US financial services regulation

March 2018
Our strengths

Depth of experience in financial services

Our financial services/regulatory team effectively manages our clients’ top concerns: regulation, compliance and enforcement. Our lawyers have built a strong reputation in the market over many years of advising and assisting clients in complex financial services regulatory and enforcement matters.

With more than 1000 professionals world-wide dedicated to financial institutions, we draw on a wealth of experience and detailed regulatory knowledge across the financial services sector. The result is the ability to handle the broad range of subjects and provide advice tailored to each client’s specific needs.

We have over 50 lawyers in the United States who represent US and non-US financial institutions in a variety of both compliance and contentious (i.e., enforcement or trial stage) regulatory matters.

Our team includes past senior level executives of US federal and state government agencies.

Practical approach and cost effectiveness

Our broad experience and client-based approach helps us to properly resource and support assignments.

We are pleased to discuss alternative approaches to client matters to achieve desired outcomes.

We provide legal services efficiently and in a cost-effective manner tailored to the nature and scope of the project.

Market intelligence

Our team prides itself on continuously staying abreast of important issues and “hot topics” that affect financial institutions. We keep our clients informed about the rapidly changing regulatory landscape through client updates, electronically delivered alerts, and our blog *Financial services: Regulation tomorrow.*
US financial services regulation capabilities

Our practice

Bank regulation

We represent US and non-US banks and their subsidiaries before US federal and state bank regulatory agencies on a wide variety of matters. We have deep experience in the regulatory framework in which all manner of financial institutions operate globally and can advise clients on the full scope of regulatory requirements and implications for US and non-US owners of US financial firms, including:

- Entry into the United States and other cross-border banking regulatory and securities issues
- Formation of US banking organizations and nonbank financial subsidiaries
- Development of new products and services

Bank mergers and acquisitions

We assist in structuring bank mergers and acquisitions and internal reorganizations. We provide regulatory guidance on all aspects of our clients’ operations, including comprehensive reviews of state and federal laws that may be applicable to our clients and development of policies and procedures. We also keep our clients apprised of the latest legislative and regulatory developments that would affect their operations.

Insurance

We advise many of the world’s leading insurers and reinsurers on their most significant corporate, regulatory and transactional matters as well as complex claims, class actions, disputes, and investigations.
US financial services regulation capabilities

Dodd-Frank compliance

We have been counseling clients on the possible consequences of the Dodd-Frank Act since the law was being debated in Congress. We now counsel clients on the effects that implementation of the Dodd-Frank Act regulations have on their operations. For example, we advise on the complex and potentially costly Volcker Rule and prudential standards and assist with our clients’ plans for compliance. We also advise clients on an array of regulatory compliance reviews related to the implementation of the derivatives reforms enacted in the Dodd-Frank Act.

Regulation of intermediaries

We represent broker-dealers, investment advisers and commodity trading advisors, futures commission merchants and swap dealers, as well as market utilities (e.g., exchanges, alternative trading systems and clearinghouses), in all regulatory aspects of their operations. We address registration issues and appropriate exemptions (including for non-US activities), financial and operational compliance, responses to examination findings and defense of matters referred for enforcement, reporting requirements and Dodd-Frank requirements (including the Volcker Rule). We also prepare submissions and comment letters involving proposed rules and interpretations to regulatory authorities on behalf of our clients.

Government and internal investigations

We conduct internal investigations and advise firms regarding corporate governance matters. Our government investigations team represents major financial institutions in internal and regulatory investigations and litigation involving equities, options, futures trading, physical commodities and other financial transactions. Our highly experienced enforcement defense lawyers regularly represent clients before the SEC and CFTC, the US Department of Justice (DOJ), the Federal Energy Regulatory Commission (FERC), and US banking and other regulatory agencies.

Cross-border compliance

We work closely with colleagues throughout our global law firm to provide coordinated solutions for our clients on complex, cross-border compliance challenges. With experienced resources across six continents and in all the major market centers, our team is uniquely positioned to provide clients with effective, coordinated representation on multi-jurisdictional issues. Due to the global nature of business, overlapping international regulatory regimes, and increasingly cooperative efforts, this coordinated approach is essential.

Information security and financial privacy

We represent a variety of clients on their compliance with requirements for federal and state information security and non-public customer financial privacy compliance programs, including strategic planning for cybersecurity breaches.

