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# Broker-Dealer Regulation

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*To Abby,*

*You came from our dreams right into our hearts.*

*We are so lucky.*

*Love,*

*Daddy, Mommy, and Julia*

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## About the Editor

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**Clifford E. Kirsch** is a partner at Eversheds Sutherland in New York City. Previously, he was Vice President and Senior Corporate Counsel at the Prudential Insurance Company of America and prior to that, first vice president and associate general counsel at Paine Webber's asset management subsidiary. From 1985 to 1994, he was on the Staff of the U.S. Securities and Exchange Commission, Division of Investment Management, in Washington, D.C. At the SEC, he held several positions, including Assistant Director in the Office of Insurance Products, and was a recipient of the Manuel F. Cohen Younger Lawyer Award.

Mr. Kirsch serves as chair for two annual American Law Institute/American Bar Association Course Offerings—"Investment Management Regulation" and "Investment Adviser Regulation." His other publications include *The Financial Services Revolution: Understanding the Changing Roles of Banks, Mutual Funds and Insurance Companies* (Irwin 1996), *Regulation and Distribution of Variable Insurance Products* (Aspen 1999), *Financial Product Fundamentals* (PLI 1999), *Investment Adviser Regulation* (PLI 1998), *Mutual Funds and Exchange Traded Funds Regulation* (PLI 2002), and *Variable Annuities and Variable Life Insurance Regulation* (PLI 2005). He is also co-author of *Investment Management Regulation* (Carolina Academic Press), a law school casebook published in 1998. He appears regularly on industry and legal panels that discuss broker-dealer and adviser matters, and serves as chair of ALI-ABA's course on Investment Adviser Regulation and PLI's courses on Broker-Dealer and Investment Adviser Regulation.

Mr. Kirsch authored chapters 1, 30, and 42G, and co-authored chapters 7, 10, 32, and 34.

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Ms. Bayer received her J.D. from Georgetown University Law Center, where she was a member of the *Georgetown Journal of Law*

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matters. Having served at the U.S. Securities and Exchange Commission (SEC) as well as in private practice, Mr. Burns has significant experience in both the trading and markets and investment management areas. Before joining Willkie in 2014, Mr. Burns served as Deputy Director of the SEC's Division of Trading and Markets, where he oversaw core regulatory functions, including market supervision and operations, analytics and research, derivatives policy and trading practices, and the chief counsel and enforcement liaison offices. In addition to focusing on market supervisory issues, he participated in the Division's implementation of key provisions of the Dodd-Frank and JOBS Acts, coordinated international regulatory efforts for the Division, and liaised closely with other operating divisions of the agency. He led teams that won the Chairman's Award for Excellence for drafting the Consolidated Audit Trail release, and the Law and Policy Award for implementing the Volcker Rule. Prior to joining the Division of Trading and Markets, Mr. Burns was a member of Chairman Mary Schapiro's staff, including serving as the agency's Deputy Chief of Staff, in which capacity he advised Chairman Schapiro on the development and execution of the agency's broader rulemaking and policy agenda as well as other key agency initiatives. He also served as counsel to Chairman Schapiro on issues involving the Division of Trading and Markets and Investment Management, including the agency's analysis and response to the Flash Crash on May 6, 2010, and numerous other market structure and Dodd-Frank-related rulemakings, studies, and programs. Mr. Burns served as counsel to SEC Commissioner Kathleen Casey before joining Chairman Schapiro's staff, and previously worked for five years in private practice on investment management and broker-dealer regulatory, compliance, and enforcement matters. Mr. Burns earned his J.D., *cum laude*, from the Georgetown University Law Center, a doctoral degree in 1997 and a master's degree in 1994 from the University of Oxford, and AB, *magna cum laude*, from Harvard College in 1991.

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Mr. Christian is Secretary of the Investment Funds Committee of the International Bar Association. He has spent considerable time working in Dechert LLP's London office and is a frequent conference speaker.

