

Corporate Compliance, Investigations and Defense

Straight Talk on Corporate Compliance, Investigations and Defense

Leading businesses set a “tone at the top” that reflects sound governance. At the same time, government regulators and law enforcement officials are raising the bar for corporate compliance, dramatically expanding their civil, criminal, administrative and legislative investigations. Andrews Kurth lawyers stay in touch with ethical best practices and counsel our clients on evolving standards in Corporate Compliance, Investigations and Defense (CCID).

CCID Practice Group

The CCID practice 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 also securities industry arbitrators. Heading the team are several former officials from the SEC and DOJ. This leadership provides the seasoned insight and skilled guidance clients need when faced with governance, compliance or enforcement issues.

CCID Experience

Andrews Kurth counsels clients on corporate compliance and also guides clients before the SEC, DOJ and other regulatory agencies. Our CCID representations include our Corporate Governance practice, as well as the following areas of experience:

- Corporate Compliance
- Public Disclosure
- Fiduciary Responsibility
- Whistleblower Claims
- Internal Investigations
- Anti-Corruption and Foreign Corrupt Practices Act (FCPA) Investigations
- SEC Enforcement
- Securities Litigation
- White-collar Defense
- Sarbanes-Oxley Act
- Securities Industry Self-Regulation Proceedings

In counseling and defending our business clients, we bring a seasoned presence to the boardroom. Drawing on extensive experience and resources, our lawyers handle corporate compliance matters in a practical, professional and confidential manner. Andrews Kurth develops policies, counsels on public disclosures, investigates facts, negotiates resolutions and provides a vigorous defense when necessary.

Dealing with the SEC, DOJ and self-regulatory organizations requires experience and judgment, especially in view of whistleblower claims, increased investigations, and the rising dollar value of securities settlements. The CCID group has extensive experience defending regulatory and government investigations, as well as civil and criminal proceedings initiated by the SEC, DOJ, FINRA, stock exchanges and state regulatory bodies.

As one of the nation's leading corporate and securities law firms, Andrews Kurth has extensive experience in helping clients manage regulatory and governance risk and, when necessary, in defending them against governmental investigations and enforcement actions. Our inside view of government enforcement delivers proven advantages for our public company clients.

Corporate Compliance, Investigations and Defense

Corporate Compliance

- Disclosure of financial restatements and deficiencies, weaknesses and changes in internal controls over financial reporting
- Structuring internal compliance and remedial programs to ensure consistency with SEC and DOJ
- 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 with activist investors
- Effective procedures that enable attorneys practicing before the SEC to report credible evidence of securities violations and breach of fiduciary duty “up the ladder”

Public Disclosure

- Public reporting of financial results and executive compensation in compliance with rules and interpretations of the SEC and stock exchanges, following standards for “fair presentation” of financial information and “principles-based” disclosure
- Communications with financial analysts and investors, 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

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 potential 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

Whistleblower Claims

- Investigation of allegations of illegal or improper conduct by employees or others
- Counsel regarding protections of whistleblowers under the civil or criminal provisions of Sarbanes-Oxley or other applicable laws that prohibit retaliation
- Advice to the company's audit committee in the treatment of complaints regarding accounting and auditing

Internal Investigations

- Internal investigations, either in advance of a government inquiry or in conjunction with it, in a broad range of issues from equity grants to revenue recognition to the Foreign Corrupt Practices Act, including counseling through the process of self-reporting
- Special litigation committee investigations in connection with shareholder derivative litigation
- Investigations into claims of financial fraud, negligence or breach of fiduciary duty
- Investigation of circumstances surrounding earnings restatements and revenue recognition
- Investigations into possible option back-dating and other issues involving executive compensation and related party transactions

Corporate Compliance, Investigations and Defense

- Representation of audit committees and other special committees of boards of directors in oversight of independent investigations

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

- Serving as independent counsel to audit committees to investigate potential corruption or FCPA violations
- Representation of companies and audit committees in self-reporting of potential FCPA issues to the SEC and DOJ and responding to FCPA inquiries from the SEC and DOJ
- Counseling and training companies on anti-corruption laws and developing compliance programs for companies
- Counseling companies on operations and arrangements with agents in countries with a heightened risk of corruption concerns
- Due diligence in advance of M&A transactions

SEC Enforcement

- Responses to, and defense in, 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 evidence of securities violations to lessen sanctions
- Development of effective corporate compliance programs that can prevent and remediate misconduct and lessen sanctions if misconduct is uncovered

Securities Litigation

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

White-collar Defense

- Representation and defense of individuals and companies in connection with grand jury and various other criminal, civil and administrative investigations conducted by both state and federal agencies
- Representation of charged individuals and companies at trial and on appeal
- Conducting internal investigations for companies, boards of directors, and audit committees
- Investigation of allegations or indications of possible FCPA violations

Sarbanes-Oxley Act

- Investigation of alleged violations of Sarbanes-Oxley, including conflicts of interest, prohibited loans to insiders, and other claims or indications of improper conduct
- Advice on how Sarbanes-Oxley and changing government policies affect the decision to maintain or waive legal privilege in SEC, DOJ and other government investigations
- Counsel on Sarbanes-Oxley rules that prohibit obstruction, document destruction and retaliation against whistleblowers
- Developing Sarbanes-Oxley compliance programs

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Securities Industry Self-Regulation Proceedings

- Representation of broker/dealers in litigation and arbitration over customer disputes, securities clearing controversies and employment matters
- Representation of hedge fund managers, investment advisory firms, securities brokerage firms and other financial professionals in FINRA inquiries and investigations
- Representation of broker/dealers and individual brokers in proceedings before FINRA and NYSE arbitration panels
- Representation of investment advisory firms and hedge funds in SEC and other regulatory inquiries and investigations