

Securities Group of the Year: Cahill Gordon

By Dean Seal

Law360 (January 14, 2020, 3:16 PM EST) -- Cahill Gordon & Reindel LLP was a staunch defender of its client Credit Suisse in 2019, helping it beat a spate of bond- and rate-rigging class actions and leading it as the only bank out of 16 to fight a sprawling foreign exchange market manipulation lawsuit rather than settle, making the firm one of Law360's Securities Practice Groups of the Year.

The year may span 12 months, but one in particular stands out for Cahill Gordon. September 2019 was a blockbuster time to be in the firm's litigation department, which saw seven major victories or developments in roughly five weeks.

"It was actually, I think, the most extraordinary month I have ever experienced," Herb Washer, head of litigation at Cahill Gordon, told Law360.

The first cause for celebration came early in the month and, unusually, from a class certification fight between Credit Suisse and investors who had alleged forex market manipulation against 16 major banking institutions. By the time Cahill Gordon was briefing a New York federal judge on class certification issues, 15 banks had settled for more than \$2.3 billion, but not Credit Suisse.

Instead, the Swiss banking giant pushed on with the fight against claims that it had been involved in a conspiracy to rig foreign exchange rates. On Sept. 4, a New York federal judge **denied certification** for a class of forex futures investors and granted certification for a class of over-the-counter forex investors with respect to just two issues: whether a conspiracy existed and whether Credit Suisse participated.

Class certification can sometimes be a gimme in securities actions, but the forex case is far from typical, Washer said, and the investors alleged a type of manipulation that would have "affected different market players in very different ways."

"There were a lot of individual determinations one would need to make in order to figure out whether any particular class member was actually affected by the alleged misconduct, so we really believed that class certification didn't make sense," Washer said.

Even with its banking industry brethren shelling out millions to escape the years-old litigation, Credit



Suisse stood behind its attorneys, who are now finishing up the discovery process and preparing to move for summary judgment in the case.

"It was an unusual situation where a client was willing to stand alone, and they took a chance, but they firmly believed that it would come out the right way in the end," Washer said. "And fortunately, they were correct."

The bank's faith in Cahill Gordon continued to be rewarded as the month wore on. In a Sept. 16 order, a New York federal judge dismissed a proposed class action accusing Credit Suisse and several other big banks and brokerages of conspiring to manipulate the Swiss franc Libor, which reflects the daily interest rate benchmarks at which banks can borrow Swiss francs.

U.S. District Judge Sidney H. Stein accepted arguments from Cahill Gordon and counsel for the other banks that the investment firm behind the suit had dissolved before it brought claims. Finding that any further amendment would be time-barred, Stein dismissed the case was dismissed with prejudice.

On Sept. 24, another federal judge in New York ruled that Credit Suisse had expressly warned investors about the risk of buying its so-called Inverse VIX Short exchange-traded notes, which are inversely tied to stock market volatility, and therefore could not be held liable for a liquidity crunch that tanked the price of the notes.

With one day left in September, Cahill Gordon's litigation group had secured four big victories in five weeks — "it was already a fabulous month," Washer said — but was elated to find three additional major dismissals handed down Sept. 30. Among them was an order tossing antitrust claims against Credit Suisse and several other big banks accused of rigging the prices for sub-sovereign government bonds.

Tackling antitrust and securities actions that contemplate entire markets, like the Libor and sub-sovereign government bond cases, has become a specialty of Cahill Gordon, which has developed not only a deep understanding of the financial industry but an even deeper bench of attorneys with backgrounds as former traders and research analysts, Washer said.

"We're able to approach these litigations with the eye of an insider or an expert," he told Law360. "We can look at trading patterns and immediately understand what's going on and why it's going on."

Still, racking up consecutive wins throughout September against multiple sets of sophisticated and experienced plaintiff-side counsel was satisfying, Washer said, and a testament to the litigation department's perseverance.

"We had dozens of people who had invested, in many instances, years into each of these cases, and to see all that effort come to fruition within the span of four weeks or so was pretty astonishing and gratifying for the whole litigation group," he said.

--Editing by Peter Rozovsky.