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was an attorney in the SEC's Division of Trading and Markets, where he held the positions of Branch Chief, Special Counsel and Staff Attorney in the Office of Financial Responsibility. He had responsibility for a variety of matters relating to broker-dealer net capital requirements, customer protection, broker-dealer books and records requirements, margin, and broker-dealer liquidations. Mr. Comstock earned his B.A. from the University of Pittsburgh, his M.B.A. from the University of Pittsburgh, Joseph M. Katz School of Business, his J.D. from the University of Pittsburgh School of Law, and his LL.M. from Universität Augsburg, Germany.

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**Elliott R. Curzon** (Chapters 22 and 45) is a partner with Dechert LLP. He concentrates his practice in broker-dealer regulation. Prior to his arrival at Dechert in 1999, Mr. Curzon spent twelve years at the National Association of Securities Dealers, where he served as assistant general counsel in the Regulatory Practice Group of the Office of General Counsel. He provided policy and legal advice to the boards, committees, and departments of the NASD in general securities law and broker-dealer regulation, including SEC, NASD, and exchange rules. He also developed rules and legal positions and provided interpretive advice in most areas of NASD broker-dealer regulatory activities, and he represented the NASD on securities industry committees, developing industry responses to regulatory issues, including clearing firm responsibilities, day trading, microcap fraud, clearance and settlement of transactions, and margin and other financial responsibility issues. He has spoken extensively on broker-dealer regulation issues, and is a graduate of San Diego State University (B.A., 1978) and the University of the Pacific McGeorge School of Law (J.D., 1983).

**Harry S. Davis** (Chapter 24) is a partner at Schulte Roth & Zabel LLP. Mr. Davis specializes in complex civil litigation, including securities law, regulatory and corporate disputes, antitrust and trade practices, intellectual property, auditor's and accountant's liability, bankruptcy and other commercial disputes.

**Joshua D. Dick** (Chapter 31A) is an associate in the Palo Alto office of Gibson, Dunn & Crutcher LLP. Mr. Dick is a member of the firm's Litigation Department and practices in its Securities Litigation Group. Mr. Dick has significant experience litigating a broad range of matters in both state and federal courts. He has successfully represented clients throughout the United States and abroad involving claims brought under the Securities Exchange Act, the California Unfair Competition Law, the Sherman and Clayton Acts, and the Foreign Corrupt Practices Act. Mr. Dick also has extensive experience in the prosecution and defense of commercial contracts and business tort claims. Mr. Dick was recently a member of a trial team that obtained a complete defense verdict following a bench trial in a nation-wide class action. His other recent matters include: defending an unsolicited tender offer and related proxy contest launched by an international technology company; defending a major credit card company in a civil antitrust action; and defending a large, multi-national corporation in a FCPA investigation, including conducting an internal investigation in cooperation with the Department of Justice.

Mr. Dick graduated, *cum laude*, from the University of Michigan Law School, where he served as an associate and articles editor for the *Journal of Law Reform*. Mr. Dick is a member of the California and New York state bars. He is also admitted to practice before the U.S. District Court for the Southern District of New York.

**Jack P. Drogin** (Chapter 46) is a partner at Schiff Hardin LLP. Mr. Drogin's practice focuses on SEC and self-regulatory organization rules and requirements relating to the federal securities laws, broker-dealers, markets, and clearing agencies. He also advises investment advisers on the requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act. Mr. Drogin regularly advises clients on broker-dealer status issues, as well as on clearing arrangements and related matters, such as prime brokerage arrangements, credit and financing arrangements, and confirmation and account statement issues. He also advises broker-dealers on commission recapture and soft-dollar arrangements, as well as on the distribution of foreign research in the United States and the execution of securities

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transactions by foreign broker-dealers for U.S. persons. Mr. Drogin advises banks on securities activities permitted by the Gramm-Leach-Bliley Act of 1999, as well as related credit and financing activities. He also advises exchange-traded fund (ETF) sponsors on the listing and trading of ETFs and similar products on U.S. markets. Prior to entering private practice, Mr. Drogin gained ten years of regulatory experience with the U.S. Securities and Exchange Commission. He served as Assistant Director in the Office of Market Supervision, Division of Market Regulation. In this position, he oversaw the National Association of Securities Dealers (now the Financial Industry Regulatory Authority) and national securities exchanges. Mr. Drogin received his B.A. from the University of Pennsylvania and his J.D. from Harvard Law School.