Anti-money laundering

We assist our clients on compliance with US federal and state anti-money laundering laws and regulations, including advising on the latest legislative and regulatory developments, conducting internal investigations, negotiating administrative enforcement orders and providing oversight of any required remedial actions.
Investment funds

Our global fund formation practice spans hedge funds, private equity funds, venture capital funds and incubators, real estate funds, commodity pools, regulated investment companies and hybrid vehicles and separately managed accounts. After launch, we work closely with managers on a day-to-day basis with respect to US and global regulatory compliance, equity and debt investments, derivatives trading and interactions with financial intermediaries and service providers. We also are on hand to advise on exams, investigations and enforcement, cross-border tax structuring, governance, investor relations issues, liquidity events and other significant business decisions whenever and wherever they arise.

Financial technology (FinTech)

We assist traditional and non-traditional financial services firms and technology companies in their efforts to sell financial products and services to their clients through the use of new technologies and channels. In particular, we are well-versed in blockchain/distributed ledger technologies and our work with FinTech ventures includes both transactional and regulatory advice. Our clients range from start-ups to multinational corporates, and FinTech firms seeking to work with or partner with financial institutions.

Staying ahead of the curve

Our team prides itself on continuously staying abreast of important issues and “hot topics” that affect the financial institution industry. We keep our clients knowledgeable about the rapidly changing regulatory landscape through client updates, electronically delivered alerts and our Financial services: Regulation tomorrow blog.

Our experience

Banking

Conduct annual independent review of a global bank’s controls mandated by a settlement with a federal government agency

Undertook comprehensive and wide-ranging review of the applicable laws, regulations and guidance materials for the compliance function at two of the largest banking organizations in the United States

Responsible for US approvals as part of a large international team advising on a reorganization of a major European bank

Advised a large international banking organization on US restrictions on insured banks entering into transactions with their affiliates

Developed and implemented a plan for chartering a bank owned by a major non-bank financial institution, including obtaining all state and federal regulatory approvals

Advised on and obtained financial holding company status for several US and non-US banking organizations, including the first non-US bank majority-owned by a foreign government

Advised a major non-US bank on permissible activities in the United States transacted from outside the United States

Undertook internal reorganization and consolidation of several smaller subsidiary banks of a large US banking conglomerate
Obtained the first “complementary to financial” order for a banking client from the Federal Reserve Board on an insurance-related product

Developed and implemented strategies for the US expansion of a major non-US bank, including obtaining all state and federal regulatory approvals

Advise banking organizations on fair lending and consumer compliance matters

Advise on US and cross-border bank mergers and acquisitions, and Change in Bank Control Act and Bank Holding Company Act transactions, including specialized due diligence capabilities and regulatory approvals

Advise issuers and underwriters on securities offerings for banking organizations

Advise major US business organizations on transmitting money for customers to their banks

Represented non-US bank in purchase of US non-bank financial company

Securities

Providing advice to US broker-dealer and investment adviser affiliates of US and non-US financial institutions

Developed written supervisory and risk management procedures for many business lines, including proprietary trading, corporate finance, derivatives trading, equity finance, soft dollar practices and new products

Prepared written submissions to the SEC, FINRA, state regulators and non-US regulatory authorities regarding proposed rules, including regarding M&A brokers, Rule 15a-6 and cross-border clearance and settlement for non-US affiliated financial institutions

Obtained no-action relief and orders in areas that include M&A brokers and Rule 15a-6, SEC reporting obligations for non-US affiliated investment banks and designated offshore securities markets

Advised market participants, trade associations and self-regulatory organizations regarding market structure issues, impediments to cross-border trading and governance

Responded to SEC and FINRA examination findings and enforcement referrals through settlement or adjudication

Advise swap dealers on the SEC’s rules regarding security-based swaps, and compliance obligations applicable to security-based swap dealers

Provided training regarding SEC broker-dealer regulations to a global derivatives exchange and clearinghouse

Represented the operator of US and non-US platforms before the SEC in connection with the SEC’s proposed rule that would limit the ability of investment companies to engage in derivatives, including security-based swaps

Advised in connection with M&A transactions in the securities industry, including specialized due diligence capabilities and regulatory approvals

Represented both financial institution issuers and underwriters in public and private offerings of equity and debt securities, including initial public offerings
Insurance

