

## Financial Markets

### Overview

Federal regulatory scrutiny of the financial markets has never been higher. Sparked by the 2008 financial crisis, the SEC and CFTC have committed themselves to tougher regulatory enforcement. The SEC, for example, has embarked on a “broken windows” enforcement philosophy under which no violation is deemed too small to pursue. The CFTC has been following a similar approach. The agencies have received increased regulatory authority from Congress, giving sharper teeth to their more aggressive approach to enforcement.

The consequences have been dramatic. The aggregate annual dollar amount of the CFTC’s enforcement fines essentially doubled from 2012 to 2013 and doubled again by 2014. In that year, the SEC and CFTC each collected annual fines that exceeded \$3 billion.

In this harsher regulatory climate, it is imperative for financial markets professionals to “get it right” when it comes to regulatory compliance. Attention to regulatory compliance and adequate training on the front end are the best protection. When the regulators do bring enforcement actions, engineering a successful outcome is critical. Fines have never been larger, and the legal right to remain in business often hangs in the balance. Also, potentially devastating class actions may be the next shoe to drop after an enforcement case is announced.

Our team is dedicated to effectively guiding our clients through these regulatory rapids, preventing problems before they arise and solving them when they appear.

### Preventing Regulatory Problems

Our first mission is to prevent regulatory problems through compliance counseling. We advise every type of professional in the securities, futures and other-the-counter markets, including:

- Broker-dealers
- Futures commission merchants
- Introducing brokers
- Investment advisers
- Commodity trading advisers
- Mutual funds, including exchange traded funds
- Alternative trading systems (“dark pools”)
- Private funds
- Commodity pools
- Exchanges
- Clearing agencies

We advise these clients on all compliance aspects of the Securities Exchange Act of 1934, the Commodity Exchange Act, the Investment Advisers Act of 1940, and the Investment Company Act of 1940, including:

- Broker-dealer, investment adviser, and investment company status
- Broker-dealer, investment adviser, and investment company mergers, acquisitions and changes in control
- Broker-dealer and investment adviser supervisory programs
- Broker-dealer confirmation delivery, books and records, and broker-dealer custody of assets
- Commission sharing, soft dollar and directed brokerage/commission rebate arrangements
- Oversight duties of independent mutual fund directors
- Listing and trading shares in ETFs
- Bank securities activities
- Applicability of swap rules under the Dodd-Frank Act
- Clearing agreements for exchange-traded derivatives
- ISDA master agreements for OTC derivatives

### Solving Regulatory Enforcement Problems

When regulatory problems cannot be prevented, we step in to protect our clients from the resulting enforcement actions. We handle cases brought by the federal agencies (the SEC or the CFTC) and by the industry regulators (FINRA and NFA and the securities and futures exchanges). The stakes in this litigation can be high, because firms and individuals often face bans and restrictions that effectively would put them out of business. In solving the problems these cases present, we tap other firm capabilities to control the risks of collateral litigation, including:

- White collar lawyers to resolve criminal investigations triggered by enforcement cases, including former Assistant U.S. Attorneys
- Class action lawyers to defend class actions that piggyback on enforcement actions

## Protecting Innovation In The Financial Markets

Innovation is critically important to firms active in the financial markets. Our intellectual property lawyers have deep experience protecting statutory and contractual rights in innovative financial technology and methods — and in challenging claims where no protection is appropriate. Our work includes:

- Index licensing agreements
- Patent litigation over technology and methods for trading or clearing
- Trading data dissemination agreements
- Litigation over misappropriation of property rights in innovative products

## Experience

### Regulatory Counseling and Compliance

- **Obtaining no-action relief.** Decades of legal and regulatory interpretations raised uncertainty as to whether an industry vendor could send standardized confirmations to institutional customers on behalf of broker-dealers, where the broker-dealer responsible for the confirmation would send a URL link to its standardized disclosures. We helped our client obtain no-action relief from the SEC staff on behalf of the securities industry to allow use of these standardized confirmations.
- **Negotiating for regulatory flexibility.** An ETF sponsor had been unable to persuade the SEC staff to allow its funds to include higher levels of restricted securities than the SEC had previously allowed. After addressing the regulatory concerns of the SEC staff and the listing exchanges, we obtained authorization for our client to make more liberal use of restricted securities in its funds.
- **Managing complexity.** The boards of a large complex of mutual funds must annually review more than 200 advisory contracts. We guide these boards in performing this evaluation in a manner that fulfills the boards' responsibilities under the Investment Company Act of 1940 and under applicable SEC rules.

### Regulatory Enforcement Cases

- **Shutting down an investigation.** A broker-dealer client was investigated by the SEC because of concerns over a complex trading pattern. After reviewing the trading records, we met with SEC staff to explain how the trading method should not create major legal or regulatory problems. Shortly after the meeting, the SEC staff ended their investigation.
- **Avoiding heavy sanctions.** Our client faced an enforcement action growing out of a sweep following the collapses of MF Global and Peregrine. We negotiated a resolution that set a new lowest penalty for the conduct at issue.
- **Short-circuiting criminal prosecution.** The U.S. Department of Justice informed our client that it intended to indict the client for market manipulation. We met several times with the prosecutors — both locally and in Washington D.C. — and made detailed presentations to explain the client's actions. After these presentations, the federal prosecutors decided not to bring criminal charges.

### Protecting Financial Markets Technology and Methods

- **Vindicating exclusive license rights.** A competitor attacked our client's exclusive license right to offer options on a leading stock index. We beat back this offensive in seven different federal and state trial and appellate courts, including the U.S. Supreme Court. The result was total vindication of our client's property rights in its index license.
- **Protecting clients' technology.** A former trader at a brokerage firm client claimed rights in the trading strategy he developed while working at the firm. We helped the firm reach a successful resolution and avoid future disputes of this nature.
- **Monetizing innovations.** Our client created a set of indexes that tracked the interest rate paid for overnight fixed income securities. We provided comprehensive counseling on ways to protect and commercially exploit the indexes and helped to negotiate licenses for the use of the indexes by banks, an exchange, a government agency and other third parties.

## AWARDS & HONORS

### • BTI "Innovation Builder"

We were singled out by corporate counsel as one of only 28 percent of law firms clients view as a BTI "Innovation Builder," which recognizes firms that bring change to the legal market through new technology, services, strategies, or structures.