**William D. Edick** (Chapter 21) is a partner at Pickard Djinis and Pisarri LLP. He specializes in regulatory and enforcement matters involving broker-dealers, investment advisers, investment companies, hedge funds and issuers. Prior to joining the firm, he was an analyst with the Market Surveillance Department of the NASD, where he specialized in insider trading investigations.

**Frances Faircloth** (Chapter 31C) is an associate in Sidley Austin LLP's Complex Commercial Litigation and Privacy, Data Security and Information Law groups. Ms. Faircloth has represented clients in all phases of civil and criminal litigation, including enforcement actions, internal investigations, and trial and appellate court proceedings, and advises clients on matters of privacy and data security. Ms. Faircloth earned her law degree from Yale Law School, where she was managing editor of *The Yale Law Journal*. She received her B.A. and B.S., *summa cum laude*, from the University of Arkansas. Prior to joining Sidley, Ms. Faircloth clerked for the Honorable Scott M. Matheson, Jr., on the United States Court of Appeals for the Tenth Circuit.

**Robert A. Fippinger** (Chapters 39 and 40) was appointed Chief Legal Officer to the Municipal Securities Rulemaking Board (MSRB) in March 2015. Previously, he had been a partner and senior counsel in the New York office of Orrick, Herrington & Sutcliffe and had specialized in the law of public finance since 1970. After receiving his undergraduate degree from Duke University and his law degree from the University of Michigan Law School, Mr. Fippinger received a Ph.D. in 1969 at Northwestern University in its law and politics program.

Mr. Fippinger was an adjunct professor at New York University law school where he taught the securities law of public finance, and he has taught the securities law of public finance at Hofstra Law School. He was a visiting lecturer in law at Yale University law school where he taught the law of public finance for a four-year period.

In 2007, the National Association of Bond Lawyers awarded Mr. Fippinger its annual Friel Medal for distinguished service in public finance. In 2010, he was appointed to serve as a member of the MSRB, and was reappointed to a three-year term in 2014. He served on the Board until his appointment as Chief Legal Officer in 2015. Any information in this book related to rulemaking activity of the MSRB since October 1, 2010, is carefully restricted to information provided by the MSRB in its public notices and interpretations that are available on the MSRB website at [www.msrb.org](http://www.msrb.org).

**Logan S. Fisher** (Chapter 43) is an associate with Bressler, Amery & Ross. Mr. Fisher practices in the firm's Securities Litigation and Regulatory Practice Group. His practice is primarily devoted to representing broker-dealers and registered representatives in securities litigation and securities arbitration, including customer-initiated complaints with self-regulatory organizations such as the Financial Industry Regulatory Authority (FINRA). He has assisted in litigating several complex matters related to auction rate securities. He also represents individuals and business organizations in matters before state and federal courts in New Jersey and New York.

A *magna cum laude* graduate of Duquesne University School of Law, Mr. Fisher served as Executive Editor of the *Duquesne Law Review*. While in law school, Mr. Fisher co-authored an article on Election Law that was published in the *Harvard Journal on Legislation*. He also began coursework toward his master's in Business Administration to be completed in the near future. He received his undergraduate degree in Business Administration from Temple University's Fox School of Business & Management.

**David F. Freeman, Jr.** (Chapters 4, 6 and 9) is a partner in the Financial Services Group of Arnold & Porter, LLP, based in Washington, D.C. His practice includes representing broker-dealers, investment managers, trust companies, banks and other financial institutions on regulatory, product, transactional, legislative and litigation matters. Mr. Freeman has authored a variety of books and articles on securities and bank regulatory issues. He received his J.D. and MBA from the University of Virginia, and is a member of the District of Columbia and Virginia Bars.

