



## Financial Services

### Overview

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We built our Financial Services industry team the right way: by bringing together the expertise of Tucker Ellis attorneys across virtually all of our practice areas to ensure that our clients receive the *strategic and sophisticated counsel that today's marketplace demands* – in both transactional matters and litigation.

Our national Financial Services Litigation practice leverages our seasoned trial, business banking, and regulatory lawyers to defend our clients against claims as diverse and complex as the financial products and services our institutional clients offer. We prosecute, in certain select circumstances, claims against bad actors whose misfeasance or malfeasance has economically harmed lenders, institutional or corporate investors, and individual shareholders.

Together, our Financial Services industry team has the experience to advise the full spectrum of businesses within the financial services industry, including commercial banks, investment advisers, securities broker-dealers, investment bankers, and insurance entities. We make it our business to stay abreast of legislative initiatives and regulatory mandates, actively participate in a variety of industry organizations, and offer complimentary training programs to keep our clients ahead of the curve and positioned for success. And when needed, our deep bench of experienced trial lawyers stands ready to defend our clients' interests in any litigation context.

### Transactional Client Segments and Service Areas

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#### Commercial Banks

Our Financial Services transactional team has a deep understanding of what it takes to operate a commercial bank/thrift. We focus our services around these strategic areas:

- Ensuring sound corporate governance and securities compliance – handling Sarbanes Oxley, Dodd-Frank, and stock exchange governance requirements; providing director education programs; assisting with strategic planning and policy development; partnering with management on 1934 Act compliance and annual meeting preparation; and advising on shareholder activists, proxy contests, and investor relations matters
- Accessing the capital markets – including serving as issuer's counsel on public offerings and stock exchanges, private placements, preferred equity, and sub-debt offerings

- Compensating directors, officers, and employees – including developing omnibus equity compensation programs; drafting executive employment agreements, change-in-contract contracts, and supplemental retirement benefit plans; and creating/updating welfare and qualified retirement benefit programs
- Managing real estate assets – including branch leasing; acquisitions and dispositions; office leasing; construction; and environmental issues
- Protecting and managing personal, private information and data security – addressing breaches and providing practical solutions to comply with the complex web of state and federal laws (e.g., the Gramm-Leach-Bliley Act)
- Structuring and documenting commercial loans and handling workouts and restructurings – including asset-based loans; acquisition financing; mezzanine finance; healthcare finance; construction loans; letter of credit facilities; investment real estate loans; REIT and real estate fund financing; and floor plan financing
- Public finance – bank’s counsel in direct purchases of bonds from government entities; letter of credit bank counsel; underwriter’s counsel for investment banks; and trustee bank’s counsel
- Litigation – including representing banks and mortgage companies in individual and class action litigation involving lender liability; challenges to merger transactions; Truth in Lending Act claims; Electronic Funds Transfer Act; The Fair Credit Reporting Act; and predatory lending claims
- Bankruptcy – including bankruptcy and reorganization cases and cases involving preferences and fraudulent conveyances; federal and state court receiverships and Uniform Commercial Code secured party sales; recovery of assets and assertion of claims; settlement agreements, plans of reorganization, and plan support agreements
- Supporting trust and wealth management activities – including providing advice to bank trust departments and trust companies on complex trust, estate administration, and tax issues
- Corporate investigations, whistleblower activities, and white collar criminal defense – handling cases and investigations for commercial banks and mortgage companies
- IP – including counseling financial services clients targeted by patent trolls; preparing patent applications; representation in connection with company-wide name changes and rebranding initiatives; and securing trademark rights
- Government relations – counseling banking institutions on regulatory and legislative matters

### **Investment Advisers**

Our versatile transactional team serves a variety of clients in the investment adviser arena, including sole advisers, advisers affiliated with broker-dealers, those that are dual registered

as both advisers and broker-dealers, and advisers to private equity funds. We provide valuable assistance in:

