

May 27, 2013

SEC v. SIPC: What the Battle to Define 'Customer' Means For Stanford Investors and Victims of Financial Fraud at Large
Bloomberg BNA Securities Regulation and Law Report

August 2011

Federal Appeals Court in New York Approves Picard's Calculation Method, Disappointing So-Called "Net Winners"

January 2011

Hope for Madoff Investors Hit With Clawback Lawsuits

November 2010

Bankruptcy Judge Approves Procedures to Facilitate Claw Back Litigation Against Madoff Investors

September 2010

The Road to Expungement Grows Longer
Securities Arbitration Commentator

July 2008

U.S. SEC Insider Trading Suits Against Foreign Citizens Increasingly Lead to Freezing of Assets
World Securities Law Report

June 9, 2008

Crossing Our Borders: Insider Trading, A Global Perspective
Securities Regulation & Law Report

January 2008

U.S. Supreme Court's decision in Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.

1998

Evaluation of Arbitration Cases
The Practicing Law Institute

Matters

Stock Promoter - Department of Justice and SEC Investigations

Representing a stock promoter in wide-ranging investigations by the Department of Justice and the SEC of securities fraud in the promotion and potential manipulation of the stocks of various start-up companies.

Investment Advisor - Department of Justice and SEC Investigations

Representing an SEC registered investment advisor to several private equity funds with over \$1.0 billion in assets under management, in connection with investigations of alleged securities law violations by the DOJ, the SEC and state securities regulators.

Financial Consultant - FINRA Arbitration

Representing a senior financial consultant in a FINRA arbitration where certain employees alleged that the firm and the consultant constructively terminated them.

Broker - FINRA Investigation

Represented a terminated broker in a FINRA investigation related to discretionary trading, and a negotiated departure from his firm.

Executive - New York Attorney General Investigation

Successfully represented an executive in a New York State Attorney General investigation into financial improprieties and conflicts of interest.

Financial Professionals - FINRA Expungement Proceedings

Representing multiple clients in FINRA proceedings to expunge reportable events from the Central Registration Depository

Hedge Fund - Federal Investigations

Represented a multi-billion dollar hedge fund firm in parallel SEC and US Attorney investigations.

Broker - FINRA Investigation

Successfully represented a broker in a FINRA investigation into selling away activities; FINRA closed the investigation with no action taken.

Broker Dealer - SEC Investigation

Represent a broker dealer in connection with an SEC insider trading investigation.

Securities Trader - Federal Criminal and SEC Civil Insider Trading Charges

Representing a securities trader in a Department of Justice criminal action and a related SEC civil action where our client is charged with participating in an insider trading scheme in which the securities of public companies were sold short in advance of secondary offerings, allegedly based upon material, non-public information. In the criminal case, our client recently received a sentence of Probation.

Hedge Fund Manager - No Action Letter in SEC Insider Trading Investigation

Successfully represented a hedge fund manager and his fund in an SEC insider trading investigation involving a US-based, multinational technology company and the alleged intentional manipulation of securities prices through the creation and spreading of false information. The investigation concluded with the issuance of a no-action letter from the SEC.

Investment Bank - Restrictive Covenant Dispute

Represented a boutique investment bank in the pre-litigation resolution of a dispute with two former executives believed to have breached their employment agreements by misappropriating confidential information and soliciting clients after resigning their positions at the firm to join a direct competitor.

Financial Advisor - FINRA Customer Claim Investigation

Represented a veteran financial advisor in a FINRA investigation into customer claims that the client recommended unsuitable investments and maintained an overly concentrated account resulting in millions of dollars in damages. FINRA closed the investigation with no action taken against our client.

Wealth Management Division - Closure of FINRA Sales Practice Investigation and Dismissal of Related Customer Arbitration

Successfully represented the wealth management division of a major international bank, obtaining the closure, with no further action, of a FINRA investigation into alleged sales practice violations and the dismissal of a related customer arbitration alleging unsuitable investments in structured products.