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**Kay A. Gordon** (Chapter 18A) is a partner in the New York office of K&L Gates and concentrates her work in the Investment Management practice, with a particular emphasis on hedge funds, private equity funds and compliance-related matters involving registered advisers and broker-dealers. She also advises clients on a broad range of securities and regulatory matters, as well as a variety of financial instruments and transactions, including managed accounts, credit facilities, joint ventures and derivative instruments. She also represents clients in investigations by the SEC and other regulators. Ms. Gordon was recently recognized by *Legal 500 US* in its 2009 Edition as a Leading Lawyer in Investment Fund Formation and Management.

**K. Susan Grafton** (Chapter 44) is a partner in K&L Gates LLP's Washington, D.C. and New York offices, and focuses her practice on advising broker-dealers and investment advisers on their business, regulatory, and compliance issues. Since 2010, *Chambers USA* has selected her as a leading lawyer for Financial Services Regulation: Broker-Dealer (Compliance).

Ms. Grafton represents clients in all aspects of broker-dealer and investment adviser registration with the Securities and Exchange Commission (SEC), Financial Industry Regulatory Authority, and states, and counsels them on related structural, supervisory, financial, and operational issues. In addition, she advises clients on a wide variety of sales, trading, and operational compliance issues including research and other written communications; soft dollars and commission sharing arrangements; political contributions, outsourcing and expense sharing arrangements, Regulations M, ATS, NMS, and SHO; sponsored access and other electronic trading issues; large trader and position reporting, books and records requirements; and OATS and trade reporting. Ms. Grafton advises and advocates the views of broker-dealers, alternative trading systems, securities and options exchanges, and investment managers on market structure issues and the potential impact of legislative and regulatory developments. Most recently, she has been active in advising individual clients as well as industry groups on a variety of issues raised by the Dodd-Frank Act, including the uniform standard of care for broker-dealers and investment advisers, investment adviser regulation, municipal advisor and private fund adviser registration, swap execution facilities, and whistleblower protection. Ms. Grafton works closely with clients to develop and conduct in-house training on a variety of topics including financial services regulatory reform, insider trading and conflicts of interest,



avoidance of “group” designations, short selling, Regulation M, electronic communications, marketing materials, and preparing for regulatory examinations. She also assists clients in developing firm-wide and business level supervisory and compliance policies and procedures.

As part of the Securities Enforcement Practice, Ms. Grafton represents broker-dealers and investment advisers before the SEC, self-regulatory organizations, and the states in enforcement matters and examinations involving a variety of issues. Ms. Grafton counsels the firm’s corporate clients on capital markets issues, including strategic investments in securities exchanges and broker-dealers, corporate buy-backs, Regulations M and SHO, Section 13(f), and other transactional issues. She also advises credit rating agencies on legislative and regulatory developments affecting their activities.

**Cheryl L. Haas** (Chapter 8) is a partner in McGuireWoods LLP. She focuses her practice in the areas of securities litigation and enforcement, representing investment companies, investment advisors, broker-dealers and individuals in a wide range of securities matters with emphasis on regulatory enforcement and litigation involving the U.S. Securities and Exchange Commission, NASD, the New York Stock Exchange, state regulatory agencies and numerous federal and state courts and arbitrations. She regularly advises clients on compliance and defense matters, and investigations related to violations of federal and state securities laws and regulations and NASD Rules.

**Michaelene Hanley** (Chapter 31C) is an associate in Sidley Austin LLP’s Privacy, Data Security and Information Law group. Ms. Hanley has experience litigating and counseling on a broad range of matters including domestic and international laws and regulatory guidance regarding data disclosure, consumer and child protection, advertising, surveillance, cross-border data flows, data breach incident response, and other related topics. She earned her law degree from Indiana University Maurer School of Law. While in law school, Ms. Hanley served as research assistant to Professor Fred Cate, Director of Center for Applied Cybersecurity Research and acted as the executive business editor for the *Indiana Journal of Global Legal Studies*.