- Adviser start-up and formation matters and formulating and implementing initial compliance programs
- Ongoing compliance matters – including annual reviews, annual updating amendments, and compliance program modifications
- Regulatory inquiries, examinations, enforcement actions, and all facets of litigation (i.e., SEC, state securities divisions, other regulatory authorities, arbitration, and civil and criminal lawsuits)
- Developing and negotiating significant adviser-related business arrangements – including investment management advisory agreements, sub-advisor agreements, solicitor arrangements, executive employment, non-competition, confidentiality, non-solicitation, and other business agreements
- Privacy and data security compliance planning and policymaking, program review, crisis prevention, and crisis management
- Strategic partnerships and joint ventures
- Restructuring of dual-registrants
- Business separations and “corporate divorces” of advisers and their principals and winding down/dissolution processes
- Fiduciary duties – including advising on the intersection between adviser duties and ERISA and Department of Labor legal requirements
- Formation of pooled investment vehicles – including design of proprietary fund products, hedge funds, and fund-of-funds for both institutional and retail products
- Mergers and acquisitions of advisers – including both acquisitions and sales of businesses
- Bank financing and capital raises for advisory businesses
- Corporate investigations, whistleblower activities, and white collar criminal defense

### **Securities Broker-Dealers**

Our transactional team has the know-how and experience to counsel broker-dealers on matters including:

- Broker-dealer start-up/formation matters and formulating/implementing initial compliance programs
- Regulatory inquiries, examinations, and enforcement actions (FINRA, state securities divisions, FCPA); arbitrating and litigating disputes with customers and third parties, including FINRA arbitrations

- Duties to customers – including due diligence requirements in making recommendations for a client investment in private placements and other non-traditional investments and suitability matters
- Developing and negotiating broker-dealer contractual arrangements – including placement agent, underwriting, executive employment, non-competition, confidentiality, non-solicitation, and other business agreements
- Strategic partnerships and joint ventures
- Restructuring of dual-registrants
- Business separations and “corporate divorces” of broker-dealers and their principals and winding down/dissolution process
- Broker-dealers as placement agents and underwriters’ counsel in connection with private and public company capital raise transactions
- Broker-dealers as underwriters in connection with public securities offerings
- Mergers and acquisitions of broker-dealers – including both acquisitions and sales of businesses
- Bank financing and capital raises for broker-dealers
- Representing broker-dealers and registered representatives in investigations by regulatory authorities as well as in litigation filed before FINRA and in civil and criminal courts throughout the state of Ohio and across the United States
- Corporate investigations, whistleblower activities, and white collar criminal defense

### **Investment Bankers**

Our investment banker clients benefit from our transactional experience in handling the following matters:

- Engagement agreements and related disputes – including tails, exclusivity matters, and indemnification protections
- Issuance of fairness opinions in M&A transactions
- Providing counsel to banks acting as placement agents/broker-dealers in connection with capital raise transactions
- Co-investment opportunities and related legal matters
- Serving as underwriter’s counsel to investment banks serving as underwriters in connection with public finance transactions, including compliance with Municipal Advisor Rules and MSRB Rules

### **Other Financial Services-Related Representation**

Our transactional team advises research company providers in connection with published research, insider trading policies, and related regulatory matters.

## Litigation Client Segments and Service Areas

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### Class Action Defense

The Class Action Litigation Group at Tucker Ellis has extensive experience defending class claims in jurisdictions throughout the United States. We defend class actions that corporate clients face with their customers, employees, investors, shareholders, and regulators. Our class action practice reaches across the major substantive areas of the law, including antitrust, securities, business tort, consumer finance, consumer fraud, contract, insurance, employment, ERISA, and other fields.

- Served as lead counsel in defending company and board members in a transaction-related shareholder class action lawsuit brought by a national shareholder plaintiff firm; defeated claims for injunctive relief and obtained complete dismissal of lawsuit, preserving closing date without delay or extension; court decision ruled favorably for the client in case of first impression relating to so-called “don’t ask, don’t waive” provisions in purchase agreement
- Served as co-lead counsel in defending company against fiduciary duty class action claims brought against directors in connection with unsolicited proposal by a third party; obtained complete dismissal

### Commercial Lending Litigation and Workouts

Tucker Ellis trial lawyers partner with our experienced business banking lawyers to assist bank clients when litigation arises from commercial lending, servicing, default, workouts, and collection efforts. We align our litigation strategy with our clients’ objectives of preserving collateral, ensuring adequate security, and maximizing recovery if a workout cannot be achieved. We also defend and prosecute claims and/or counterclaims by commercial borrowers, which often involve fraud and misrepresentation allegations arising from the original loan transaction and loan servicing. At all stages of these matters, we work with our clients to assess, balance, and manage litigation costs against the likelihood of recovery.

