

Corporate Compliance, Investigations and Defense

As one of the nation's leading corporate and securities law firms, Andrews Kurth regularly counsels public companies, financial institutions and investment firms on a myriad of governance, compliance and enforcement issues. Dealing with the Securities and Exchange Commission, Department of Justice and self-regulatory organizations is always a delicate endeavor and is even more so in this post Sarbanes-Oxley environment where securities regulators possess increased resources and enforcement powers. Having experienced counsel who specialize in these critical areas is essential to all firms participating in our capital markets.

Our Corporate Compliance, Investigations and Defense team (CCID) plays a vital role helping clients avoid regulatory and governance problems and defending them against governmental investigations and enforcement actions. We have the experience and skill to guide our clients through scrutiny by the SEC, DOJ, Financial Industry Regulatory Authority (FINRA), and many other regulatory agencies, as well as to defend our clients in shareholder litigation. We also regularly advise and conduct internal investigations and due diligence for boards of directors, audit and special litigation committees, and in-house counsel into issues ranging from the Foreign Corrupt Practices Act (FCPA), to insider trading, to revenue recognition and a host of whistle-blower complaints.

With the SEC's budget--along with the number of investigations and dollar-value of settlements--continuing to increase, more than ever public companies need Andrews Kurth's inside view on the "how" and "why" of government enforcement as part of seasoned advice to deal with governance, fiduciary liability and internal investigations concerns.

A Snapshot of the Andrews Kurth Solution

Our approach is to provide the integrated, holistic and comprehensive solution that public companies and investment firms need. The CCID team brings together more than 30 partners from across the firm, linking over 100 corporate/securities lawyers and over 100 litigators (a number of whom are securities industry arbitrators). Heading the team is Spencer Barasch, who has almost three years of internal SEC post-SOX enforcement experience, nearly 20 years of SEC experience as head of enforcement activities in the Southwest Division of the SEC, and as SEC liaison with U.S. Attorney Offices, DOJ, self-regulatory organizations, other federal agencies, international securities agencies, and state regulators and prosecutors.

There are numerous benefits to this combination of experience and resources--including the following advantages:

- Decades of disclosure and compliance counsel to Fortune 500 companies, boards, special and audit committees, in-house counsel and management
- An inside view of SEC enforcement, particularly involving interpretation of the Sarbanes-Oxley Act
- Proactive compliance advice to issuers and underwriters of IPOs or other securities offerings
- Seasoned insight on governance and fiduciary liability concerns
- Remedial help to craft practices and policies that enable companies to avoid shareholder litigation and SEC enforcement scrutiny
- Confidential assistance with internal fraud and misconduct investigations
- Skilled guidance in the event of SEC civil litigation or administrative enforcement
- Aggressive defense of shareholder class action and derivative litigation
- Effective arbitration of broker/dealer disputes involving shareholders and securities exchanges

When clients call upon us to investigate actions that may violate the law or established corporate policies, our team undertakes a thorough, professional and confidential study. We focus on identifying problems, making recommendations on how to resolve them, and helping ensure that they do not happen again.

Managing the Disclosure Process

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Our lawyers give clients practical guidance on their disclosure obligations to shareholders, exchanges (including the New York Stock Exchange and NASDAQ), industry associations such as FINRA, stakeholders, and federal and state regulators under the federal securities laws and key statutes, including Sarbanes-Oxley. We know the right questions to ask and the right standards to follow when it comes to ensuring the accuracy of financial filings and disclosing material information.

Our counsel includes these broad areas:

Disclosure

- Public reporting of financial results and executive compensation in compliance with rules and interpretations of the SEC and stock exchanges, standards for "fair presentation" of financial information, and CEO and CFO certifications of public filings with the SEC
 - Guidelines to comply with Regulation FD in financial analyst communication, management discussion and analysis, and similar statements, taking into account recent SEC enforcement actions and penalties for violations of the rules against selective disclosure
 - Specialized disclosure issues, such as insider trading, proxy statements and communications distributed on Web sites and the Internet
- ### Internal Controls
- Disclosure of deficiencies, weaknesses and changes in internal financial reporting controls
 - Structuring internal compliance programs to ensure consistency with the amended federal sentencing guidelines
 - Implementing governance procedures that comply with Sarbanes-Oxley in the structuring of boards and their committees, development of effective charters and codes of ethics, and handling stockholder nominations and communications
 - Effective procedures that enable attorneys practicing before the SEC to report credible evidence of securities violations and breach of fiduciary duty up the ladder to the chief legal officer, audit committee and board of directors, and to confirm that their actions result in appropriate remedial measures
- ### Fiduciary Responsibility
- Advice to individual officers and directors, as well as boards and special committees, on their fiduciary responsibilities in matters like takeover responses and personal conflicts of interest
 - Indemnification of corporate officers and directors, as well as coverage and claims matters involving D&O insurance
 - Due diligence for underwritten offerings and merger and acquisition transactions, encompassing governance, corporate compliance, and disclosure controls and procedures
 - Representation of hedge fund managers, investment advisors, brokers/dealers and other financial professionals in FINRA and federal regulatory proceedings
- ### Internal Investigations
- Conducting internal investigations, either in advance of government inquiry or in conjunction with it, in a broad range of issues from revenue recognition to the Foreign Corrupt Practices Act, including counseling through the process of self-reporting
 - Conducting special litigation committee investigations in connection with shareholder derivative litigation
 - Conducting investigations and counseling clients in advance of SEC reporting deadlines, public offerings or other required disclosures
 - Conducting investigations into financial fraud, negligence or breach of fiduciary duty
 - Representation of audit committees and other special committees of boards of directors in conducting independent investigations
- ### Whistleblower Claims
- Investigating allegations of improper conduct by employees or others
 - Ensuring that whistleblowers receive the protection due under the civil or criminal provisions of Sarbanes-Oxley or other applicable laws that prohibit retaliation