**Issa J. Hanna** (Chapter 32) is an associate with Eversheds Sutherland in New York City. Mr. Hanna counsels investment advisers, broker-dealers, and investment funds on compliance with federal and state securities laws and regulations, and self-regulatory organization rules.

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He also advises life and annuity insurers on securities issues associated with the management and distribution of variable products and on other regulatory issues under state insurance laws.

Before joining the firm as an associate, Mr. Hanna participated in Eversheds Sutherland's Summer Associate Program in 2008, where he assisted primarily with matters relating to investment advisers, broker-dealers, and investment funds. During law school, he also served as a law clerk in the Civil Division of the Office of the U.S. Attorney for the Middle District of Florida, and as an extern in the County Attorney's office in Alachua County, Florida. Mr. Hanna received a B.A. from Duke University, and J.D., *cum laude*, from the University of Florida Levin College of Law, where he served as a Board Member of the *Florida Law Review*.

**Dr. Andrew J.H. Henderson** (Chapter 42C) is a partner in Eversheds Sutherland LLP's financial institutions group. Dr. Henderson specializes in financial services regulation with over fifteen years of experience as a financial services lawyer. He co-leads Eversheds Sutherland LLP's non-contentious financial services regulation practice and works closely with the firm's Financial Services Consulting business. In addition to the legal directories referred to below, he is recommended in the *IFLR 1000*.

Dr. Henderson advises international asset managers, investment advisers, depositaries and custodians, investment banks, broker-dealers, and banks on all aspects of EU and UK financial services regulation. This includes advisory, project, and transactional work in connection with the Markets in Financial Instruments Directive, the Capital Requirements Directive and Regulation, the Alternative Investment Fund Managers Directive, the UCITS Directive, the Market Abuse Directive and Regulation, governance and the Senior Managers Regime, the Retail Distribution Review, and issues relating to the protection of client assets and client money, particularly those arising from FCA Policy Statement 14/9.

Dr. Henderson also works closely with colleagues in the financial services disputes and investigations group, having started his career as a contentious financial services lawyer. This includes, most recently, support in LIBOR related investigations, conduct risk reviews, a significant enforcement action relating to breaches of the FCA Client Asset Rules, and a skilled persons review of an asset manager's client money arrangements.

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He has been twice seconded to the UK Financial Services Authority, the Secretariat to the Bank of England Financial Markets Law Committee, and to the compliance department of an international investment bank. He has contributed to various academic and practitioner texts since 2000, including most recently *Gore-Browne on EU Company Law* (Jordans: 2015) and *Financial Services Law* (3rd ed.) (OUP: 2014). Dr. Henderson was a college law lecturer at the University of Cambridge where he obtained a Ph.D. in public law.

**John R. Hewitt** (Chapters 12 and 33) is a partner in Pastore & Dailey LLC's Stamford, Connecticut office. Mr. Hewitt is a securities lawyer and focuses his practice on securities litigation and regulatory advice and counsel to broker-dealers, investment banks, and investment advisers. His work involves virtually every aspect of the federal and state securities laws, including equity, fixed income and derivatives trading, net capital, short-selling, suitability, record retention, insider trading, cybersecurity and registration issues. Cybersecurity is a major part of Mr. Hewitt's practice, and he is a recognized national authority in this field. Among other things, he advises firms on their development of information security programs, guides them through cyberincidents and represents them in any resultant regulatory inquiry. Mr. Hewitt regularly conducts cybersecurity audits for broker-dealers and investment advisers, and was the SEC-appointed independent outside consultant in the first major SEC cybersecurity enforcement action, *In the Matter of LPL Financial Corp.*, Respondent Admin. Proc. File No. 3-13181 (2008). Mr. Hewitt has been a partner and counsel at several of the country's finest law firms, including Mayer, Brown, McCarter & English, and Kelley Drye, where he advised and defended many of the country's largest financial institutions.

