

# Funds and Investment Services



Warner Norcross + Judd



# FUNDS AND INVESTMENT SERVICES PRACTICE

## Our Securities Practice

Warner Norcross + Judd LLP has a long history of counseling broker-dealers, investment advisers and other members of the securities industry on the complete spectrum of securities regulation, litigation, arbitration and enforcement issues. Corporate and securities work provided the foundation of our firm when we were established in 1931, and continue to represent a substantial portion of our practice today.

We work extensively with brokerage and investment management firms, counseling clients through the highly complex maze of federal, state and self-regulatory compliance requirements, regulatory issues and proceedings. We have dealt with regulatory issues with the SEC, FINRA, NYSE and all of the 50 states. Our clients are located and conduct securities business in many different states and jurisdictions.

Our experienced team of attorneys has successfully guided clients through all stages of business growth. We have worked with firms both large and small, from entrepreneurial start-ups to Fortune 100 companies. We regularly provide counsel on the day-to-day problems that all businesses face, as well as more complicated financial, regulatory and operational issues. We have substantial experience with all types of mergers and acquisitions.

We regularly serve as underwriter's counsel in a wide variety of public and private securities offerings. Warner Norcross attorneys have substantial experience with initial public offerings and secondary offerings, as well as "going-private" transactions. Those securities offerings broadly range from common equity to subordinated debt to complex asset-backed securities. We also serve as issuer's counsel on the same spectrum of offerings, which gives us a broad perspective of the critical business issues that arise in every deal. A rapidly growing part of our securities offering practice serves church denominations, foundations and nonprofit organizations raising capital in their lending and investment programs.

Customer complaints, arbitrations, regulatory investigations and proceedings and other litigation are an inherent part of the securities business. While some claims are small, others can place an entire business at risk. Our team of seasoned litigators has handled the full spectrum of civil, criminal, administrative, arbitration and litigation proceedings.

In September 2003, our team of securities, banking, ERISA, and litigation attorneys was engaged to investigate and manage the complex legal issues facing the outside directors of a trust company that was named in the New York Attorney General's first complaint in the national mutual fund scandal. The trust company and its management faced allegations of late trading and market timing in multiple mutual funds on behalf of New York and Illinois hedge funds. Our team assisted the trust company in responding to simultaneous investigations by the New York Attorney General, the Securities and Exchange Commission, the U.S. Comptroller of the Currency, and the U.S. Department of Labor, as well as defending the ensuing civil litigation. Our team also guided the trust company and outside directors in responding to the Comptroller of the Currency's order to close and liquidate.

## Broker-Dealer Experience

We regularly represent clients who are members of the Financial Industry Regulatory Authority, Inc. Warner Norcross serves as outside counsel for two national insurance companies in dealing with their broker-dealer affiliate matters. We represent a number of regional brokerage firms located throughout the United States who provide retail and investment banking services.

Warner Norcross has experience dealing with nationwide administrative investigations, serving actively as counsel in five national investigations (involving the SEC, FINRA, NYSE and the 50 states) and numerous SEC, SRO and state investigations dealing with one or more regulatory agencies. We have helped these clients manage the "domino effect" that such proceedings can sometimes produce. We frequently represent firms going through regulatory inspections, as well as the proceedings that may follow.

Our team members' former service as federal and state government securities regulators and on federal and state securities advisory committees and boards has allowed us to develop excellent contacts in the industry. We have regular contact with securities regulators through the North American Securities Administrators Association, or NASAA. Our attorneys have served on NASAA advisory committees and have been involved in negotiations with NASAA in conjunction with national investigations, as well as NASAA-sponsored projects.

We have been involved in the preparation of compliance manuals, supervisory procedures, special supervision submissions to FINRA, no-action rulings and providing legal advice on a daily basis regarding problems that confront general counsel and compliance officers of brokerage firms.

We have prepared member briefings and comment letters on various SEC and FINRA rule proposals for the Financial Services Institute (FSI), a newly organized industry association of “independent contractor” broker-dealers. We frequently write and speak on compliance topics for the National Society of Compliance Professionals.

Our work in the industry has resulted in significant experience with broker-dealer acquisitions, change of control, change of entity and increase of authority under FINRA membership agreements. Our contacts often aid in navigating through the regulatory shoals that can slow approval processes.

