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Services

Investment Management

Litigation

Securities Litigation

White Collar & Regulatory
Defense

Website Accessibility

Trusts & Estates Litigation

Finance & Securities

Non-Competes

Matt is an experienced business and securities litigator and investment management lawyer who regularly represents clients in complex business disputes, including regulatory proceedings by the SEC, FINRA and other regulators.

Matt has over 25 years of experience litigating in federal, state and administrative forums around the country and counseling wealth management firms and their representatives. He is head of Fredrikson's Investment Management Group, and is also a shareholder in the firm's Business, Securities and Trusts & Estates Litigation groups.

Matt serves as outside general counsel to many Registered Investment Advisory (RIA) firms. He advises clients on a wide array of regulatory and compliance matters, including those arising under the Investment Advisers Act of 1940. Matt represents wealth management firms, investment adviser representatives, financial planners, broker-dealers, advisers to private funds, investment companies, insurance companies, public and private companies and individuals being examined, investigated or sued by the U.S. Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), other SROs and state and federal regulators. Matt regularly represents wealth management firms and advisers on drafting and interpreting non-solicitation agreements, and planning, executing and litigating transitions between firms.

For much of his career, Matt has worked with organizations dedicated to ensuring that those without sufficient economic resources have access to legal representation, including the Volunteer Lawyers Network (past board chair); and he has worked as co-chair of the Legal Access to the Disadvantaged (LAD) Committee of the Minnesota State Bar Association. Matt was appointed by the Minnesota Supreme Court and served for six years on the Legal Services Advisory Committee (LSAC), which makes grants to legal services programs serving low-income clients in Minnesota. Matt also volunteers through Children's Law Center.

"Matt delivers exceptional legal advice and service in the investment management space, consistent with our firm's values and evolving needs. Matt is knowledgeable and responsive and is an invaluable partner who instills confidence as we navigate an ever-changing business and regulatory landscape. Through his work with us on

our recent SEC exam, Matt again affirmed his value as a 'go-to' trusted legal advisor for our firm."

– \$3 Billion Registered Investment Advisory Firm

Experience

Securities & Investment Management Litigation

- Successfully represented group of investment advisers transitioning to a new firm. Counseled advisers on strategy for departure in light of non-solicitation agreements, other restrictive covenants and broker Protocol. Defeated motion for temporary injunction, which led to a favorable settlement and enabled the advisers to continue working with their clients. *AdvisorNet Financial, Inc. v. Machlitt, et al.*, No. 27-CV-21-6860, Hennepin County District Court, Order Denying Motion For Temporary Injunction, June 30, 2021.
- Represented insurance field marketing office in multi-state litigation to enforce non-solicitation and confidentiality agreements and to enforce a multi-year joint venture agreement. Claims included, among others, breach of contract, tortious interference with contract, breaches of fiduciary duty, misappropriation of trade secrets and violations of the Minnesota Deceptive Trade Practices Act. Obtained temporary restraining order in Minnesota, defeated efforts to transfer litigation out of state, obtained a temporary injunction and negotiated favorable settlement shortly before trial. *First Income Advisors, Inc. v. Andrew S. Dodge, Financial & Tax Architects, Inc., et al.*, No. 27-cv-19-8961, Hennepin County District Court, Order Granting Temporary injunction, July 11, 2019.
- Represented dually-registered RIA/brokerage firm in SEC investigation into possible conflicts of interest, representations to investors, private investments and internal controls and processes. After two years of proceedings, depositions and multiple interviews and document requests, the SEC recommended no enforcement action.
- Obtained "nuisance value" settlement for former registered representative sued along with numerous others in FINRA arbitration arising out of alleged sale of investments issued by DBSI, Inc. Thereafter obtained court order under North Dakota indemnification statutes requiring former employer to indemnify client for defense costs as well as "fees on fees" for the costs of enforcing his indemnification rights. See *Anderson v. Capital Financial Holdings, Inc.*, Civil No. 51-2016-CV-0808 (Ward Cty. Dist. Ct., N.D., July 20, 2017).
- Obtained dismissal of registered representative's FINRA case against former broker-dealer after a four-day hearing. Claimant alleged defamation, gross negligence, malicious filing of a false instrument (U5 and U4), tortious interference with business relationship, breach of the covenant of good faith and fair dealing, breach of contract and mental distress, and alleged damages of \$3,200,000. All of Claimant's claims were dismissed after claimant's presentation of his case-in-chief, and the Panel granted our client's counterclaim for breach of contract. See

Thomas W. Ottman v. Feltl and Company, Inc., et al., FINRA Case No. 14-01955, July 16, 2015.