Mr. Hewitt has written extensively on the regulation of electronic technology in the securities markets, including a series of articles for the *New York Law Journal*, and has chaired and spoken at numerous seminars on it. Mr. Hewitt is the author of *Cybersecurity in the Federal Securities Markets*, a BloombergBNA treatise, and is the editor and author of *Securities Practice & Electronic Technology*, an ALM publication. Mr. Hewitt is currently the Co-Chair of the American Bar Association, Business Section Subcommittee on Cybersecurity. He is a recipient of the *Compliance Reporter* "Compliance Person of the Year" award for his work in electronic technology regulation, was a participant in the Securities and Exchange Commission's roundtable discussions on Internet issues and is listed on the *International Who's Who of e-Commerce Lawyers*.

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**Jeffrey O. Himstreet** (Chapter 37) is affiliated with Prudential Investment Management, Inc. Prior to Prudential, he was Regulatory Counsel of CIT Group, Inc. and of counsel with Bingham McCutchen LLP. Mr. Himstreet's practice concentrates on regulatory counseling concerning securities market and regulatory issues for investment advisers, dual registrants, broker-dealers, mutual funds and others in the financial services industry. He has provided securities enforcement defense before the SEC, FINRA, and other SRO and state regulators for members of the financial services industry. He also conducts internal investigations and defends securities litigation.

Before rejoining Bingham in 2011, Mr. Himstreet held two in-house positions, first serving as the chief investment advisory support for a dual registrant with \$92 billion in managed assets and second as the chief legal officer for a bank-affiliated wealth management division, overseeing all legal and compliance functions for an affiliated investment company, investment adviser, private bank, broker-dealer and trust company (offering both personal and institutional trust services). Prior to joining Bingham in 2000, Mr. Himstreet was a lawyer with the SEC's Division of Investment Management in the Office of Investment Adviser Regulation. Mr. Himstreet has an LLM in securities regulation, *with honors*, from Georgetown University Law Center.

**Ronald A. Holinsky** (Chapter 11) is Vice President, Chief Compliance Officer, and Assistant General Counsel of Lincoln Financial Group. Mr. Holinsky has been practicing securities law since 1997. Mr. Holinsky recently served as Director & Associate General Counsel for Legg Mason in Baltimore and as Deputy General Counsel for Legg Mason Investor Services, LLC. He served as a Senior Associate for K&L Gates LLP within the firm's Investment Management, Broker-Dealer and Private Funds/Hedge Funds practice groups. He also has served as Senior Counsel in the U.S. Securities and Exchange Commission's (SEC) Division of Investment Management and Attorney-Adviser in the SEC's Office of Compliance Inspections and Examinations. Mr. Holinsky received his law degree from the University of Baltimore School of Law, *cum laude*, in 1996 and his undergraduate degree in business administration from West Virginia University in 1992.

**Ki P. Hong** (Chapter 40A) is a partner in the Political Law Group at Skadden, Arps, Slate, Meagher & Flom LLP. Mr. Hong advises major corporations on the unique political law issues they face when engaging in government affairs or government procurement activity. These

include federal and state campaign finance, lobbying, gift, ethics, and conflict-of-interest laws. He also advises clients on pay-to-play laws that impose special restrictions on the political activity of companies that have or seek government contracts, as well as their covered employees. Mr. Hong advises clients on establishing and maintaining comprehensive systems to ensure compliance with those laws. In addition, he represents clients at the enforcement stage. Mr. Hong represents the “Big Four” accounting firms and leaders in a wide range of different industries, such as technology, energy, media, insurance, and communications. He also represents nine of the top ten U.S. banks and nearly all of Wall Street.

Mr. Hong co-authored the *Ethics Handbook for Entertaining and Lobbying Public Officials* and several chapters of the Practising Law Institute’s publication “Corporate Political Activities.” He also co-authors PLI’s *Corporate Political Activities Deskbook*. Mr. Hong consistently has been selected for inclusion in *Chambers USA: America’s Leading Lawyers for Business*, and *Washingtonian Magazine* repeatedly has recognized him as a top lawyer in the field of ethics and election law. Mr. Hong received his B.A., *cum laude*, from Cornell University, and J.D., *cum laude*, from Harvard Law School.

