Every January we look back at the past year for legal milestones – liability game changers for executives and financial institutions in the coming year and beyond. This year, we observed trends that went both ways: signaling an increase and a decrease in possible exposures. For your consideration:

1. **Reserve Fund**: With significant investments in the debt of Lehman Brothers, the Fund “broke the buck” by falling below the $1 net asset value that money funds maintain, leading to a civil suit by the U.S. Securities Exchange Commission (SEC) against the Fund and certain top executives. After losing on the intentional fraud counts but prevailing on its negligence charges back in 2012, the SEC allegedly refused a proposed settlement with the individual defendants, instead continuing to pursue its appeal on the fraud charges in line with the Commission’s new litigation priorities. [Impact: E&O, D&O]

2. **Instinet**: The brokerage firm settled SEC charges that it allegedly made improper “soft dollar” payments to an investment firm while ignoring red flags that the payments should not have been made. Note: the SEC has signaled its intention to sustain its focus on brokers as crucial gatekeepers in connection with possible soft dollar payments, and when it comes to red flags, turning a blind eye is tantamount to breaching their fiduciary duty to clients. [Impact: E&O, D&O]

3. **UBS**: A suit alleged that the bank mislead investors about its risk-management practices prior to revealing a $2.3B trading loss by a “rogue trader” in its London office (the largest in British history). In dismissing this case, the judge began with the observation that, “over the past several years, it has been ever so easy to make banks the target of lawsuits alleging securities fraud... One might think of the tired but appropriate phrase ‘shooting fish in a barrel.’” But, happily, failure to state a claim sufficient to allege the necessary facts for the defendants to be held liable under the law – is still reason for dismissal. [Impact: D&O]

4. **JPMorgan Chase**: The Commodity Futures Trading Commission (CFTC) alleged that in selling significant volumes of derivative swaps in a short period of time, the bank’s traders “recklessly disregarded” the fundamental market precepts of supply and demand. Dodd-Frank empowered the CFTC to police the swap market. This $100M settlement indicates that the Commission intends to use this power. Note: the bank admitted the specified factual findings in the Order, including that its traders acted recklessly. [Impact: E&O, D&O]
5. **Citibank:** A state attorney general settled allegations that the bank had been aware of vulnerabilities in its online credit card account system for up to three years but didn’t permanently fix the vulnerability until after a hack resulted in the theft of data relating to hundreds of thousands of customers. The sums in this case were not significant, but the bank is also required to hire an independent outside firm to conduct an information security audit and share a summary of its findings to the state attorney general. [Impact: Cyber, D&O, E&O]

6. **Household International:** This credit crisis suit accused the firm and some of its top executives of making false and misleading statements that inflated the company's share price (the classic D&O stock-drop case). The result: a $2.46B jury verdict, the largest D&O securities class action awarded after trial. [Impact: D&O]

7. **Merrill Lynch:** An eight-year long racial discrimination class action was brought to a close with a $160M court approved settlement which included significant governance changes. The settlement, to be shared among 1,400 brokers, makes it the largest cash award in a racial discrimination employment case. [Impact: EPL]

8. **RBS:** The Antitrust Division and the Criminal Division of the Department of Justice (DOJ) have announced a deferred prosecution agreement with the Royal Bank of Scotland (RBS) for its role in the alleged worldwide conspiracy to manipulate the London Interbank Offered Rate (LIBOR). As part of the agreement, RBS acknowledges its culpability in relation to one count of wire fraud relating to Swiss Franc LIBOR and one count for an antitrust violation relating to Yen LIBOR. This is the DOJ’s first criminal antitrust charge of a corporation for alleged trader-based market manipulation. While crediting the bank for taking significant remedial measures, the agreement also provides for a criminal penalty of $150M. [Impact: E&O, D&O]

9. **MB Investment Partners:** Investors sued the investment management company to recover monies lost in a Ponzi scheme allegedly perpetrated by an employee who had, prior to his employment by MB, formed a hedge fund and continued to market and administer it using the company’s offices, computers, filing facilities and office equipment. The employee distributed the company’s business cards and affirmatively marketed his hedge fund as a fund option available to the company’s customers. In allowing this case to continue, the court found that investment management companies and hedge funds should take extra precautions to clearly distinguish the company’s investment products from those being offered by their managers or employees for other legal entities. Otherwise, investors and clients might believe that the other entity’s products have the imprimatur of the firm’s management company. [Impact: E&O, Fidelity]

10. **Bank of America:** In mergers and acquisitions-related D&O and ERISA Fiduciary credit crisis suits, plaintiffs alleged that the firm hid material information when it acquired Merrill Lynch & Co. The court approved a $2.43B settlement along with roughly $160.5M to the three law firms representing the plaintiffs in the trifecta of D&O stock-drop claims, derivative litigation and an ERISA tagalong suit. [Impact: D&O, Fiduciary Liability]

If you found this useful, you may also want to read our broader Top 10 list which doesn’t focus on financial institutions. In this, you are likely to find at least two other exceptionally significant cases. Happy reading.
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