



## Corporate and Securities Litigation

DLA Piper is a leader in securities litigation defense. We represent public corporations, individual officers and directors of corporations, underwriters, accounting firms, and investment advisers in every area of securities litigation. Our practice is national, but we have a substantial presence in the busiest jurisdictions for privately litigated securities claims, including Silicon Valley and New York.

When securities litigation arises in the context of a broader corporate crisis, we work closely with our white collar and securities enforcement teams to assist clients in related civil and criminal investigations, enforcement proceedings, congressional inquiries and criminal trials.

### SECURITIES CLASS ACTIONS

In the litigation of securities fraud claims under the Securities Exchange Act of 1934 and claims for violations of the Securities Act of 1933 in connection with public offerings, we have an outstanding track record in obtaining dismissal at the pleadings stage before the costs and intrusions of discovery.

We have defended cases resulting in landmark decisions, including the first reported defense win under the Private Securities Litigation Reform Act of 1995, *Zeid v. Kimberley (Firefox)*, 930 F.Supp. 431 (N.D. Cal. 1996), and the first reported appellate decision affirming the dismissal of an accounting fraud case under that statute, *In re The Vantive Corporation Securities Litigation*, 283 F.3d 1079 (9th Cir. 2002).

In addition to defending claims of securities fraud, our securities litigators have had extensive experience and success in defending non-fraud based securities claims registration statements in public and private offerings, where scienter is not an element of the claim. In *Krim v. pcOrder.com, Inc.*, 402 F.3d 489 (5th Cir. 2005), we obtained a groundbreaking decision strictly limiting the potential claimants who can pursue a class claim under section 11 of the Securities Act of 1933 that has been followed in jurisdictions around the nation.

In cases that have not been dismissed, our trial lawyers have the experience and creativity necessary to resolve these matters to our clients' satisfaction, whether by obtaining summary judgment, by defeating a motion for class certification, or by trying the matter to verdict.

### STOCKHOLDER DERIVATIVE AND CORPORATE GOVERNANCE CLAIMS

#### KEY CONTACTS

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- Litigation, Arbitration and Investigations
- Financial Services Regulation, Enforcement and Litigation

We regularly defend stockholder derivative lawsuits and actions asserting claims of breach of fiduciary duty against corporations, limited liability companies, partnerships, and their directors, officers and managers.

Lawyers in our office in Wilmington, Delaware regularly defend these actions in the Delaware courts making us one of the few international firms that can provide such onestop representation in this important jurisdiction. Beyond Delaware, however, we have corporate governance litigators with deep knowledge of the corporate laws of other US jurisdictions under which large numbers of businesses are organized, including California, Maryland, Massachusetts and New York.

We advise boards of directors on the complex issues they must address when a derivative claim is asserted. We help directors understand whether a stockholder derivative claim is a corporate asset that should be pursued or a strike suit that represents a potential drain on corporate assets and management attention.

Our experience in stockholder derivative litigation also enables us to coordinate the defense of derivative claims asserted in conjunction with claims of alleged securities fraud.

## SECURITIES ENFORCEMENT

Securities litigation often is accompanied by investigations and enforcement proceedings brought by the SEC, the Department of Justice or self-regulatory organizations. We regularly assist our clients in formal and informal government investigations, enforcement proceedings, internal investigations and congressional and grand jury proceedings. We apply our experience and judgment to determine whether such actions call for a cooperative approach or a more aggressive strategy. When litigation is necessary and advisable, we have the experience to get results.

We staff multi-faceted matters with experienced lawyers, including securities class action professionals, former federal prosecutors and former enforcement staff from the SEC. Our experience enables us to guide clients through each phase of a matter as regulatory proceedings evolve into civil litigation. Our cohesive, integrated teams ensure that clients are defended on many fronts consistently and simultaneously.