- Successfully defended a broker-dealer, its president and one of its registered representatives in FINRA arbitrations filed around the country by investors in various alternative investments, including real estate investment trusts (REITS) and limited partnerships. Successfully resolved multiple FINRA investigations arising out of the same circumstances.
- Successfully defended FINRA regulatory action against brokerage firm and broker involving allegations of unsuitability, excessive trading, improper exercise of trading discretion and failure to supervise.
- Represented investor group against insurance agents who sold life settlements in violation of state securities laws. The defendants tendered the matter to their insurer and the insurer denied a duty to defend and indemnify. After the defendant-insureds abandoned efforts to obtain coverage, Matt's clients litigated with the insurer, defeated the insurer's summary judgment motion and settled on the eve of trial for over 90% of their investment losses.
- Obtained victory before the American Arbitration Association (AAA) on behalf of an investor and a trust. Our clients alleged that their broker unlawfully recommended certain securities without performing adequate due diligence and via misrepresentations about the true nature of the investments. Our clients alleged breach of fiduciary duties, negligence, and violation of the applicable securities laws. After a three-day trial, our clients were awarded nearly \$1,000,000 in damages with joint and several liability against the brokerage firm and the individual broker. See *McClure v. Okoboji Financial, Inc.*, AAA case no. 65 148Y 00043 09.
- Obtained arbitration victory on behalf of an energy company client. The client alleged the unauthorized trading of oil futures contracts in its account. The broker refused to acknowledge the trade and, instead, claimed that our client had authorized the trading, that the brokerage firm sent valid confirmations, and that the client failed to mitigate its losses. After a three-day hearing, the arbitration panel awarded the full amount of the claim plus interest - over \$950,000 - to our client. See *Northern Oil & Gas, Inc. v. UBS Financial Services, Inc.*, FINRA Case No. 08-04398.
- Represented numerous RIAs and advisers, including advisers to private funds, in matters initiated by the SEC, FINRA, DOL and/or state regulators. Matters include, among others, allegations of insider trading, misrepresentation, negligence, breach of fiduciary duty, unsuitability, unauthorized trading, breach of contract, fraudulent transfer, excessive trading, unreasonable fees, violations of SRO rules, violations of the state and federal securities laws.
- Defended broker in FINRA enforcement matter alleging qualitative and quantitative unsuitability and unauthorized trading.
- Represented relief defendants in connection with ponzi scheme clawback action initiated by Securities and Exchange Commission (SEC) receiver against over 225 defendants.

- Defended broker-dealer in federal court litigation by bankruptcy trustee alleging ponzi scheme, breaches of fiduciary duty, negligence, violations of state and federal securities laws, and fraudulent transfers.
- Defended registered investment adviser in securities litigation and related investigations by the SEC, CFTC and the FBI.
- Represented investment adviser in connection with SEC and State investigations and federal court litigation involving alleged unregistered sales of securities.
- Defended broker in FINRA investigation into sales of over \$7 million of deferred variable annuities.