Conducted contract-by-contract risk-transfer review of reinsurance contracts for a global reinsurer in connection with an internal and SEC investigation

Advised Fortune 500 financial services group regarding reporting requirements under Insurance Producer Licensing Act in all 50 states upon for-cause termination of licensed employees

Conducted contract and documentation quality-control review for internal audit purposes at a global reinsurer

Developed insurance regulatory, accounting and insurance insolvency arguments to oppose proposed termination of a restructuring plan for a financial guaranty insurer

Conducted due diligence, and regulatory analysis, including regarding notice/approval requirements in connection with acquisition of entities licensed by insurance regulators in multiple U.S. jurisdictions

Advised regarding proposed inter-company transaction under insurance investment law and insurance holding company act

Advised insurance company and financial-market participants on insurance products and/or derivative alternatives to address specialized weather, crop, commodity, and financial-market risks

Commodities and derivatives

Assist non-US central counterparties (CCP) in obtaining exemptions from registration as derivatives clearing organizations

Advise non-US CFTC registered swap dealers on compliance with CFTC’s swap dealer and cross-border regulations

Advise registered swap dealers, futures commission merchants and introducing brokers on regulatory implications of contemplated corporate restructuring

Advise electronic trading platforms with all aspects of the registration process for swap execution facilities and foreign boards of trade

Advise clients, including fund managers, commodities trading firms and other finance companies, on a broad range of CFTC matters, including regulatory and compliance issues, position limits and CFTC enforcement matters

Advised US pension trustee regarding futures account agreements and clearing addendums

Assist clients in preparation of comment letters to CFTC on position limits and swap execution facility issues

Provided a US company with advice regarding protection of client funds in MF Global bankruptcy proceedings
US financial services regulation capabilities

**Dodd-Frank**

Advised several non-US banks on Dodd-Frank’s Volcker Rule implementation and continuing compliance

Advise clients on complex derivatives products to determine their status as CFTC-regulated swaps, SEC-regulated security-based swaps, or mixed swaps

Advise US and non-US clients regarding cross-border application of regulations promulgated under Dodd-Frank

Assist US and non-US companies with regulatory training as well as development of compliance programs and changes to business processes in relation to Dodd-Frank requirements

Advised a major firm on incentive compensation practices in response to Dodd-Frank, Sarbanes-Oxley, and other regulatory implications; advice related to a line of business employing nearly 3,000 employees

Advise global financial institutions regarding comparative analysis of US and EU margin and position limits proposals

Review of new fund formations for Volcker Rule consequences

Represented an international bank with respect to regulatory issues concerning its swap dealing activities, including a focus on the cross-border implications of its swaps activities

Representation of an international bank with respect to swap dealer reporting and recordkeeping requirements

Perform swap dealer and major swap participant registration analyses for clients

Analyze the application of swap dealer registration requirement and other Dodd-Frank derivatives reforms, such as clearing and trade execution mandates, and data reporting and recordkeeping requirements, to the US and cross-border activities of clients offering banking, financial, and credit union services to US and non-US persons

Evaluated trading activities of various non-US funds to determine if they qualified as covered funds for Volcker Rule purposes

**Investigations and enforcement actions**

Represented the lead defendant in the parallel civil and criminal cases brought by the SEC and DOJ concerning the “London Whale” trades by J.P. Morgan derivatives traders in London, allegedly leading to $6 billion in losses; all charges, civil and criminal, were dismissed by the government without payment, penalties or any concession by the client Represent major US investment banks and broker-dealers in numerous ongoing confidential matters before a variety of US financial regulators

Represented a major wirehouse in US$100m anti-money laundering matter involving mutual fund option plans and other esoteric products

Advised a major investment fund on anti-money laundering and know-your-customer requirements

Represented a non-US bank before bank regulators in connection with an enforcement action that included anti-money laundering issues

Advised on US anti-money laundering and US financial privacy laws for a major European business conglomerate
Represent clients in CFTC and SEC enforcement investigations

Assist companies in defending against investigations and disciplinary proceedings brought by futures exchanges

Represented a major US bank in a federal banking investigation into its anti-money laundering and permissible activities policies and procedures

Representing broker-dealer in litigation against the SEC, FINRA and multiple stock exchanges regarding allegations of market manipulation

Represent investment banks in major SEC investigations including valuation and disclosure issues concerning mortgage portfolios, securitization transactions and sales of stock in non-publicly traded companies