Our attorneys regularly serve as underwriter’s counsel in both public and private securities offerings. Many of those offerings are registered with the SEC and even more are private placements under various federal and state exemptions from registration. Offerings to retail and institutional investors have ranged in size from several million to several hundred million dollars. We have written and negotiated both underwriting and selling group agreements.

Mergers and acquisitions among broker-dealers, banks and insurance companies are quickly integrating the financial services landscape. As counsel to the Michigan Bankers Association and to numerous banks, our firm has combined a knowledge of banking and securities to create successful bank and broker-dealer networking relationships. Regulatory issues common to the entire financial services sector are growing rapidly, including consumer privacy, information sharing and money laundering. The complexity of new regulatory requirements is ever increasing, especially for firms that provide service in more than one sector of the financial services industry.

## Investment Adviser Experience

Our work with investment advisers, money managers, financial planners and others subject to regulation under the Investment Advisers Act of 1940 and state securities laws covers all aspects of regulatory compliance and corporate matters.

We have guided new firms through the registration process at both the federal and state levels. We are experienced with preparing and updating Form ADV, the primary federal and state registration form, as well as related narratives and disclosures. We believe that with careful planning this process can serve helpful risk management and compliance functions by giving important disclosures to clients.

We can help design new account forms, agreements and transactions-related documentation to address regulatory requirements. We provide compliance program policies and manuals, a variety of client service contracts, and agreements with both employed advisory representatives and independent contractors. Many advisers use paid solicitors, and we provide the necessary contract and disclosure forms. We have assisted firms in designing wrap fee programs in light of regulatory, contractual and operational considerations.

We routinely address regulatory questions and help clients to implement risk management through compliance and inspection checklists. During periodic inspections, federal and state regulators invariably identify compliance issues that may range from minor to serious. We have helped many clients in preparing appropriate responses and taking remedial action.

## Securities Litigation/Arbitration Experience

We have substantial experience in defending broker-dealers, registered representatives and investment advisers in FINRA arbitrations, federal and state court actions, and in federal class actions. These cases typically involve claims under the federal Securities Exchange Acts of 1933 and 1934, as well as those arising from state securities laws and the common law. Alleged claims may run the gamut from run-of-the-mill unsuitability, churning and unauthorized trading, to more sophisticated claims involving such things as “selling away.”

We counsel our securities clients proactively by advising them on important business issues, such as hiring and firing representatives, creating or navigating noncompetition agreements, obtaining or defeating temporary restraining orders and creating, maintaining and updating compliance procedures to reduce the risk of potential litigation.

Attorneys at every level of our firm, from senior partners to associates, are regularly involved in FINRA arbitration proceedings. Because representing clients in arbitrations

is one of the fundamental services offered by our group, we have developed a broad base of attorneys who can lead these proceedings. This experience allows us to provide outstanding, yet cost-effective, service to our clients.

We are a member of the national “round table” of attorneys representing ING Group’s network of broker-dealers. ING Group is one of the largest integrated financial services organizations in the world, with more than \$467 billion in assets under management.

Furthermore, Warner Norcross has a record unmatched in the country in the defense of class-action lawsuits. In more than 20 engagements, including several securities-related actions, our clients have never lost a class-action case. We are committed to preserving that record.

## Client Service, Legal Fees and Billing Arrangements

Exceeding clients’ service expectations is our highest priority — to deliver exceptional value and to solve clients’ problems as quickly and practically as possible. We facilitate client communications by providing photo/phone directories and using the latest technologies. For larger clients we often establish client service teams that periodically meet to discuss current business initiatives and developments in order for us to better know and understand our clients’ needs and circumstances. We use our regular practice group meetings to stay abreast of current and anticipated regulatory developments affecting clients and strive to give clients a “heads-up” on those proposals and changes.

We work with clients to structure flexible billing arrangements, taking into consideration both the routine and the unique features of a firm’s legal needs. In the defense of arbitration and litigation claims, we regularly work with insurance companies and we are accustomed to meeting their billing and case management requirements.