Inter-Dealer Brokerage Firm - \$500 Million Raiding Case

Represented the affiliate of a billion-dollar inter-dealer brokerage firm in a large "key employee raiding case" brought by a competitor whose stock market valuation declined 24% (approximately \$450 million) on the day following our client's hire of approximately 20 of its credit derivatives brokers and employees. Following an intense oral argument by Herrick and other firms aligned with our client, a New York Supreme Court denied the plaintiff's motion for a temporary restraining order and later denied a motion for preliminary injunction in rulings which allowed the subject employees to work for our client. The dispute then moved to a FINRA arbitration where we defended hundreds of millions of dollars in claims. After more than 240 hearing sessions, the matter was fully settled and all claims withdrawn.

Investors - Resolution of Fraud and Breach of Contract Claims

Negotiated a favorable settlement involving the payment of significant monetary damages on behalf of a New York limited partnership to resolve allegations of fraud and dissipation of family trust assets against a major offshore bank and international investment advisors.

Business Executive - Parallel Criminal and Civil Insider Trading Investigations Settled Favorably

Herrick successfully represented a business executive in parallel criminal and civil insider trading investigations conducted by the U.S. Attorney's Office for the Eastern District of New York and the SEC, in connection with allegations that our client and four other defendants used illegal tips to trade in the stock of a company prior to it being taken private in a multibillion dollar deal. Herrick was able to resolve the SEC claims with a favorable settlement which involved no admission of wrongdoing, and obtained no prosecution with the U.S. Attorney's Office.

Favorable Resolution Negotiated in FINRA Customer Arbitration Alleging Sales Practice Violations

Herrick successfully defended a leading investment banking and brokerage firm in a FINRA arbitration initiated by the beneficiary of an estate seeking to hold our client liable for the alleged misconduct of the estate's trustees, including alleged defalcation, in connection with significant losses incurred by a brokerage account opened on behalf of the estate. Herrick was able to negotiate an extremely favorable settlement involving no admissions of wrongdoing or further disciplinary actions by FINRA.

Favorable Resolution in FINRA Arbitration Initiated by Former Managing Director

Herrick successfully defended a midmarket investment bank and brokerage in a FINRA arbitration initiated by a former Managing Director who alleged that our client had wrongly denied him commissions on deals in which he claimed to have been involved. The parties ultimately entered into binding mediation where virtually all claims against our client were dismissed and the matter was resolved with a minimal settlement that was a small fraction of the amount initially claimed.

Broker-Dealer - FINRA Employment Arbitration

Represented a broker-dealer in a complex employment arbitration brought by six former employees seeking over \$10 Million in collective damages. This FINRA arbitration proceeded for 60 sessions, including 32 hearing days, and resulted in a virtually complete defense verdict for the firm, including for attorneys' fees. The award was confirmed in its entirety by the Southern District of New York.

Financial Service Firm - Insider Trading Investigation

Herrick successfully represented a financial services firm and key executives in a joint SEC and US Attorney's insider trading investigation related to the purchase of shares in multiple pharmaceutical companies prior to announcements of multibillion mergers. The investigation concluded with no action taken against our clients.

Regional Securities Firm - FINRA Investigation

Representation of a regional securities firm in a FINRA investigation in connection with the firm's hiring of a statutorily disqualified person.

Senior Investment Banker - SEC/FINRA Investigations

Represent a senior investment banker in parallel SEC and FINRA investigations relating to allegations of fraud and misrepresentation in connection with the sale of private equity securities.

SEC Matter - Securities Fraud Allegations

Representation of a business executive in an SEC civil securities fraud matter alleging participation in a pump-and-dump scheme involving two penny stocks.

Senior Account Executive - FINRA Investigation

Represent an account executive in a FINRA investigation alleging sales practice violations, selling away and paying non-licensed persons transactional based compensation.

FINRA Arbitration

Representation of a national broker dealer in an arbitration claiming fraud and misrepresentation in the sale of private placements.

FINRA Investigation - Failure to Supervise

Representation of a major broker dealer investigated by FINRA for failure to supervise brokers in connection with the sale of speculative securities.