Represented broker-dealer in SEC and FINRA investigations regarding due diligence and related disclosures with respect to the sales of new products

Regularly represent US and non-US companies in responding to CFTC subpoenas and inquiries

Represent broker-dealer in litigation against FINRA regarding the reasonableness of anti-money laundering policies and procedures

Represented broker-dealer in FinCEN investigation regarding SAR filing practices

Advised investment bank in connection with its global anti-corruption risk assessment

Represent multiple global banks in connection with RMBS FIRREA negotiations with the DOJ

Represented Long Island investment banking head against SEC claims involving alleged stock fraud

Represent officers and directors from numerous financial institutions involving claims by the FDIC and other agencies of negligence and misconduct

Represent professionals, executives and companies facing grand jury subpoenas, white collar investigations and indictment
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Steve Dollar
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Steve Dollar devotes the majority of his practice to representing US and non-US financial institutions in a wide variety of regulatory investigations with the SEC, FINRA, DOJ and numerous state regulators. Steve has led major industry participants through dozens of investigations involving such issues/allegations as anti-money laundering, structured products, Dodd-Frank whistleblowers, sales practice violations and “foreign finders” in high-risk jurisdictions.

Kevin Harnisch
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Kevin Harnisch is the firm’s Head of SEC Enforcement and he defends clients before the SEC, FINRA and other self-regulatory organizations, the Department of Justice, the CFTC, US attorney’s offices, and federal courts. He handles matters relating to securities enforcement defense, internal investigations, and anti-corruption issues, and represents corporations and their directors and officers, broker-dealers, hedge funds, private equity funds, and investment banks. Kevin previously served as a Branch Chief in the SEC’s Division of Enforcement where he led cases regarding financial fraud, market manipulation, insider trading, the Foreign Corrupt Practices Act, and municipal bond offerings.

Steven Howard
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Steve Howard has more than three decades of experience advising investment managers and investment funds in all aspects of their businesses. Steve has advised many of the world's largest commercial and investment banks on investment management projects. Steve has extensive knowledge of US and international regulation of money managers.

Financial services: Regulation tomorrow blog

Our blog, Financial services: Regulation tomorrow offers a convenient resource for those keeping track of the evolving and increasingly complex global financial services regulatory environment. It reports on financial services regulatory developments and provides insights and commentary across Africa, Asia, Australia, Canada, Europe and the United States.

We cover a broad range of financial services regulatory topics including banking and capital adequacy regulation, clearing and settlement, commodities and derivatives, anti-money laundering, insurance, regulation and compliance, retail and wholesale conduct and securities regulation.

We have a leading reputation in the global market for advising on complex financial services regulatory matters, drawing on the strength of our financial services lawyers throughout Europe, the United States, Canada, Latin America, Asia, Australia, Africa, the Middle East and Central Asia.

With blog postings from our international team we ensure that you are on top of the latest developments.

Visit regulationtomorrow.com today and stay connected.

Core team
Michael Keeley combines his knowledge of the banking industry and corporate and securities law, to represent financial institutions on a broad array of regulatory, enforcement, acquisition and securities law matters. Mike serves as the head of the firm’s Bank M&A Practice and co-head of the Securities Practice. Mike provides strategic counseling to a spectrum of clients ranging from small community banks and investor groups to multi-billion dollar public entities. Mike serves as regular outside counsel to several publicly-traded financial institutions and advises on regulatory compliance, corporate governance, securities offering and M&A transactions.

Bill Leone is a litigation partner and the co-head of the firm’s disputes and litigation practice. Bill is a former federal prosecutor and served in the United States Department of Justice from 2001 to 2006. He served as United States Attorney for the District of Colorado from 2004 to 2006. Bill has tried over 60 cases to verdict before judges, juries and arbitration panels. He also served on the Attorney General’s Advisory Committees for white collar crime and environmental enforcement and on the National Securities Fraud Task Force with representatives from the CFTC, IRS, SEC, FBI, United States Postal Service, EPA, FINRA and numerous other agencies.

Andrew Lom represents investment advisors, family offices and institutional investors in a wide range of transactional and regulatory matters, including private equity and hedge fund formations, side letter negotiations, equity and debt transactions, SEC registration and compliance, Shari’ah finance, cross-border structuring, governance and fiduciary issues and succession planning and other significant business decisions.