Consulting/Regulatory Advice

- Advising large RIA in SEC examination focused on management of private funds, including review of disclosures, fees and expenses, conflicts of interest and valuation.
- Representing RIAs in compliance exams focused on such matters as advertising, disclosure of fees, disclosure of conflicts, performance portability, cybersecurity, succession planning and more.
- Represented multi-billion dollar wealth management RIA in 14-month examination by Washington D.C. office of the SEC. Exam focused on dozens of issues, included over 130 separate requests for documents and information and interviews of numerous officers and employees. Counseled client representatives on interview preparation and participated in all interviews. Following completion of the examination, the SEC made no referral to its enforcement division.
- Represented large RIA in SEC proceedings arising out of theft of client funds by a rogue employee. Following months of discovery and a forensic investigation, the firm was neither fined nor sanctioned. Also assisted the client in obtaining insurance coverage for the costs of the defense and forensic investigation.
- Represented RIA against allegations that it had wrongfully advised institutional client to purchase auction rate securities (ARS).
- Analyzing registration status and registration exemptions under federal and state laws, including the Investment Advisers Act and the Investment Company Act.
- Assisting with RIA registration under federal and state laws.
- Advising clients with respect to corporate governance, fiduciary duty, and conflicts of interest.
- Preparing and reviewing advisory contracts, customer disclosure documents, solicitation agreements and contracts with service providers.
- Advising on the installation and maintenance of policies and procedures, agreements, disclosures, etc. that are necessary for serving ERISA-covered plan participants.
- Advising on record-keeping and reporting requirements.
- Advising clients on advertising and marketing materials, particularly focused on the Marketing Rule (compliance date November 4, 2022).

- Advising on custody requirements, trading obligations (e.g., best execution, trade allocation, and principal and agency cross trades), soft dollar commissions and commission recapture, and other trading and execution obligations.
- Preparing codes of ethics and compliance procedures and developing compliance systems and related supervisory programs.
- Assisting with employee training programs and seminars.
- Facilitating ongoing compliance with the Investment Advisers Act of 1940 and similar state laws.
- Assisting clients' implementation and adherence to industry best practice standards.
- Formation of private funds and preparation of offering memorandums, fund agreements and subscription agreements.
- Form D and related state compliance and filings for private offerings.
- Analyzing registration exemptions as CPO (commodity pool operator) under the Commodity Futures Trading Commission (CFTC).
- Structuring and negotiating strategic transactions involving investment advisers, broker-dealers and their representatives, including mergers and acquisitions, joint ventures and other contractual relationships, succession and transition planning, and guidance regarding relevant regulatory considerations.

General Business Litigation

- Obtained complete dismissal of plaintiff's claims alleging violations of the Americans With Disabilities Act (ADA) and under New York City and State law for failure to offer gift cards containing braille. The Court held that a gift card is a "good" that a public accommodation need not modify under the ADA. See *Thorne v. American Dairy Queen Corporation*, 19-CV-9933 (JPO), U.S. District Court, Southern District of New York, Order filed Oct. 14, 2020.
- Successfully defended numerous companies in Florida, New York, Pennsylvania and California against allegations that websites failed to comply with the Americans With Disabilities Act for alleged failure to make reasonable accommodations to permit blind and visually impaired persons full access to the websites. Currently representing additional businesses in similar website - and/or mobile app-related claims.
- Obtained reversal on behalf of trust beneficiary after district court erred in finding that the trustee's expenses for outside counsel were reasonable and by ruling that potential remedy was limited to beneficiary's proportional share of the value of the subject trust. *In the Matter of the Trusteeship under that certain Indenture Trust dated as of April 1, 2010 by and between the Economic Development Authority of the City of Vadnais Heights and U.S. Bank National Association, as Indenture Trustee*, A16-1133 (Minn. Ct. App., April 3, 2017)
- Successfully defended bank in class action lawsuit asserting violations of the American Disabilities Act for alleged failure to make reasonable accommodations to permit blind and visually impaired individuals to use ATMs independently.

Sawczyn v. Farmers State Bank of Hamel, No. 13-CV-2731 (D. Minn. 2013).