- Represented a large insurance indemnity company in a case involving the rights of indemnitors of construction contracts
- Represented a bank in a case of first impression in the U.S. Bankruptcy Court, resulting in a ruling in favor of the bank and a published opinion upholding payment rights of equipment lessors
- Represented a corporate creditor in complex environmental claims litigation, resulting in a ruling in favor of the creditor in the United States Sixth Circuit Court of Appeals, as well as a subsequent ruling in favor of the creditor on similar issues in the U.S. Sixth Circuit Bankruptcy Appellate Panel

- Represented petitioning creditors in a large involuntary bankruptcy case involving construction fraud at a golf course development project, resulting in a successful resolution through the sale of the project
- Represented debtors, buyers, and secured lenders in numerous asset sale transactions under Section 363 of the Bankruptcy Code
- Represented buyers, debtors, franchisors, and creditors in the franchise restaurant industry
- Represented guarantors, creditors, and debtors in commercial law cases in state courts, including the appellate level
- Served as counsel for an official creditor's committee of unsecured creditors
- Represented a variety of creditors in avoidance actions, pursuing claims, advocating during plan confirmation hearings, and related bankruptcy work
- Represented various financial institutions and debtors in credit restructure and workout arrangements involving structured alternatives to bankruptcy
- Represented a financial institution in defense of a fraudulent conveyance claim arising out of a failed leveraged buyout

### **Securities and Accounting Fraud Litigation**

Securities and accounting fraud allegations must be treated with the utmost sensitivity, realistically assessed, and defended consistently within clients' business and legal objectives. Tucker Ellis defends these high-stakes claims with cross-functional teams of trial and securities regulatory lawyers. When necessary, lawyers from the firm's White Collar Criminal Defense & Corporate Investigations Group become involved.

We represent public companies, closely held businesses, private equity investors, and entrepreneurial ventures in the securities litigation context. We also represent investment management firms, including broker-dealers, investment advisers, and investment funds in dealing with regulatory and investor litigation. Our clients benefit from our work across multiple practice groups, navigating the federal and state securities regulatory frameworks and closely monitoring the SEC's ever-changing reporting rules and regulations, including those mandated by the JOBS Act and the Dodd-Frank Act. This comprehensive approach facilitates a coordinated defense of regulatory inquiries, threatened and pending litigation, parallel government investigations, and criminal charges.

In certain cases, we prosecute securities, accounting fraud, and related claims on behalf of corporate or institutional investors and individual or activist shareholders. Our trial lawyers have substantial experience, both in the private and public sectors, successfully investigating and prosecuting such claims.

- Defended an investment company sued as a co-defendant in a securities fraud case arising from a Ponzi scheme perpetrated by another entity, which used a single herd of cattle as collateral (instead of the multiple herds it falsely represented it owned) for sequential multimillion-dollar loans; the investment company raised capital for the loans by selling private security interests in the herds it believed the other entity owned
- Represented a group of defrauded investors in litigation filed against a real estate investment firm that fabricated financial information as part of a private placement memorandum to solicit investment capital
- Represented a group of shareholders in litigation filed against a closely held company and its board of directors involving the alleged intentional devaluation of company shares and a punitive forced buy-out at below fair value
- Conducted a pre-suit investigation concerning the fraudulent use of a private placement memorandum to solicit and obtain investment capital for a mixed-use real estate development project that ultimately failed
- Advised investors who purchased interests in a real estate company under a private placement memorandum in pre-suit negotiations concerning potential claims against the offeror
- Defended a venture capital firm in misappropriation of trade secrets, fraud, and civil conspiracy lawsuit
- Represented bondholders and clearinghouses before the United States Second Circuit Court of Appeals and the United States Supreme Court in litigation arising from the Republic of Argentina debt crisis
- Represents officers, directors, and other professionals in enforcement actions pursued by the U.S. Securities and Exchange Commission
- Defended a corporate CFO in a civil fraud action prosecuted by the U.S. Securities and Exchange Commission, resulting in dismissal of all charges
- Defended the CFO of a large insurance company in a tax fraud, insurance fraud, and money-laundering criminal prosecution arising from an alleged accounting fraud scheme and related civil litigation