## EXPERIENCE

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### SECURITIES CLASS ACTIONS

- Represented a leading aerospace and defense contractor in consolidated securities and derivative litigation in the Southern District of New York. We obtained dismissal of the stockholder derivative action and, after intensive litigation relating to allegations falsely attributing to a confidential witness, we negotiated a favorable settlement of the related securities class action
- Representing a wireless communications company in a securities action pending in the Southern District of California alleging accounting improprieties and inadequate internal controls
- Representing a mobile services company and related individuals in a securities class action in the Western District of Washington and in related state court stockholder derivative action. After we prevailed on a motion to dismiss the securities class action, the stockholder derivative action was voluntarily dismissed
- Represented multiple US-listed companies with operations in China and their officers and directors as well as underwriters in securities class actions involving allegations of violations of the Securities and Exchange Act of 1934 and the Securities Act of 1933
- Representing the underwriters in related class actions in the Southern District of New York and the Northern District of Alabama asserting securities violations in connection with three securities offerings by a large insurance company that is based in New York
- Representing a network equipment company in a securities class action pending in the Southern District of California alleging accounting improprieties and fraud in connection with a secondary offering
- Representing the underwriters in consolidated class actions in the Western District of Oklahoma concerning statements in securities offerings and other filings by an oil and gas exploration company and related royalty trusts
- Represented the former chief executive officer of a government sponsored enterprise in consolidated securities class actions in the Southern District of New York asserting claims for securities law violations after the enterprise was placed in government conservatorship
- Represented the underwriters in a class action asserting claims based on alleged misstatements and omissions in the registration

statement for an offering by a large regional bank holding company of trust preferred securities. The court dismissed the action with prejudice after plaintiffs' misrepresentation of information allegedly provided by a confidential witness was revealed

- Represented one of the world's largest financial institutions in multi-district litigation involving allegations of late trading and market timing in the mutual fund industry, in the District of Maryland Defense of investment advisors in a number of actions throughout the United States asserting claims for purported "death spiral" securities fraud, including a number of actions in which we obtained dismissal of plaintiffs' complaints
- Representing one of the nation's largest homebuilders and several individual officers in a consolidated action asserting claims for securities fraud in the Northern District of Texas

## SECURITIES ENFORCEMENT

- Representing the former CEO of a publicly traded utility company in a trial alleging criminal violations of the federal securities laws, resulting in a deadlocked jury
- Representing a former securities trader under allegations of securities fraud, TARP Fraud, and making false statements to the United States government
- Representing the former CFO and general counsel of a public company in an SEC investigation involving alleged accounting improprieties
- Representing the former general counsel of a public company in SEC action and grand jury investigation involving alleged accounting improprieties
- Representing a multinational issuer in SEC, congressional and Department of Justice inquiries, and in related securities class actions filed in the Southern District of New York, arising from a financial restatement
- Representing a former fund manager of a major mutual fund company in investigations and civil litigation relating to alleged market-timing trading in mutual fund shares
- Representing a broker-dealer in investigations by the New York Attorney General and the SEC concerning market timing and after-hours trading in shares of open-end mutual funds
- Representing a brokerage firm in a FINRA investigation of the Association's trade reporting rules
- Representing a former COO and CFO of a public company in investigations by the SEC and a grand jury into alleged violations of the Foreign Corrupt Practices Act
- Representing a corporate officer in an SEC investigation of possible Investment Company Act violations. Although the SEC took action against other officers, it took no action against our client
- Representing an issuer under SEC investigation regarding MD&A disclosures. After presentation to SEC staff, the matter was closed with no action
- Representing an issuer in a NASDAQ delisting inquiry, in which the delisting panel granted our client an exception to listing requirements which permitted it to execute transactions that brought it back into compliance

## INSIGHTS

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### Publications

#### Blockchain and Digital Assets News and Trends

23 May 2022

#### [BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS](#)

OECD releases public consultation document on crypto tax reporting in effort to increase transparency.

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**California court approves enforcement of federal forum selection provision for Securities Act claims: Practical implications of *Wong v. Restoration Robotics***

12 May 2022

Even if Delaware (or another state) allows its domestic corporations to adopt federal forum provisions, it will be up to courts in other states to enforce those provisions.

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### **Thrills, spills and poison pills – An Australian legal perspective on Musk’s latest battle**

26 April 2022

Enigmatic billionaire, Elon Musk, has a rocky history with US corporate law and regulators. Just the other day a US judge ruled his 2018 Tesla ‘take-private’ tweet was misleading. Now, in his latest headline grabbing corporate play, Musk has taken aim at his social media platform of choice, Twitter, and in doing so, has brought into focus fundamental questions about the proper role of a company’s board.

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### **SEC’s “shadow trading” theory defeats motion to dismiss insider trading complaint**

1 February 2022

A significant expansion of the potential scope of insider trading enforcement under federal securities laws.

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### ***MultiPlan* decision focuses scrutiny on SPAC merger disclosures**

14 January 2022

Organizers of SPACs and participants in de-SPAC transactions should bear in mind the court’s comments in their dealings and disclosures.

