Firms Nab Plum Roles in Interest Swap MDL

By Ben Hancock
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Photo: Andrew Cribb

Cohen Milstein Sellers & Toll and Quinn Emanuel Urquhart & Sullivan have been selected to spearhead a class action against a dozen major banks that they allege colluded to keep competition out of a market that sees $1.4 trillion daily in trading.

Competition for the class counsel slot was stiff in the multidistrict antitrust suit, which focuses on the market for interest rate swaps. Big names in the plaintiffs bar, including Hagens Berman Sobol Shapiro and Susman Godfrey, also were vying for the position.

But in an order Wednesday, U.S. District Judge Paul Engelmayer of the Southern District of New York conclud~~ed that Coh~~en Milstein and Quinn Emanuel were best suited to lead the case—in no small part because they were the first to uncover the alleged conspiracy.

"Critically, the firms did so not by piggybacking on an existing government investigation or enforcement action, but by undertaking an independent investigation," Engelmeyer wrote. "The firms represent that they interviewed dozens of market participants and confidential witnesses and consulted leading experts."

The judge also noted that the investigation took about six months and cost the firms about $1 million.

The suit targets 12 large financial institutions, including Bank of America, Merrill Lynch and JP Morgan Chase, as well as ICAP Capital Markets and Tradeweb Markets—two companies that also are involved in the swaps market and allegedly aided in the conspiracy.

Cohen Milstein and Quinn Emanuel filed the first of what later would become an avalanche of lawsuits against the companies in November 2015 on behalf of the Public School Teachers' Pension and Retirement Fund of Chicago, a client of Cohen Milstein.

The suit alleges that the financial institutions and trading companies went to great lengths to prevent the establishment of a transparent exchange for interest rate swaps (IRS)—even taking over a company to kill any plans for an exchange platform.

"Since at least 2007, as detailed herein, the dealer defendants have jointly threatened, boycotted, coerced, and otherwise eliminated any entity or practice that had the potential to bring exchange trading to buy-side investors in the IRS market," the complaint says.

Also suing are two companies that sought to create exchange-like services. They are Tera Advanced Technologies and Javelin Capital Markets, both represented by Wollmuth Maher & Deutsch.

Swaps allow investors to mitigate risk on changing interest rates or to speculate on their future movement. Most commonly, this works by one party paying a fixed interest rate on a nominal amount of principal to a counterparty who then pays a floating rate based on a benchmark.

By keeping competition out of the market, the going rates for these financial instruments are kept artificially high. This in turn delivers the banks a larger amount of money in fees, according to the complaint.

It's hardly the first time that Wall Street has been in the crosshairs of plaintiffs firms over financial misbehavior. Last year, a cadre of major banks agreed to a settlement of over $1.8 billion to resolve claims that they stifled competition in the credit default swaps market.

Quinn Emanuel also was involved in that litigation, which got started after a Department of Justice investigation.

There's a lot of money at stake in the ongoing case, too. Carol Gilden, Cohen Milstein's lead attorney on the case, declined to estimate the potential damages but noted that $1.4 trillion dollars in value goes through the swaps market each day.

Taking that into account, she said, "one could say that the damages would be very large."

Contact Ben Hancock at bhancock@alm.com. On Twitter: @benghancock

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