**Peter M. Hong** (Chapter 48) is a partner at Stradley Ronon Stevens & Young, LLP. Mr. Hong advises clients in matters pertaining to the registration and regulation of registered and private investment companies, investment advisers, broker-dealers, commodity trading advisors and commodity pool operators under federal and state laws. His practice includes providing advice regarding compliance with regulations of federal and state securities and commodities regulatory authorities and self-regulatory organizations such as the Financial Industry Regulatory Authority and the National Futures Association. In addition, Mr. Hong also advises clients in the formation of domestic and offshore hedge funds, including preparation of private placement memoranda, operating agreements and subscription documents; preparation and negotiation of related service provider contracts; and compliance with state blue sky filing requirements.

Prior to joining the firm, Mr. Hong served as special and senior counsel at the U.S. Securities and Exchange Commission. During his tenure as special counsel in the Division of Investment Management, he actively participated in and influenced positions taken with respect to legislation or rulemaking regarding investment company disclosure regulation. He also served as senior counsel in the

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Office of Chief Counsel for the SEC's Division of Enforcement. In addition, Mr. Hong investigated and prosecuted violations of the Commodity Exchange Act and its related rules as a trial attorney for the U.S. Commodity Futures Trading Commission, Division of Enforcement in Washington, D.C.

Mr. Hong received his B.A. from Dickinson College, and his J.D. from American University Washington College of Law.

**Joshua Horn** (Chapter 42H) is a partner and co-chair of the Securities Industry Practice at the national law firm of Fox Rothschild LLP. He represents major financial services companies throughout the country and guides financial advisory companies, broker-dealers, individual advisors, representatives, and counselors through FINRA examinations, enforcement, and arbitrations. Mr. Horn has also represented individual brokers on disciplinary matters before FINRA and state securities commissions, as well as companies and individuals in SEC investigations. His clients include the premier merchant card processing company, for whom he handles various matters, including class actions, throughout the United States. Mr. Horn also represents clients in connection with trademarks and trade secrets, professional ethics, data security, the Fair Debt Collection Practices Act and the Fair Credit Reporting Act. Mr. Horn is a frequent blogger on Fox Rothschild's Securities Compliance Sentinel blog (<http://securitiescompliancesentinel.foxrothschild.com>), and has authored a number of guidebooks and other reference materials for financial advisors. He received his J.D. from Widener Law School and his B.A. from Skidmore College.

**Thomas M. Johnson, Jr.** (Chapter 31A) is an associate in Gibson, Dunn & Crutcher LLP's Washington, D.C. office. He practices in the firm's Litigation Department and is a member of the Labor and Employment and Appellate and Constitutional Law Practice Groups.

Mr. Johnson received his law J.D., *magna cum laude*, from Harvard Law School, where he was Deputy Editor-in-Chief of the *Harvard Journal for Law and Public Policy* and won the Irving Oberman Memorial Award for his third-year paper on separation of powers. Before joining the firm, he clerked for one year for the Honorable Jerry E. Smith on the Fifth Circuit Court of Appeals in Houston, Texas. Mr. Johnson received a B.A. in Government, *magna cum laude*, from Georgetown University in 2002. Mr. Johnson is admitted to practice in New York and the District of Columbia.

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**Katherine L. Kelly** (Chapter 32A) is an associate in the Washington, D.C. office of Eversheds Sutherland. Ms. Kelly is a securities litigator who principally represents broker-dealers, investment advisers and individuals in examinations, investigations, and enforcement actions involving the Securities and Exchange Commission (SEC), Financial Industry Regulatory Authority (FINRA), and other regulators. In addition, Ms. Kelly represents clients in securities-related arbitrations and litigation, and counsels clients on regulatory and compliance matters.