Our experience and expertise on these issues have led large insurance companies to appoint Warner Norcross as counsel to their insureds on securities-related matters. As such, we are familiar with the particular needs of an insurance company when it comes to defending an insured. We regularly prepare budgets for cases and work with insurance companies in establishing strategy and coordinating litigation. We understand the need for consistent and thorough communication between an insurance company and the firm it has selected to defend its insured.

Additionally, our corporate culture has always been founded on high-quality yet cost-effective service to our clients. While we have a practice that is national in scope, our roots are in Michigan, where our clients have always demanded value for the services they receive. As such, we serve each of our clients with a team of attorneys and support staff. A client service manager leads this team and is responsible for ensuring that we provide quality service at the lowest possible cost, calling upon the appropriate level of expertise needed for any given project.

We typically assign associate attorneys to handle more routine matters, involving senior associates and partners when necessary. Furthermore, our hourly rates are highly competitive within the legal profession—and typically well below those of counsel in larger metropolitan areas.

While we historically bill on hourly rates, we offer both fixed-fee and blended rate arrangements. We have also established volume discounts and standardized our services to meet our clients’ needs.



## Broker-Dealer and Investment Adviser Regulation

A representative selection of our services includes:

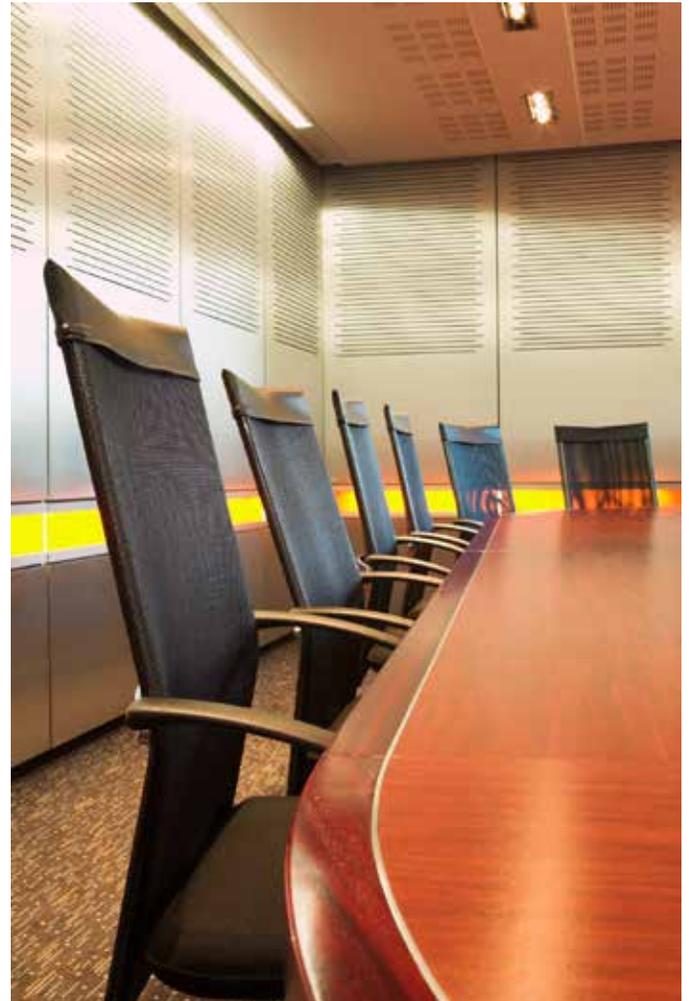
- Broker-dealer and investment adviser mergers, acquisitions and practice purchases
  - Asset purchase and merger agreements
  - Due diligence reviews
- Broker-dealer/investment adviser compliance matters
  - Registration process
  - Mergers and successor registrations
  - Compliance manuals
  - Internal compliance procedures
  - Compliance checklists
  - Compliance training
  - Ongoing interpretive advice
  - Compliance inspections and reports
  - ERISA compliance
  - Obtaining no-action and interpretive letters from regulatory authorities
  - Regulatory examinations and responses
- Advice regarding administrative services such as
  - Shareholder record keeping
  - Transfer agent services
  - Accounting services
  - Custodial services
- Securities marketing and distribution advice
  - Compliance with federal and state securities offering requirements
  - Compliance with SEC, FINRA and state advertising requirements
  - Compliance with state and federal banking laws, regulations and policy statements
- Anti-money-Laundering (PATRIOT Act) compliance
- Consumer Privacy (Gramm-Leach-Bliley Act and Fair Credit Reporting Act)
- Industry-specific contracts
  - Clearing agreements
  - Internet services agreements
  - Representative agreements
  - New account forms and client service agreements
  - Networking arrangements
  - Errors and omissions insurance policies
  - Data processing agreements
  - Outsourcing vendor agreements

