

Banking Group Of The Year: Latham

By Rachel O'Brien

Law360 (December 8, 2020, 5:53 PM EST) -- Latham & Watkins LLP's banking practice secured for UBS a more than \$1 billion judgment against two defunct affiliates of the bankrupt Highland Capital Management, and it got more than two dozen underwriters of two initial public offerings off the hook in separate investor class actions, earning it a place among Law360's 2020 Banking Groups of the Year.

"There's a longstanding tradition we have of representing ... a variety of banks across the globe," Dan Seale, chair of the firm's global banking practice, told Law360. "What we think sets us apart is the excellence of our practice across numerous practice groups that supports banks."

Representing banks in litigation, transaction, regulatory and multijurisdictional matters, two class action cases this year where it represented underwriter defendants highlighted the team's versatility and expertise.

Latham extracted a group of banks, led by Goldman Sachs and Citibank, from a Section 11 case in the Southern District of New York, *Xu v. Gridsum Holding*.

In that case, the banking team got the complete dismissal of the federal case and stayed the parallel state court proceedings.

The banks were underwriters for the IPO of Gridsum Holdings, a China-based data analytics company, and plaintiffs in the suit claimed the underwriters were liable for alleged misrepresentations in the IPO registration statement.

Partner Jason Hegt noted the cases were significant because they were among the first set of parallel actions to come after the Supreme Court's March 2018 decision in *Cyan v. Beaver County Employees Retirement Fund*, which found that class actions under the Securities Act of 1933 can be brought in state court and are not removable to federal court.

While it got the federal case against Gridsum dismissed, Latham was able to develop a strategy to have the state court case stayed and have filed a motion to dismiss, Hegt said.



"This was one of the original test cases for getting the state case stayed and taking a run at the motion to dismiss," he said.

Similarly, Latham's banking team represented the 15 underwriters in the Pivotal Securities Litigation in the Northern District of California, also getting a dismissal of the federal case and staying the parallel state case.

Latham defended Morgan Stanley and Goldman Sachs among other underwriters of cloud software development company Pivotal Software in its \$638 million IPO. In that class action, plaintiffs said the Pivotal and underwriters made deceptive statements about its products and finances in its IPO registration, causing a drop in stock price.

Again, it came after the Cyan decision, and the state case is back in motion, partner Gavin Masuda said. And while the federal case was dismissed with leave to amend, the plaintiffs decided not to amend.

"That was due to the strong motion to dismiss and scathing order dismissing the claims," he said.

As lead counsel for UBS Securities and UBS AG's lawsuit against Highland Capital Management, the Latham team got a trial victory that raked in more than \$1 billion after two Highland funds breached their contracts. The judge ruled UBS was entitled to recover losses on a failed securitization of collateralized loan obligations and credit default swaps

Andy Clubok, global chair of Latham's securities litigation group, noted the versatile role its team has played as counsel for both the plaintiff and defense sides.

"What you're seeing here are examples of really terrific efforts to defend banks in litigation, but also this case is where we acted as the plaintiff vindicating their rights against a hedge fund," he said. "That's kind of unique, you don't see lot of firms" doing both, he added.

With hundreds of attorneys in its banking group in virtually all of its 29 offices, the group is a significant portion of the firm, Latham said, including in large transactions.

One such transaction included advising lenders like Goldman Sachs, Credit Suisse and Barclays in financing international private equity firms Advent International and Cinven, as well as RAG-Stiftung's \$18.9 billion acquisition of Thyssenkrupp AG's elevator technology business, the largest buyout in Europe in more than a decade, according to Stephen Kensell, managing partner of Latham's London office.

"It was a real showcase of what we do," he said.

While it was a massive deal involving bank loans, bonds and cross-border transactions, the bid came together quickly, Kensell said.

The deal was underwritten at the beginning of the COVID-19 pandemic and closed over the summer. It was a complex deal, but "the market knew it was coming during lockdown around the world," said Mo Nurmohamed, co-chair of Latham's London finance department.

"It was tough to finance M&A; markets were essentially closed, but this deal got done and we saw quite a number of deals getting done because the confidence was there," Kensell said.

The Latham banking team was also counsel for the joint lead arrangers and joint book runners financing Apollo's \$6 billion acquisition of Tech Data Corp., a large technology distributor.

That deal involved a cross-border, multidisciplinary Latham team from 12 offices in the U.S., Europe and Asia, and it demonstrated Latham's expertise at handling large cross-border deals, partner Alfred Xue said.

"A global structure with local assets was basically the mandate from the clients," he said. "That was pretty exciting."

The pandemic shook the confidence of the market, but its clients were able to get it through, and "it really shows the resilience of the debt markets," Xue said.

While the pandemic shifted the nature of some work away from acquisition and financings, it picked up with banks providing liquidity to the market and companies, Seale said.

"We've been able to keep quite busy," he said.

--Editing by Adam LoBelia.