- Representing publicly-traded retail firm in coverage litigation arising out of nationwide securities class action and shareholder derivative litigation.
- Successfully represented The Metropolitan Council over a three-year period in a complex litigation involving rights to operate the light rail transit on property adjacent to the Mall of America. The matter was settled shortly before trial. *MOAC Land Holdings, LLC v. Metropolitan Airports Commission, et al.*, Henn. Cty. Dist. Ct., No. 27-CV-07-617.
- Represented a shareholder/registered investment advisor and its principal and won dismissal of all claims against them by a former CEO/Board Chair who sued after waging an unsuccessful proxy contest and being removed from the board. Plaintiff had asserted breaches of fiduciary duty, interference with contract, and various statutory claims, all of which were dismissed by the Court. *Gerry Fisher v. Alebra Tech, Inc., et al.*, Henn. Cty. Ct. File No. 27-CV-06-13967 (Henn. Dist. Ct., Oct. 23, 2006), aff'd., A07-0630.
- Served as lead counsel in a successful trial on behalf of a national investment banking firm. The client was a substantial bondholder seeking to prevent the corporate trustee from selling trust assets comprised of a business and real estate. Matt and the client established that the trust assets were worth substantially more than the proposed sale price, obtained a denial of the trustee's petition, obtained an order to replace the receiver overseeing the assets, and obtained complete reimbursement of the client's attorney's fees. *In the matter of the Trusteeship created by the city of Arbemarle, North Carolina*, Ram. Cty. Ct. File No. C2-04-200063.
- Represented closely-held corporation and won dismissal of all claims brought by several former preferred stockholders asserting rights to preferred dividend payments. *Vernon J. Krupa v. Extrusion Dies Industries, LLC, et al.*, Chipp. Cty. Ct. File No. 04-CV-386.
- Represented physician in a defamation lawsuit and obtained six-figure arbitration award. *Mahjouri v. Blue Cross Blue Shield of Minnesota* (AAA arbitration).

Corporate Governance

- Advised Fortune 100 company on director and officer protections, including director and officer liability insurance.
- Advised Fortune 100 company on bylaws and agreements regarding indemnification and advancement.
- Served as independent counsel to the audit committee of a publicly-held company in the restaurant industry for purposes of conducting an internal investigation of potential fraud and accounting irregularities.
- Conducted internal investigation of stock-option backdating for a publicly-held Silicon Valley tech company.
- Served as special legal counsel to a publicly-held company to determine eligibility for advancement of legal fees and indemnification for 18 present and former

officers and directors named in a series of class-action securities lawsuits.

- Advised company and prepared director and officer indemnification agreements for manufacturing company in connection with its initial public offering.
- Served as lead counsel in lawsuit relating to entitlement to indemnification and advancement of legal fees under Minnesota Statute § 302A.521.

Credentials

Education

- William Mitchell College of Law, J.D., 1993, *magna cum laude*
- New York University, LL.M.
- University of Minnesota, B.A., Political Science, 1989, *summa cum laude*

Admissions

- Minnesota
- New York
- U.S. District Court for the District of Minnesota
- U.S. Court of Appeals for the Eighth Circuit

Clerkships

- Judicial Clerkship, Honorable Margaret M. Marrinan, Ramsey County District Court, 1992-1993

Recognition

- *Best Lawyers in America*, Litigation–Trusts and Estates, 2024
- North Star Lawyer, Minnesota State Bar Association, 2020

Civic & Professional

Professional Activities

- American Bar Association, Business Law Section, Federal Regulation of Securities Committee and Civil Litigation and SEC Enforcement Matters Subcommittee, Committee Member, 2012-present
- American Bar Association, Business Law Section, State Regulation of Securities Committee, Member, 2016-present
- American Bar Foundation, Fellow

- National Association of Compliance Professionals, Member, 2019-present
- Childrens' Law Center, Volunteer Attorney, 2015-present
- Legal Services Advisory Corporation, Committee Member, 2013-2016
- Minnesota State Bar Association, Legal Access to the Disadvantaged (LAD) Committee, Co-Chair, 2009-2012
- American Bar Association, Co-Chair, Director & Officer Liability Committee, 2009-2012; Committee on Corporate and Business Litigation, Indemnification and Insurance Subcommittee, Member; Task Force on Director & Officer Liability, Section Task Force on Model Indemnification Agreement, Co-Chair, 2007-2012
- Annotated Model D&O Indemnification Agreement, Co-Executive Editor, as published by the American Bar Association, Business Law Section, Director and Officer Liability Committee, August 2013