Senior Broker - FINRA Investigation

Representation of a registered senior broker in a FINRA investigation into possible selling-away activities.

Madoff Litigation - SIPC Trustee Actions

Representation of Madoff victims named as defendants in actions filed by the SIPC Trustee to recover monies withdrawn from their Madoff securities accounts. Those actions, which are commonly referred to as "clawback" claims, are before the Bankruptcy Court for the Southern District of New York.

Broker-Dealer - Sales Practice Investigation by FINRA

Successfully negotiated a favorable settlement on behalf of a broker-dealer in a sales practice investigation initiated by FINRA concerning allegations that the firm made false and/or misleading representations to customers in connection with the sale of certain mortgage backed securities.

FINRA Arbitration - Sexual Discrimination Claim

Representation of a regional broker dealer in a claim asserted by a former account executive alleging the firm had engaged in sexual discrimination and failed to pay certain bonuses and other compensation.

Employee Claim

Representation of a regional broker dealer in a claim asserted by a former research analyst alleging that the firm wrongfully withheld certain bonus and other transactional compensation.

Philadelphia Stock Exchange and FINRA Investigation

Representation of a regional brokerage firm in a FINRA and Philadelphia Stock Exchange investigation into payment of transaction based compensation to unregistered persons in numerous violations of the just and equitable principles of trade.

Madoff Litigation - Filings Against the SEC

We represent a number of victims of Bernard Madoff's Ponzi scheme. In January of 2009, we filed notices of claim with the Securities & Exchange Commission alleging negligence under the Federal Tort Claims Act. The SEC rejected our claims six months later, and on Wednesday, October 14, 2009, we filed the historic and first known lawsuit against the SEC seeking monetary damages under the FTCA, *Molchatsky and Schneider v. United States*. We were lead counsel on the *Molchatsky* case and filed two additional cases against the United States on behalf of other Madoff victims. While the Second Circuit ultimately dismissed the action, essentially saying that the SEC had absolute immunity, the case sent a message that Herrick will leave no stone unturned on behalf of its clients. The firm continues to defend Madoff victims in clawback actions initiated against them by the Madoff bankruptcy trustee.

FINRA Investigation

Representation of a registered representative of a major broker dealer in a FINRA investigation into mismarking of trade tickets and unsuitable trading. After successfully filing

a Wells submission, the matter was ultimately dropped and the client received no formal discipline.

SEC Matter - CEO of Broker Dealer Investigated for Fraud

Representation of the Chief Executive Officer of a significant broker dealer in a U.S. Securities and Exchange Commission investigation regarding alleged misrepresentations in the offering of private placement interests, and responding to an SEC Wells Notice. The matter was ultimately favorably resolved.

Favorable Resolution to FINRA Customer Arbitration

Herrick successfully defended a regional broker dealer in a FINRA customer arbitration seeking both compensatory and punitive damages in connection with alleged fraud and misrepresentation related to the sale of publicly traded securities and private placements. We negotiated a settlement for a fraction of the initial claim, resolving the matter with no further disciplinary actions against our client.

Broker Dealer - Regulatory Investigation

Defended broker dealer in a FINRA regulatory investigation alleging that a former analyst made misrepresentations about high-growth securities in multiple firm research reports.

Investment Advisor - Successful Conclusion to SEC Investigation and Wells Notice Alleging Fraud Against Senior Executive - Stanford Ponzi Scheme

We represented a senior executive investment advisor formerly associated with the now infamous Stanford Financial Group in a Securities and Exchange Commission investigation. In 2011, the SEC issued a Wells Notice concerning our client's alleged fraudulent disclosures and affirmative misrepresentations in the sales of Stanford International Bank CDs, allegedly a massive Ponzi scheme. After making two submissions in response to the Wells Notice and an oral presentation to the staff at the SEC's Fort Worth office, we successfully persuaded the SEC to issue a no-action letter stating that it will not bring any charges against the client.

