

Spencer C. Barasch



Partner

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INDUSTRIES

Banking/Financial Services

Biotechnology, Life Sciences and Medical Devices

Construction

Energy

Finance

Government

Health Care

Hospitality and Hotels

Insurance

Internet/E-Commerce

Manufacturing and Sales

Natural Gas

Oil and Gas

Real Estate

Restaurant

Software/Electrical

Technology

Technology and

Emerging Companies

PRACTICES

Anti-Corruption and the Foreign Corrupt Practices Act (FCPA)

Commercial Litigation

Corporate

Corporate Compliance, Investigations and Defense

Governance

Litigation

Professional Liability

Securities Litigation

Subprime and

Distressed Assets

Spence is the leader of Andrews Kurth's corporate governance and securities enforcement team. He has extensive experience defending regulatory and government investigations and civil and criminal litigation initiated by the Securities and Exchange Commission, the Department of Justice, FINRA, stock exchanges and state attorney general and regulatory bodies. Spence's clients include domestic and foreign public companies, financial institutions, private equity funds, accounting firms, oil and gas ventures, law firms and individual attorneys, and small entrepreneurs.

He also regularly advises boards of directors, audit and special litigation committees and in-house counsel in connection with government investigations and shareholder litigation, and he has conducted numerous internal investigations on their behalf related to revenue recognition and disclosure issues, whistle-blower complaints, auditor concerns and issues under the Foreign Corrupt Practices Act. His experience under the FCPA includes global investigations, response to SEC and DOJ inquiries, due diligence in connection with corporate transactions, and day-to-day counseling for clients in the energy, oil and gas and high-tech industries.

Prior to joining Andrews Kurth as a partner, Spence spent 17 years with the SEC during which time he served in a variety of capacities, including director for the SEC's enforcement program in the Southwest during the enactment of Sarbanes-Oxley, and earlier as enforcement director in the SEC's Miami, Florida, Southeast regional office. While at the SEC, Spence directed high profile investigations and litigation in all areas of the securities industry, often working closely with the DOJ and state and self regulatory organizations.

REPRESENTATIVE EXPERIENCE

- Conducted two internal investigations for a Fortune 500 global retailer, and represented the company in two SEC investigations, both of which were terminated with no enforcement action
- Conducted an internal investigation for a Fortune 500 financial services company, and represented an investment firm subsidiary of that company in an SEC investigation which was terminated with no enforcement action
- Conducted internal investigations for several oil field services companies involving FCPA, financial reporting and corporate governance issues
- Represented several technology and energy companies in SEC and/or DOJ investigations

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- Represented a private equity firm and an executive of a major Wall Street investment bank in investigations by the New York Attorney General's Office and related SEC investigations
- Represented several private oil and gas issuers and their executives in SEC and/or Texas State Securities Board examinations and investigations
- Conducted stock option back-dating investigations and responded to SEC and NASDAQ stock option inquiries on behalf of multiple companies
- Represented corporate executives and in-house counsel in SEC and FINRA investigations related to alleged financial improprieties and insider trading issues
- Represented a number of brokerage firms, investment advisors and venture capital firms in SEC and FINRA investigations and examinations
- Represented law firms and individual attorneys in SEC inquiries and in connection with complex Sarbanes-Oxley and up-the-ladder reporting issues

PUBLICATIONS

- Recent Ruling Allows a Shareholder Lawsuit to Proceed After a Negative Say-on-Pay Vote: Quirk or Harbinger? (October 6, 2011)
- DC Circuit's Proxy Access Decision to Stand, but SEC to Allow "Private Ordering" of Proxy Access (September 20, 2011)
- Oil and Gas Companies Should Expect Increased SEC Scrutiny of Operations and Reserves (September 6, 2011)
- PCAOB Floats Possibility of Mandatory Audit Firm Rotation *Financial Fraud Report (January 2012)* (August 31, 2011)
- DC Circuit Panel Vacates Proxy Access Rule (July 28, 2011)
- Securities and Exchange Commission Adopts Final Whistleblower Rules under the Dodd-Frank Act; Internal Reporting Encouraged but Not Required (July 6, 2011)
- The New DOJ Working Group and What It Means to the Oil and Gas Industry (May 10, 2011)
- SEC Proposes Rules for Compensation Committees and Compensation Advisers (April 21, 2011)
- The Ninth Circuit Rules that Foreign Documents Brought into the Country are Subject to Federal Grand Jury Demands (January 4, 2011)
- An Andrews Kurth Client's FCPA Success Story (December 10, 2010)
- Recent SEC Enforcement of Regulation FD: Lessons to be Learned (December 9, 2010)
- SEC Proposes New Whistleblower Rules Under the Dodd-Frank Act of 2010 (December 2, 2010)
- Record FCPA Settlements Continue, Important Lessons To Be Learned (November 9, 2010)
- "Controversial Uses of the "Clawback" Remedy in the Current Financial Crisis" *Texas Bar Journal* (December 2009)
- "Protecting Internal Investigations from Disclosure Requires Planning" *Executive Legal Advisor* (January 2009)
- "Preserving Privilege When Undertaking Internal Investigations" *Texas Lawyer* (November 24, 2008)