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### **Blockchain and Digital Assets News and Trends**

22 November 2021

#### **[BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS](#)**

Infrastructure bill, including crypto “broker” rules, becomes law.

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### **In *Goldman Sachs* decision, Supreme Court expands methods for challenging class certification in securities fraud cases**

23 June 2021

The decision is a significant holding for securities fraud defendants.

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### **Blockchain and Digital Assets News and Trends**

21 June 2021

#### **[BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS](#)**

Biden tax plan spotlights cryptocurrency transactions; FTC announces spike in cryptocurrency investment scams; El Salvador is first

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country to adopt bitcoin as legal tender.

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## Blockchain and Digital Assets News and Trends

20 May 2021

### BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS

SEC issues Staff Statement on investments in the bitcoin futures market, plus latest legal developments governing the use and acceptance of blockchain technology, smart contracts and digital assets.

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#### SEC issues Staff Statement on investments in the bitcoin futures market

20 May 2021

The Statement signals that the SEC will continue to proceed cautiously in approving any proposed bitcoin ETFs and that funds and advisers should expect increased scrutiny.

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#### SEC focus on SPACs: Key takeaways from recent SEC statements and enforcement activity

28 April 2021

The SEC's attention to SPACs is not surprising given the explosion in SPAC IPOs in 2020 and the first quarter of 2021.

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#### SEC Commissioner Peirce issues revised token safe harbor proposal

23 April 2021

The proposed rule provides two paths to an exit that would allow the company to keep operating without registration of the tokens.

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#### US Supreme Court clarifies scope of specific personal jurisdiction over corporations: *Ford Motor Co. v. Montana Eighth Judicial District*

12 April 2021

The decision resolves confusion in the lower courts.

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#### Understanding securities enforcement

7 April 2021

Addressing the basics that matter in the course of a securities investigation.

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#### SEC interim final amendments signal stricter regulation on Chinese and other emerging market companies

29 March 2021

Under the new requirements, certain companies must establish that they are not owned or controlled by a foreign government entity and must disclose any foreign government influence.

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### **SEC Division of Examinations announces 2021 exam priorities**

9 March 2021

The priorities provide insight into the Division's risk-based approach to examinations and the areas it believes present potential risks to investors and the US capital markets.

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### **Expectations for white collar enforcement under the Biden Administration**

18 February 2021

Six key areas where the Biden Administration may focus its enforcement efforts.

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### **Defensible deletion: The proof is in the planning**

5 February 2021

A framework for making defensible deletion an attainable goal.

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### **Disputes, Issue 2**

28 January 2021

#### **DISPUTES**

In this issue, we look at the split among the federal circuits over what it means to "exceed authorized access" in violation of the Computer Fraud and Abuse Act; the ways in which the federal courts apply the Supreme Court's recent limitations on equitable disgorgement; ways to mitigate liability risk in unauthorized financial transfers; considerations for employers as they develop policies regarding use of cannabis in their workforce; and the critical importance of escalation protocols in corporate whistleblower programs.

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### **Six months after *Liu*: The SEC and disgorgement**

28 January 2021

In the wake of *Liu*, several open questions are only now starting to work their way through the courts.

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### **SEC invites comment on newly revealed 2011 proposal to conduct undercover investigations of criminal violations of securities laws**

20 January 2021

Such an undercover program could be a game changer, increasing criminal prosecutions of securities fraud.

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### **SCOTUS suggests expansive reach of "Bridgegate" ruling in directing Second Circuit to reconsider insider trading convictions**

14 January 2021

Yet another example of the Supreme Court's continuing effort to trim the government's overly expansive theories of criminal liability in certain cases under the federal fraud statutes.

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## **Congress expands SEC enforcement authority, broadens disgorgement powers and doubles statute of limitations periods**

6 January 2021

Buried deep in the annual defense bill is an important group of securities law amendments that strengthen the SEC's enforcement powers.

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## **SEC 2021 and beyond: What to expect**

7 December 2020

Some likely areas of SEC focus, from both the regulatory and enforcement perspectives, in 2021 and beyond.

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## **Blockchain and Digital Assets News and Trends**

23 November 2020

### **[BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS](#)**

IMF issues report on regulatory framework for CBDs and GSCs, SEC invites feedback on application of custody rule to digital assets.

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## **SEC roundtable highlights exam observations on Regulation Best Interest and Form CRS compliance**

29 October 2020

Key guidance discussed during the roundtable.