## General Securities Matters

- Public and private equity offerings
- Public and private financing
- Securities offering compliance under Regulation A, SCOR and Regulation D offerings
- Corporate and municipal bond offerings
- Nonprofit corporation financing
- Public company compliance
- Equity-based compensation programs

## Litigation and Arbitration

- Customer complaints and FINRA arbitrations
- Administrative and enforcement proceedings
- Non-solicitation and non-compete enforcement
- Contract enforcement and defense
- General litigation



# AREAS OF FUNDS AND INVESTMENT SERVICES EXPERIENCE

**Primary Contacts:** Joscelyn Cekola Boucher, 269.276.8145, Shane B. Hansen, 616.752.2145  
Loren Andrulis, 616.752.2182, Brian J. Masternak, 616.752.2205  
Linda Paullin-Hebden, 248.784.5159

## Acquisitions

Joscelyn Cekola Boucher  
Shane B. Hansen  
Linda Paullin-Hebden  
Michael H. Schubert

## Arbitrations

Brian J. Masternak

## Bankruptcy Matters

Robert H. Skilton III  
Gordon J. Toering

## Broker-Dealers

Dana R. Dawe\*  
Shane B. Hansen  
Linda Paullin-Hebden

## Charitable and Religious

### Organizations

Timothy L. Horner  
Jeffrey B. Power

## Compliance

Diane M. Currie\*  
Dana R. Dawe\*  
Shane B. Hansen  
Linda Paullin-Hebden

## Employee Benefits Plans and ERISA

Anthony J. Kolenic, Jr.  
Mary Jo Larson  
Justin W. Stemple  
Lisa B. Zimmer

## Enforcement Matters

Shane B. Hansen  
Brian J. Masternak

## Equity-Based Compensation Agreements

Anthony J. Kolenic, Jr.  
Craig N. Meurlin  
Jeffrey A. Ott

## Financial Institutions

Charlie Goode  
Shane B. Hansen  
Gordon R. Lewis  
Rodney D. Martin  
Jeffrey A. Ott

## Health Care Financing

Richard L. Bouma  
Stephen R. Kretschman

## Insurance Regulation

Shane B. Hansen  
Gordon R. Lewis  
Stephen C. Waterbury

## Investment Advisers

Diane M. Currie\*  
Dana R. Dawe\*  
Shane B. Hansen  
Linda Paullin-Hebden

## Labor

Jonathan P. Kok

## Litigation

Kristina M. Araya  
Edward J. Bardelli  
Brian J. Masternak

## Mutual Funds and Variable Insurance Products

Shane B. Hansen  
Gordon R. Lewis  
Brian J. Masternak

## Oil & Gas Offerings

Craig N. Meurlin

## Privacy and Information Security

Shane B. Hansen  
Norbert F. Kugele  
Rodney D. Martin

## Private Offerings and Other Exemption Offerings

Loren Andrulis  
Joscelyn Cekola Boucher  
Cameron S. DeLong  
Charlie Goode  
Timothy L. Horner  
Matthew D. Johnson  
Craig N. Meurlin  
Jeffrey A. Ott  
Linda Paullin-Hebden  
Michael H. Schubert

## Publicly Traded

### Companies

Jeffrey S. Battershall  
Charlie Goode  
Gordon R. Lewis  
Craig N. Meurlin  
Jeffrey A. Ott  
Mark J. Wassink  
Stephen C. Waterbury

## Public Securities

### Offerings

Jeffrey S. Battershall  
Charlie Goode  
Timothy L. Horner  
Gordon R. Lewis  
Craig N. Meurlin  
Jeffrey A. Ott