## **Corporate Fiduciary and Shareholder Disputes**

Leadership, ownership, and financial disputes arise even among the closest family members, friends, and business partners. Tucker Ellis trial lawyers are prepared to move quickly to protect shareholder rights. We prosecute and defend claims against companies, officers, directors, managers, and majority or minority shareholders in closely held corporate litigation. This litigation often includes claims that officers, directors, or shareholders breached an operating agreement; breached their fiduciary duty; withheld books and records; failed to disclose information material to shareholder approval of a merger or acquisition; undervalued

the company or its shares; engaged in self-dealing; overcompensated themselves; misappropriated trade secrets; or failed to act in the company's best interests.

Our trial lawyers act quickly to seek or oppose temporary and preliminary injunctive relief designed to protect company and shareholder interests and assets. We are prepared, at a moment's notice, to pursue or defend motions for emergency injunctive relief, immediate disclosure of company books and records, and expedited discovery. When necessary, we press for a consolidated trial on the merits to quickly bring a case to conclusion. Our demonstrated ability to try a shareholder case on short notice, in any forum, involving any issue, no matter the complexity, can foreshorten litigation and lead to an expedited resolution through a negotiated settlement or a judicial decision.

- Represented a joint venture party in a technology company during Delaware Chancery Court expedited proceedings arising from the alleged misappropriation of trade secrets, breach of contract, and breach of fiduciary duty
- Represented a joint venture party in a \$30-million commercial dispute arising from the failure of an oil and gas well and the alleged misappropriation of trade secrets, which included seismic survey reports that identified the likely location of oil and gas deposits
- Represented the minority owner of a printing company in expedited litigation arising from a lockout effectuated by the majority owner and alleged financial mismanagement and other improprieties
- Represented the minority owner of a real estate firm in expedited litigation involving the misappropriation of company assets by the majority owners for their own benefit and to the company's detriment
- Served as lead trial counsel in corporate dissolution proceedings on behalf of a 50% shareholder in deadlock with co-owner; after bench trial, obtained all relief requested in complaint and secured sale of company, preserving significant asset valuation for the client
- Defended a selling shareholder in a complex breach of contract matter in Ohio state court and U.S. Bankruptcy Court adverse to the private equity fund that acquired the company; obtained advancement of the client's attorney fees in a case of first impression under Ohio corporate law and successfully dismissed the resulting appeal
- Defended and favorably resolved claims involving a partnership dispute among members of a financial advisory firm wherein a former partner alleged breach of contract, fraud, conversion, and unjust enrichment
- Represented and obtained a successful settlement for a minority shareholder in claims against the managing member of an LLC
- Represented the former managing member of an LLC in an executive compensation dispute; obtained an arbitration award for the entire amount in dispute – \$1.3 million – affirmed by the trial court and court of appeals

## **Trust Litigation**

Tucker Ellis trial lawyers in the Financial Services Litigation Group partner with the firm's highly skilled estates and trusts lawyers to represent trustees and fiduciaries in litigation involving high net-worth individuals, beneficiaries, banks, and trust companies. In our capacity as trial counsel for beneficiaries and trustees, we prosecute and defend claims including breach of fiduciary duty, breach of the duty of loyalty, improper or unsuitable investment of trust assets, theft of trust assets, contested accountings, fraudulent transfers, beneficiary disputes concerning distributions, and disputed creditor claims. These financial claims commonly arise simultaneously with non-financial claims for judicial construction and modification of wills and trusts, a declaration of incapacity or undue influence, elder abuse, denial of adequate medical care, or conservatorships and guardianships.

Claims arising from trust management and fiduciary decision-making, among other issues, often present interrelated tax, real estate, corporate, securities, and insurance questions that must be resolved concurrently with litigation. We have deep practice experience in each of these additional areas to provide comprehensive legal services to trustees and beneficiaries before, during, and after litigation concludes.