Justin Long is a partner in the firm’s Corporate, M&A and Securities and Financial Institutions practice areas. Justin’s practice primarily is focused on mergers and acquisitions, corporate reorganizations, divestitures, securities offerings and reporting requirements as well as state and federal regulatory matters involving financial institutions, specialty lending and financial technology. He has represented public and private financial institutions, investment banks, investment advisors, broker-dealers as well as investors and investment funds in financial related businesses. He also has served as regular outside corporate and securities counsel to NASDAQ-listed companies and advises on SEC disclosure and other requirements of the federal securities laws as well as represented financial institutions in connection with regulatory compliance and enforcement matters.

Joseph Williams focuses on FERC and CFTC investigations, enforcement and show cause proceedings, and complex energy litigation matters. Joseph has represented clients in both FERC enforcement matters and FERC regulatory proceedings on a broad variety of issues, including market-based rate filings, ISO/RTO rate proceedings, natural gas pipeline rate proceedings and general rulemakings. He also has assisted clients with several government investigations of market activity, including actions by the Department of Justice, FERC, CFTC, and state attorneys general. Joseph also assists clients with the regulatory due diligence for major transactions and investments, including the development and acquisition of electric generation facilities and natural gas pipelines.
Carey Child focuses on developing innovative products and risk-transfer solutions for insurance, reinsurance, and financial-market clients. He also has an active practice in connection with mergers and acquisitions, both within the insurance industry (including due diligence and regulatory analysis) and more generally (focusing on de-risking and risk transfer, representation and warranty insurance, tax treatment insurance, and other insurance solutions).

Kathleen Scott is a senior counsel in the New York office. She advises US and non-US banks and other financial institutions on a broad range of federal and state regulatory issues, including permissible activities, financial technology and the regulatory aspects of mergers and acquisitions, and the establishment of new banking organizations, nonbanking affiliates and other nonbank financial institutions. Kathleen also advises financial institutions on financial privacy and anti-money laundering matters.

Catherine Napolitano counsels clients with respect to trading and structuring products in compliance with CFTC-NFA derivatives rules, SEC-FINRA securities rules, and FRB-FSB-OCC bank rules. Her experience stems from over 25 years combined industry, exchange, and private practice legal work focusing on OTC derivatives, swaps, futures, physical commodities, energy, agricultural markets and merchandizing, prime brokerage, securities, registered funds, private equity and hedge fund formation. Her experience also includes business conduct, sales practices, product marketing, exchange rules, intellectual property, and implementation of compliance programs.

Genna Stephens has extensive experience representing financial institutions in regulatory inquiries, investigations, cycle exams, cause exams and enforcement actions before state regulators, FINRA, the SEC, and the DOJ. She also regularly assists financial institutions with internal reviews, and with development of policies, procedures and practices designed to comply with ever-changing industry requirements. Her experience covers a wide variety of matters, including selling-away, suitability, OBAs, market timing, compensation practices, failure to supervise, conflicts of interest, anti-money laundering, cybersecurity, and privacy laws. Genna also has served a secondment for a large financial institution during which she handled broker/dealer regulatory inquiries and investigations.

Anna Biegelsen represents clients in regulatory proceedings and enforcement matters before the CFTC and the FERC. Additionally, she works with clients to implement compliance and training programs regarding the Commodity Exchange Act, the Federal Power Act, the Natural Gas Act and CFTC and FERC regulations.
Norton Rose Fulbright

Norton Rose Fulbright is a global law firm. We provide the world’s preeminent corporations and financial institutions with a full business law service. We have more than 4000 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, Africa, the Middle East and Central Asia.

Recognized for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare. Through our global risk advisory group, we leverage our industry experience with our knowledge of legal, regulatory, compliance and governance issues to provide our clients with practical solutions to the legal and regulatory risks facing their businesses.

Wherever we are, we operate in accordance with our global business principles of quality, unity and integrity. We aim to provide the highest possible standard of legal service in each of our offices and to maintain that level of quality at every point of contact.

Norton Rose Fulbright Verein, a Swiss verein, helps coordinate the activities of Norton Rose Fulbright members but does not itself provide legal services to clients. Norton Rose Fulbright has offices in more than 50 cities worldwide, including London, Houston, New York, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg. For more information, see nortonrosefulbright.com/legal-notices.

The purpose of this communication is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.