## Real Estate Offerings

Loren Andrulis  
William W. Hall  
Paul R. Jackson

## Regulatory Investigation and Proceedings

Shane B. Hansen  
Timothy L. Horner  
Brian J. Masternak

## Self-Regulatory Organizations (FINRA, NYSE, AMEX)

Shane B. Hansen  
Gordon R. Lewis  
Brian J. Masternak  
Jeffrey A. Ott  
Stephen C. Waterbury

## Takeover Defense, Proxy Contests

Charlie Goode  
Gordon R. Lewis  
Craig N. Meurlin  
Jeffrey A. Ott

## Tax Issues

Cameron S. DeLong  
Paul R. Jackson  
Stephen R. Kretschman

## Technology and Intellectual Property

R. Scott Keller  
Janet P. Knaus  
James L. Scott

## Venture Capital

Loren Andrulis  
Joscelyn Cekola Boucher  
Matthew D. Johnson  
Gordon R. Lewis  
Craig N. Meurlin  
Linda Paullin-Hebden  
Mark J. Wassink

\*Senior Compliance Consultants and not licensed to practice law.

## FUNDS AND INVESTMENT SERVICES GROUP PROFILES



Josie is chair of the firm's Funds and Investment Services Practice Group and a partner in the Kalamazoo office. She focuses on corporate and securities law, with an emphasis on representing emerging growth companies in all stages of development. She counsels clients on a variety of business transactions, such as venture capital financing, private placements, strategic alliances, research and development, technology licensing and acquisition, international business, clinical and pre-clinical study agreements, and supply, distribution and manufacturing contracts. Josie also represents venture capital funds in connection with fundraising, investment and other transactions.



Loren is a partner in the Grand Rapids office. He concentrates his practice in financial services, securities, corporate business, real estate and mining matters.



Kris is a partner in the Grand Rapids office. Her practice focuses on complex commercial litigation, including in the areas of securities, insurance coverage, and banking.



Sean is a partner in the Southfield office and chairs the firm's Tax Practice Group. He has a diverse practice that includes tax law, mergers and acquisitions, closely held businesses, trust and estate work, general corporate law and nonprofit and charities law. He also is a certified public accountant.



Diane is a senior compliance consultant in the Southfield office. She provides consulting services for registered investment advisers, financial planners and family offices. Diane is not licensed to practice law.



Dana is a senior compliance consultant in the Grand Rapids office. He specializes in providing regulatory and SRO compliance consulting services to FINRA registered broker/dealers and SEC registered investment advisers. He also has significant capital markets and investment banking expertise. Dana is not licensed to practice law.



Shane is a partner in the Grand Rapids office. He practices in the area of financial services regulation of banks, broker-dealers, investment advisers, financial planners and money managers. He regularly advises clients about business, corporate, banking, securities and franchise laws and regulations. Shane's longstanding relationships with regulators has facilitated obtaining

regulatory interpretations and negotiated settlements of regulatory issues for many clients. He has substantial experience involving mergers, acquisitions and sales of financial institutions and their assets.



Timothy L. Horner  
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Tim is a partner in the Grand Rapids office. He focuses his practice on financial services, corporate, and securities law, including regulation of financial institutions, broker-dealers, investment advisers and insurance agents. He also has broad experience with mergers and acquisitions, SEC reporting, public offerings and private placements.



Matthew D. Johnson  
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Matt is a partner in the Grand Rapids office. He specializes in mergers and acquisitions, private securities offerings, joint ventures and other general corporate matters.



Celia G. Kaechele  
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Celia is an associate in the Southfield office. She supports registered investment advisers with securities compliance concerns and works with nonprofit organizations to overcome the hurdles to formation. She also assists closely held businesses on a variety of matters including formation, early stage financing, corporate governance, securities law compliance and mergers and acquisitions.



Norbert F. Kugele  
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Norbert is a partner in the Grand Rapids office. He focuses his practice on employee benefits and privacy and information security law.



William C. Lentine  
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Bill is a partner in the Southfield office. He concentrates his practice in taxation, business law and estate planning for high net worth individuals.



Brian J. Masternak  
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Brian is a partner in the Grand Rapids office. He concentrates his practice in helping businesses and individuals faced with civil litigation, particularly in the areas of securities and antitrust. Brian also has special expertise in the Sherman, Clayton and Robinson-Patman Acts.