News

Firm News | 08.17.2023

Fredrikson Attorneys Recognized in The Best Lawyers in America© 2024

Speaking Engagements

Event | 06.26.2018

Don't be Caught Off Guard: Strategies to Manage Risk for Investment Advisors

Legal Updates

Legal Update | 03.14.2023

SEC Division of Examinations 2023 Exam Priorities

Legal Update | 03.15.2021

SEC Releases Its 2021 Exam Priorities

Legal Update | 05.06.2020

Must an RIA Disclose Its Receipt of a PPP Loan? Consider the Facts and Circumstances

Legal Update | 03.31.2020

SEC Removes Conditions On ADV Amendment Filing Extension

Legal Update | 03.17.2020

SEC Announces Conditional ADV Amendment Filing Extension

Legal Update | 01.17.2020

The SEC's 2020 Exam Priorities

Legal Update | 11.01.2018

Senior Investor Update: Minnesota Enacts Safe Seniors Financial Protection Act

Legal Update | 01.22.2018

FINRA Announces 2018 Regulatory and Examination Priorities

Legal Update | 07.27.2017

SEC's Use of Disgorgement Remedy Limited by Five-Year Limitations Period

Legal Update | 06.15.2017

FINRA Enacts New Rules Addressing Financial Exploitation of Seniors, as Regulators Increase Vigilance Protecting Senior Investors Generally

Legal Update | 11.15.2016

Financial Services Industry Targeted in Wave of Lawsuit Threats Over Websites Allegedly Inaccessible to the Visually Impaired

Legal Update | 04.07.2016

DOL Issues Final Conflict of Interest Rule

Publications & Presentations

Panelist, *Tips For Implementing the New SEC Marketing Rule*, National Society of Compliance Professionals National Conference, October 17, 2022

Panelist, *Practical Recommendations for Managing Key Issues in Our Complex Regulatory Environment*, hosted by Fredrikson & Byron's Investment Management Group, Swedish American Institute, October 4, 2022

Panelist, Cybersecurity & Privacy Panel, Minnesota Financial Planning Association, September 22, 2022

Co-Presenter, *Sharing Solutions: Implementing The New SEC Advertising Rule*, National Society of Compliance Professionals Seminar, June 22, 2021

Quoted in "SEC Turns to Video During Pandemic," *Regulatory Compliance Watch* (compliance best practices), August 28, 2020

"What an RIA Should Think About if it's Considering Disclosing a PPP Loan," *InvestmentNews*, June 8, 2020

Quoted in "PPP Loans: Debating Disclosure," *Regulatory Compliance Watch* (compliance best practices), May 14, 2020

Quoted in "Tips Should You Ever be Deposed," *Regulatory Compliance Watch* (compliance best practices), May 14, 2020

Panelist, *Migration to RIA Platform and Increase in RIA Cases*, Securities Experts Roundtable 27th Annual Meeting Conference, August 2, 2019

Presenter, *Everyday Ethics and Case Studies*, Financial Planning Association of Minnesota, July 16, 2019

Presenter, *Everyday Ethics & The Legal Bases For Fiduciary Duty*, Society for Financial Services Professionals, October 4, 2018

Panelist, *Don't be Caught Off Guard: Strategies to Manage Risk for Investment Advisors*, Fredrikson & Byron Program co-hosted with Charles Schwab and BMO Global Asset Management, June 26, 2018

Presenter, *Trustee Duties*, The Estate Planning Probate & Trust Law 50, Minnesota CLE, February 2016

Presenter, *Trustee Duties*, The Estate Planning Probate & Trust Law 50, Minnesota CLE, September 2014

Co-Author with David E. Winkler, "SEC Publishes Its 2014 List of Examination Priorities," *FredALERT: Investment Management*, February 12, 2014

"RIAs Must Be Prepared For Aggressive SEC Enforcement," *Investment News*, July 28, 2013