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## **Blockchain and Digital Assets News and Trends**

21 October 2020

### **[BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS](#)**

SDNY finds Kin token is a security; unpacking the DOJ's cryptocurrency guidance – plus latest legal, regulatory and case law developments.

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## **SEC wins summary judgment that Kin token is a security**

21 October 2020

The decision underscores that many of the proposed arguments that digital tokens are not securities will be unsuccessful.

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## **Unpacking the DOJ's cryptocurrency guidance: Enforcement priorities and industry implications**

15 October 2020

A warning to offshore cryptocurrency exchanges and other money services businesses operating outside of the reach of US authorities.

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## California legislation and recent stockholder derivative suits push for more board diversity

7 October 2020

California's latest diversity law follows a new wave of shareholder derivative actions attacking the lack of racial diversity in corporate leadership.

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## SEC votes 3-2 to amend whistleblower rules

1 October 2020

The amended rules include an updated definition of "whistleblower" and a requirement that submissions must be provided in writing.

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## Blockchain and Digital Assets News and Trends

23 September 2020

### [BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS](#)

The court finds that a valid arbitration agreement exists in the ongoing WAX tokens dispute – plus latest legal, regulatory and case law developments.

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## Blockchain and Digital Assets News and Trends

21 August 2020

### [BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS](#)

California appellate court affirms judgment for Coinbase in lawsuit over Bitcoin Gold – plus latest legal, regulatory and case law developments.

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## Delaware Court of Chancery: "Internal affairs doctrine" bars stockholder from using California Corporations Code to inspect books and records of a Delaware corporation – four takeaways

17 August 2020

Demonstrating the power of the internal affairs doctrine.

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## US moves forward on enhanced securities regulations focusing on Chinese companies

17 August 2020

Latest developments in US efforts to address the financial risks posed by emerging market companies.

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## Rule 26(g) certification means more than guide and advise: Key takeaways

12 August 2020

Sanctions were imposed on an attorney for failing to properly oversee the client's discovery process.

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## SEC announces Event and Emerging Risks Examination Team

3 August 2020

The Event and Emerging Risks Examination Team will engage proactively with financial firms regarding current market events and emerging threats.

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## National banks may provide cryptocurrency custody services – exchanges will soon face competition

30 July 2020

The OCC issues Interpretive Letter #1170.

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## Blockchain and Digital Assets News and Trends

20 July 2020

### [BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS](#)

Court upholds New York AG's Martin Act authority to investigate virtual currency fraud – plus latest legal, regulatory and case law developments.

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## FINRA issues guidance on private placement retail communications

10 July 2020

RN 20-21 addresses third-party prepared materials, balanced presentations of risks and benefits and more.

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## Supreme Court approves SEC disgorgement with limits

9 July 2020

The decision appears to be a victory for the SEC 's ability to obtain disgorgement, but the Court recognized limitations on equitable disgorgement which may offer defendants some potential relief.

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## SEC issues risk alert on private fund abuses

8 July 2020

Activity by the Enforcement Division tends to follow OCIE's leadership on issues of concern.

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## Protecting the attorney-client privilege while under quarantine: Five tips for protecting attorney-client privilege when using online collaboration tools

22 June 2020

With the increase in remote working comes an increased opportunity for attorney-client privilege issues to surface.

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## SEC settles *Lucia* enforcement action

22 June 2020

Questions remain following Supreme Court decision concerning the Appointments Clause of the Constitution and who constitutes an

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“Officer of the United States” for the purposes of complying with that constitutional provision.

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## **Blockchain and Digital Assets News and Trends June 2020**

18 June 2020

### **BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS**

World Economic Forum announces Presidio Principles as a foundation of blockchain ecosystem design – plus latest legal, regulatory and case law developments.

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## **Supreme Court will tackle issue of who determines arbitrability when a dispute involves arbitration carveouts**

18 June 2020

This issue is currently dividing courts of appeals and state high courts.

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## **"Now you see it, now you don't": Ephemeral messaging may lead to sanctions**

8 June 2020

A recent decision highlights one key risk of ephemeral messaging.

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## **DOJ updates guidance on evaluation of corporate compliance programs: three takeaways**

4 June 2020

Three key takeaways to keep in mind when updating compliance policies for 2020.

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## **SEC report on tokens as securities: seven takeaways**

31 JUL 2017

Sneak peek: DAO Tokens are securities. Double-sneak peek: many tokens are securities.