EDUCATION

JD, 1984, University of Tulsa College of Law, *Tulsa Law Review*
AB, 1980, Duke University

ADMISSIONS

Texas 1994
District of Columbia 1984

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- "10b5-1 Plan Abuse" *LJN - The Corporate Counselor* (September 2007)
- "Stock Option Scandal" *Texas Lawyer* (December 25, 2006)
- "Decoding the Stock Option Backdating Scandal" *Corporate Counsel State Bar Section Newsletter* (June 1, 2006)
- "Corporate Governance Seen Through the Eyes of the Enforcers: An Unlikely Place to Find Meaningful Guidance" *Bloomberg Law Reports Corporate Governance* (January 1, 2006)
- "Being Prepared for an SEC Investigation" *Headnotes, official publication of the Dallas Bar Association* (August 1, 2005)
- "SEC in Transition: Key Enforcement Issues Affecting Public Companies" *Texas Lawyer* (July 18, 2005)

PROFESSIONAL RECOGNITION

- Profiled as one of "Texas' Top Rated Lawyers" by *ALM* in Securities (2012)

BRIEFINGS, SEMINARS & SPEECHES

Speaker

- "The Foreign Corrupt Practices Act (FCPA): What Every Company Needs to Know," Association of Corporate Counsel - South Central Texas Chapter (April 6, 2011)
- "The Foreign Corrupt Practices Act (FCPA): What Every Company Needs To Know," Andrews Kurth Client Seminar (February 24, 2011)
- "Current Issues Under the FCPA," University of North Texas College of Business Administration's Professional Development Institute (November 20, 2009)
- "Internal Investigations: What are the Best Practices and Common Mistakes?," Webinar Co-Panelist, ALI-ABA (November 9, 2009)
- "The Impact of the Global Recession on Securities Litigation and Enforcement," World Law Group, Washington, DC (May 1, 2009)
- "Identity Theft & Other Privacy Issues," ACA's Spring 2009 Compliance Conference, Las Vegas, Nevada (April 23, 2009)
- "An Overview of the Financial Crisis and Its Effect on Corporate America," The University of Tulsa College of Law, Tulsa, Oklahoma (March 23, 2009)
- "Boards Under Stress," (with David Washburn) Dallas Bar Association, Dallas, Texas (March 6, 2009)
- "Financial Crisis in a Globalized World: Strengthened Role for Regulators?" RBTT Merchant Bank Investors' Forum, Miami, Florida (December 11, 2008)
- "The Significance of the Internal Investigation in the Sarbanes-Oxley World," State Bar of Texas Annual Meeting, Houston, Texas (June 26, 2008)
- "SEC's Recent Interest in 10b5-1 Sales by Insiders," webinar (November 2007) *[Click on the title of the webinar to view the presentation in its entirety.]*
- "Crisis Management for Corporate Counsel," Association of Corporate Counsel, Dallas, TX (September 2007)
- "SOX: 5 Years Later," presented by Andrews Kurth and Tatum, LLC, Austin, Dallas and Houston, TX (September 2007)
- "Internal Investigations," The University of Texas, 29th Annual Corporate Counsel Institute, Houston, TX (April 2007)
- "Straight Talk on Backdating" webinar (November 2006) *[Click on the title to hear the presentation in its entirety.]*
- "International Trade Risk – Foreign Corrupt Practices Act," Texas General Counsel Forum, Houston, TX (April 2006)
- "Corporate Governance Issues in the Oil and Gas Setting," OCU Energy Law Association, Oklahoma City, OK (April 2006)
- "Street Smarts for Small-Cap Companies – Stock Promoters: Behind the Scenes," American Stock Exchange IR Alliance, Las Vegas, NV (April 2006)
- "What to Do When the Government Comes Knocking," Association of Corporate Counsel – America/Houston Chapter, Houston, TX (January 2006)

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- "Hedge Funds and SEC Regulations," Bloomberg Roundtable on Issues Affecting Hedge Funds, New York, NY (December 2005)
- "Developing Compliance Plans for Energy Companies," Fourth Annual Gas & Power Institute, Houston, TX (October 2005)
- "The New Securities Enforcement Environment," IX Hemispheric Congress for the Prevention of Money Laundering, Panama City, Republic of Panama (August 2005)

PRESS RELEASES

- Senior SEC Attorney to Join Andrews Kurth as Partner (March 9, 2005)
- Andrews Kurth Announces Arrival of New Partner as Leader of its Corporate Compliance, Investigations and Defense Practice (June 10, 2005)