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- Supporting the role of the company's audit committee in the treatment of complaints regarding accounting and auditing **Financial Investigations**
- Investigating allegations of improper smoothing or manipulation of financial reporting and the timing of when revenue is booked
- Handling legal and disclosure issues associated with financial restatements, including reviews of potential misstatements under SAB 99
- Representing public companies and their audit committees in connection with independent committee investigations of alleged accounting and auditing irregularities **Foreign Corrupt Practices Act Investigations**
- Representing companies and working as independent counsel to audit committees to investigate potential FCPA violations
- Advising companies and audit committees on the self-reporting of potential FCPA issues to the SEC and DOJ
- Representing companies and audit committees in responding to FCPA inquiries from the SEC and DOJ
- Working with company auditors and/or outside accountants to strengthen and test internal controls to detect and prevent potential FCPA violations
- Advising companies on appropriate FCPA policies and training
- Advising companies on arrangements with and due diligence on agents in countries with a heightened risk of FCPA concerns

Other Committee Inquiries

- Acting on behalf of special committees in connection with litigation, related party transactions, actual or potential conflicts of interest, and mergers and acquisitions
- Responding when reports from a public company's auditors allege illegal acts, accounting or auditing irregularities, unusual adjustments, or require changes in accounting principles or estimates

SEC Enforcement

- Response to and defense of SEC inquiries and investigations of allegations against companies, individuals, directors, officers and auditors
- Advice to clients regarding government voluntary disclosure programs and proactive reporting of securities violation evidence in order to avoid harsher penalties
- Development of effective corporate compliance programs that can prevent criminal conduct and lessen sanctions if misconduct is uncovered

Securities Litigation

- Defense of actions under federal and state securities laws, including class actions
- Advice to companies and their boards of directors regarding shareholder derivative lawsuits
- Arbitration and other alternative dispute resolution proceedings to settle alleged violations of securities laws

White-Collar Matters

- Investigating allegations or indications of possible FCPA violations
- Representing companies in disclosure and reporting of foreign payments
- Applying insider trading rules, handling disclosure and providing defense in SEC enforcement actions, including the application of amended standards under Rule 10b5-1

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- Representing and defending individuals and companies in connection with various other government investigations, civil enforcement actions and criminal proceedings

Sarbanes-Oxley

- Investigating alleged violations of Sarbanes-Oxley, including conflicts of interest, prohibited loans to insiders, and other claims or indications of improper conduct
- Advising on how Sarbanes-Oxley affects the decision to maintain or waive legal privilege in SEC, DOJ and other government investigations
- Helping avoid violation of Sarbanes-Oxley rules that prohibit obstruction, document destruction and retaliation against whistleblowers

Industry Self-Regulation Proceedings

- Representing broker/dealers in litigation and arbitration over customer disputes, securities clearing controversies and employment matters
- Defending securities brokerage firms in connection with FINRA investigations
- Acting for broker/dealers and individual brokers in proceedings before FINRA and NYSE arbitration panels
- Representing investment advisory firms and hedge funds in SEC and other regulatory inquiries and investigations

Using Straight Talk to Prevent and Solve Problems

Successful businesses try to observe a clear line between aggressive and illegal conduct. However, government regulators and law enforcement officials are blurring that line by dramatically expanding their civil, criminal, administrative and legislative investigations. Andrews Kurth knows that straight talk to corporate clients can avoid problems and prevent small issues from growing into large ones. We work fast and effectively behind the scenes to develop proper policies and procedures, make the right disclosures, investigate concerns, negotiate resolutions and provide a vigorous defense when necessary. With extensive resources and our inside view into the SEC, our goal is to help lessen the risk that a subpoena or lawsuit will threaten your company.