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## **Second Circuit clarifies law of insider trading in reversing convictions of remote tippees**

11 DEC 2014

The decision is likely to have implications for the type of insider trading prosecutions that are brought in the future and how the litigants will prosecute and defend those cases

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## **Dodd-Frank affects private companies too: practice points to note**

3 DEC 2013

For private companies reviewing their governance structures in a post Dodd-Frank world, a capsule of the Act's relevant provisions

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## **CFTC approves final cross-border guidance of the swap provisions of the Dodd-Frank Act**

12 JUL 2013

The Final Guidance aims to set forth the CFTC's policy on the application of the swap provisions of the Commodities Exchange Act to cross-border activities

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### **European Commission and CFTC announce a path forward on cross-border regulation of OTC derivatives**

11 JUL 2013

A high-level joint understanding

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### **Growing whistleblower activity calls for close employer attention to retaliation issues**

7 MAY 2013

Careful consideration must precede adverse action against purported whistleblowers

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### **SEC's whistleblower report reveals surprising volume of tips from foreign countries**

30 Nov 2011

The US Securities and Exchange Commission has issued its Annual Report on the Dodd-Frank Whistleblower Program.

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### **SEC, CFTC approve new Dodd-Frank rule requiring many hedge fund advisers to report detailed information**

3 Nov 2011

The regulatory tide continues to roll a year after President Barack Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act. This past week, the SEC and CFTC jointly adopted a rule that will require many hedge fund advisers to complete a new form that discloses detailed information about their funds' holdings and investments to federal regulators.

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### **With even tougher SEC scrutiny imminent, can a mock examination help you prevail?**

7 Sep 2011

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### **Responding to the SEC's final whistleblower bounty rules**

2 Jun 2011

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### **Federal Reserve issues proposed rule on debit interchange fees and network restrictions**

17 Dec 2010

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### **Will proposed SEC whistleblower rules prevent the undermining of corporate compliance programs?**

9 Nov 2010

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## Dodd-Frank Act: regulators to take center stage in wake of sweeping financial services legislation

21 Jul 2010

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## Senator Dodd introduces revised financial services reform bill

18 Mar 2010

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## Events

### Previous

#### Emerging litigation risks involving SPACs

20 May 2021 | 10:00 - 11:00 PT

Webinar

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## NEWS

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### DLA Piper's Deborah Meshulam and Michael Fluhr co-edit ABA book on Cryptocurrency and Digital Asset Regulation

12 April 2022

DLA Piper is proud to announce that Deborah Meshulam and Michael Fluhr have co-edited the book *Cryptocurrency and Digital Asset Regulation: A Practical Guide for Multinational Counsel and Transactional Lawyers*.

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### DLA Piper lawyers and practices ranked in latest edition of *The Legal 500*

17 June 2021

DLA Piper announced today that the firm received 42 individual lawyer rankings and 49 firm rankings in *The Legal 500 United States* 2021 guide.

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## Rankings

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- Named a "standout" firm for securities and finance litigation (BTI Litigation Outlook Report 2013, 2014, 2015)
- Ranked #1 in Securities and White Collar by number of partners (*Law360* 2014)
- Ranked #2 in the US for commercial law and contracts litigation, based on a review of public filings from Fortune 250 companies (*Corporate Counsel*)

- Dispute Resolution Team of the Year (Legal Business Awards)
- #1 Litigation practice by number of lawyers (*The American Lawyer* 2013)
- #1 in overall M&A deal volume and mid-market deal volume globally during 2014 (*Mergermarket* and *Thomson Reuters*)
- Named in the prestigious FT 40 as one of the most innovative North American law firms (*Financial Times* 2014)
- Named Law Firm of the Year (*Legal Business* 2014)
- Leading firm for international arbitration (*Global Arbitration Review's* 2013 GAR 30 rankings of the world's most active arbitration practices)
- Ranked #1 for US antitrust litigation, based on the number of cases in US federal district court during the prior two years (*Martindale-Hubbell*)
- Listed as one of the top Product Liability Groups of the Year (*Law360* 2013)
- More litigators based outside the US than any other firm on the AmLaw 100 List
- Global Real Estate Firm of the Year (*The International Who's Who of Business Lawyers* 2005-2013)
- Franchise Law Firm of the Year (*The International Who's Who of Business Lawyers* 2005-2013)
- Named International Law Firm of the Americas, for the fifth consecutive year (*International Tax Review* 2014)