Regional Brokerage Firm - Investor Claims

Representation of a regional brokerage firm in multiple investor claims alleging fraud and misrepresentation in connection with a failed private placement.

SEC Matter - Insider Trading

Represented a defendant charged with insider trading by the Securities Exchange Commission.

International Insurance Company - Breach of Contract

Represented a major international insurance company in breach of contract dispute.

Brokerage Firm - Defamation Litigation

Representation of a leading independent broker-dealer against claims of defamation and tortious interference asserted by a competitor firm.

Securities Brokers - State Insurance Department Investigation

Representation of more than 275 securities brokers of a number of national retail brokerage firms in proceedings before the NY State insurance department on issues concerning annuity exchanges. We were successful in convincing the department to drop approximately 90% of the cases with no formal action and received favorable settlements in the case of the other 10% of the advisor.

International Insurer - FINRA Arbitration

Representation of a major international insurer in a FINRA arbitration brought by a group of customers alleging improper selling- away by an account executive.

International Insurance Carrier - Indebtedness Recovery

Represented international insurance carrier in its attempts to recover a two million dollar indebtedness from a former account executive.

Foreign Insurance Company - Wrongful Discharge Claim

Representation of a foreign insurance company in connection with the wrongful discharge claim from the managing directors of a U.S. subsidiary.

FINRA Investigation - Falsification of Records

Represented four account executives in an FINRA investigation alleging the falsification of records during a raiding dispute.

FINRA Investigation - Gift and Gratuity

Representation of a senior trader in a FINRA investigation into the possible violation of FINRA gift and gratuity rules.

NYSE Company - Internal Investigation

Representation of the Audit Committee of a New York Stock Exchange listed company to conduct an internal investigation of whistleblower claims brought by a former officer alleging that certain officers and directors had committed accounting fraud and violated the Sarbanes-Oxley Act.

Broker-Dealer - Employment Contracts

Representation of a regional bank broker-dealer in preparing employment contracts to hire an account executive.

Securities Brokerage Principal - NASD Arbitration

Represented the principal of a brokerage firm in an NASD customer arbitration for breach of contract.

Investor - SEC Investigation

Representation of an investor in multiple inquiries by governmental authorities in connection with alleged insider trading.

Individuals - Insider Trading

Representation of two foreign citizens in connection with an SEC lawsuit alleging insider trading of Dow Jones' stock.

Investment Banker - FINRA Proceeding

Representation of a former employee of a major investment bank in a FINRA regulatory proceeding on charges that he misappropriated funds from his employer by improperly submitting personal expenses as business-related expenses.

Investor Group - Fraud and Misrepresentation Claims

Represented an investor group in connection with fraud and misrepresentation claims against an investment manager in various private investments.

International Investigation - Market Manipulation

Representation of a foreign citizen in connection with an indictment by the U.S. Attorney's Office and an SEC investigation alleging market manipulation of multiple OTC securities in the U.S. markets via the internet.

Stock Brokers - FINRA Investigation

Representation of multiple stock brokers of a national retail brokerage firm in a FINRA investigation into various sales practice violations.

Branch Manager - FINRA Investigation

Representation of the branch manager of a national retail brokerage firm in a FINRA investigation involving the failure to supervise in connection with a major defalcation from a customer account by an administrative employee.

Executive - SEC Investigation

Representation of an executive of a national retail brokerage firm in a joint U.S. Attorney and SEC action alleging fraud in connection with securities lending.

National Retail Brokerage Firm - Civil Litigation

Representation of a national retail brokerage firm in a state court action alleging sales practice violations.

Hedge Fund Managers - SEC Investigation

Representation of two hedge fund managers in an SEC investigation relating to market timing activities. No charges were instituted.

Mutual Fund Company - NASD Arbitration

Representation of an international mutual fund company in a NASD arbitration brought by a senior officer seeking alleged wrongfully withheld compensation and bonuses.

Employees - SEC Investigation

Representation of multiple employees from a public company in an SEC investigation alleging misstatements in the company's public filings. No charges were instituted.