John C. Muhs  
248.784.5165  
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John is an associate in the Southfield office. He advises privately held and publicly traded companies on matters of corporate governance, commercial contracts and securities regulation.

Linda Paullin-Hebden  
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Linda is the Executive Partner in the Southfield office. She has served as securities compliance adviser to several publicly held corporations and registered investment advisers and as an adviser to closely held corporations and nonprofit entities. She concentrates her practice in corporate matters and securities, and has been involved in numerous complex corporate mergers and acquisitions involving both public and closely held corporations, as well as municipal bond offerings.

Lisa B. Zimmer  
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Lisa is a partner in the Southfield office with more than 28 years of experience in employee benefits, almost 23 of those years as an attorney. She counsels employers in the design, documentation, implementation and government compliance of their qualified retirement plans, welfare programs and non-qualified deferred compensation arrangements. Lisa concentrates her practice exclusively in employee benefits law, focusing on the income tax and ERISA compliance issues that arise in the operation of employee benefits plans.

## REPRESENTATIVE CLIENTS

### **Selected National and Regional Broker-Dealers/ Investment Advisers for Whom We Serve (or Have Served) as Special Counsel:**

- Aetna Life Insurance and Annuity Company
- Associated Securities Corporation
- Robert W. Baird & Co. Incorporated
- Castle Creek Financial LLP
- Centennial Securities Company
- Donnelly Penman French Haggarty & Co.
- Equitas America L.L.C.
- Fifth Third Securities Corporation
- First Investors Corporation
- FSC Securities Corporation
- H&R Block Financial Advisers
- Hartford Life Insurance Company
- Jackson National Financial Services, Inc.
- Leonard and Company
- Linsco/Private Ledger Corp.
- M. L. Stern & Co., LLC
- Mayer & Schweitzer, Inc.
- Mesirov Financial, Inc.
- Mutual Service Corporation
- Nations Securities
- NEXT Financial Group, Inc.
- Oberlin Financial Corporation
- Olde Discount Corporation
- Pacific Select Distributors
- PaineWebber Inc.
- P&M Corporate Finance, LLC
- Prudential Securities Inc.
- RBC Dain Rauscher
- Rodman & Renshaw Capital Group
- Royal Securities Co.
- Salomon Brothers, Inc.
- Securities Equity Group
- Stifel Nicolaus & Co., Inc.
- United Planners' Financial Services of America
- USA Advanced Planners, Inc.
- USA Financial Securities, Inc.
- Vestax Securities Corp.
- Vision Investment Services
- Union Investment Services, Inc.
- Walnut Street Securities, Inc.
- Waterstone Financial Group
- Wayne Hummer, Inc.
- Wheat First Securities, Inc.

### **Selected Investment Advisers for Whom We Have Served as Counsel:**

- Aetna Life Insurance & Annuity Co.
- Aegon USA Invest Management
- AMBS Investment Counsel, Inc.
- Andrews & Co.
- Aspen Gold Investment Management, Inc.
- Azimuth Capital Management, LLC
- Cohig & Associates, Inc.
- Econostrat Advisory Corp.
- Financial Advisory Corporation
- First Financial Advisors, Inc.
- First Mutual Investment Management, Inc.
- Hartford Life Insurance Company
- LaFleur & Godrey, Inc.
- LS Investment Advisors, LLC
- MKD Wealth Coaches, LLC
- Mutual Service Corporation
- NEXT Financial Group, Inc.
- Planning Alternatives, Ltd.
- Plante Moran Financial Advisors
- Polaris Greystone Financial Group, LLC
- Rehmann Financial Group, LLC
- Seizert Capital Partners, LLC
- Select Portfolio Management
- USA Financial Securities, Inc.
- USA Wealth Management LLC
- Vison Asset Management, Inc.

### **Other Securities-Related Clients for Whom We Have Served as Counsel:**

- Financial Services Institute
- Investment Company Institute
- National Association of Securities Dealers, Inc.



## **Warner Norcross + Judd**

A BETTER PARTNERSHIP®

By providing discerning and proactive legal advice, we build a better partnership with clients.

[WNJ.com](http://WNJ.com)

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