Securities Finder - SEC Investigation

Representation of securities finder in a joint U.S. Attorney and SEC action alleging fraud in connection with securities lending.

Trader - FINRA Investigation

Representation of a former trader at a national retail brokerage firm in a FINRA regulatory investigation into charges of front-running one of the firm's customers.

Retail Brokerage Branch Manager - NASD Charges

Successful defense of a branch manager of a national retail brokerage firm. Following a hearing, the hearing panel dismissed all of the NASD's charges, including allegations of supervisory failures. The dismissal was upheld on appeal by the NASD to the NASD's National Adjudicatory Council.

Retail Brokerage - Federal Investigation

Representation of a national retail brokerage firm in a joint U.S. Attorney/SEC investigation of illegal "frontrunning" trading activity.

Financial Services Company - Internal and Grand Jury Investigations

Conducted an internal investigation for a major international financial services corporation concerning allegations that company employees had provided false customer account information to another financial institution. We also represented the company in a related New York state grand jury investigation.

First Allied Securities - NASD Arbitration

Representation of First Allied Securities in an NASD arbitration in Seattle, Washington involving claims against a competitor for raiding an entire division of the company, including multiple brokers in multiple offices.

Retail Brokerage - NYSE Investigation

Representation of a national retail brokerage firm in claims brought by the Enforcement Division of the New York Stock Exchange relating to proxy procedures used on an industry-wide basis. The case was favorably resolved after discovery.

Broker/Dealer - Non-Solicitation Dispute

Represented a registered broker/dealer in defending an action for a temporary restraining order brought by a competitor seeking to restrain our client's brokers from contacting their respective clients.

Securities Broker - State Regulatory Proceeding

Representation of a securities broker in a regulatory proceeding brought by the New Jersey Bureau of Securities alleging unregistered and unauthorized transactions.

Independent Broker-Dealer - State and NASD Litigation

Representation of a national independent broker-dealer in a New York State civil litigation and in a related NASD arbitration against former employees to recover fees and restitution payments made by the firm as a result of the misconduct of its former employees.

Securities Broker - Termination Disclosure Inquiry

Representation of a securities broker in an NASD regulatory inquiry relating to his termination disclosure concerning alleged forgery of customer signatures on new account forms.

Retail Brokerage - NASD Arbitration

Representation of a national retail brokerage firm in an NASD customer arbitration alleging sales practice violations.

National Retail Brokerage - NASD Arbitration

Representation of a national retail brokerage firm and a number of individual employees in NASD customer arbitrations alleging sales practice violations.

Brokerage Branch Manager - NASD Investigation

Representation of the branch manager of a regional brokerage firm in an NASD regulatory investigation into improper market timing activities that allegedly occurred in the branch office. No charges were brought against the branch manager.

National Exchange Department Head - SEC Investigation

Representation of a department head of a national exchange's regulatory division in an SEC investigation into the exchange's failure to enforce its member surveillance program and filing false records with the SEC. The former department head received a cease-and-desist order with no monetary penalties assessed against him.

Securities Broker - Forgery Investigation

Representation of a broker in an NYSE regulatory investigation alleging that the broker forged managerial signatures on new accounts forms and disposed of original employer documents. The broker received an admonition letter in lieu of an enforcement proceeding being brought against him.

National Retail Brokerage Firm - Arbitrations

Representation of a national retail brokerage firm and its employees in over 75 arbitrations alleging various sales practice violations.

Senior Executive - U.S. Attorney/SEC Investigation

Representation of a senior executive of a national retail brokerage firm in a joint U.S. Attorney/SEC investigation relating to market timing activities. No charges were instituted against the executive.

National Retail Brokerage - State Court/NASD Arbitration

Represented a national retail brokerage firm in successfully seeking a TRO, permanent injunction and monetary damages in connection with raiding of employees by a competitor.

Retail Brokerage - NASD Investigation

Representation of a retail broker of a national retail brokerage firm in a NASD investigation alleging numerous sales practice violations in connection with customer accounts. No charges were instituted after the filing of a Wells submission.