Before joining Eversheds Sutherland, Ms. Kelly was a fellow with the American Civil Liberties Union of Maryland, where she gained experience in civil rights issues related to housing, free speech and education. Ms. Kelly also participated in the firm's 2008 Summer Associate Program. She has been named to the 2012 *Capital Pro Bono Honor Roll*. Ms. Kelly received her B.A. from St. John's College, and her J.D. from Vanderbilt University Law School.

**Katie Klaben** (Chapter 37C) is an associate in the Securities and Futures Regulatory Group in the Washington, D.C. office of Sidley Austin LLP. Ms. Klaben graduated *summa cum laude* from the American University Washington College of Law, where she served as a fellow for both the Legal Rhetoric Program and the Marshall-Brennan Constitutional Literacy Project. She earned her B.S. in Business Administration, with a focus on finance and international business, from the Georgetown University McDonough School of Business. Prior to joining the firm, Ms. Klaben worked in the Office of Compliance Inspections and Examinations in the U.S. Securities and Exchange Commission. She also spent three years at SNL Financial, where she managed the Specialized Financial Services division.

**Susan Krawczyk** (Chapters 13 and 14) is a partner in the Washington, D.C. office of Eversheds Sutherland. She focuses on regulatory and compliance issues for broker-dealers, investment advisers, insurers and other financial service providers in the retail, institutional and retirement markets. She works with firms in developing marketing materials, establishing marketing and compensation arrangements, and implementing appropriate compliance systems and procedures. She has been closely involved with numerous organizations in the establishment of broker-dealer firms and advisers and has developed and conducted training programs for all "levels" in broker-dealer firms, from sales reps to field supervisors, to home office personnel and boards of directors of broker-dealer firms. She represents clients before

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the Securities and Exchange Commission and the National Association of Securities Dealers, Inc., is a member of the NASD Variable Insurance Products Committee, and participates on other industry committees focusing on sales and marketing practices. She is a member of the District of Columbia Bar and the Virginia State Bar, and received a J.D. degree in 1984 from the George Washington University National Law Center.

**Sean E. Kreiger** (Chapter 35) is Director, Compliance of Babson Capital Management LLC. Mr. Kreiger recently served as CCO of QVT Financial LP. He served as Vice President, Assistant General Counsel, Global Head of Policies and Procedures for AIG Investments. He worked as an associate in Kirkpatrick & Lockhart LLP's New York office. Mr. Kreiger was also an attorney for the U.S. Securities and Exchange Commission, Division of Enforcement where he investigated, developed and litigated cases involving violations of the federal securities laws. He is a graduate of the Georgetown University Law Center (LL.M., 2000, Securities and Financial Regulation), University of Baltimore School of Law (J.D., 1999), and University of Maryland at College Park (B.A., 1996).

**Neil S. Lang** (Chapter 36) is a partner with Eversheds Sutherland. Mr. Lang represents public companies, their officers and directors, brokers, investment advisers and individuals in government and regulatory investigations, enforcement and litigation involving, among others, the Securities and Exchange Commission (SEC), the Department of Justice (DOJ), state regulatory agencies, the Financial Industry Regulatory Authority (FINRA) and private litigants. He advises public companies, broker-dealers, investment advisers and financial institutions on federal and state regulatory matters, disclosure issues and compliance matters.

A member of Eversheds Sutherland's Litigation practice group, Mr. Lang helped build the firm's Securities Enforcement and Litigation and White Collar Defense Practice teams. He has more than twenty-five years of experience in securities enforcement, compliance, corporate governance disclosure issues, internal investigations and litigation.

A former chief trial attorney for the Division of Enforcement of the SEC, Mr. Lang has litigated dozens of cases involving allegations of financial fraud, fair value improprieties, market manipulation, insider trading, accounting irregularities and proxy violations. He was also an Executive Vice President and General Counsel of a publicly traded



financial institution. He brings years of enforcement, regulatory and business experience to his practice, as well as an insider's working knowledge of the SEC's perspectives and public company internal dynamics and pressures.

**Ernesto A. Lanza** (Chapter 37E) is Senior Counsel to Clark Hill PLC. Mr. Lanza focuses his practice on public finance matters, with a particular emphasis on securities law, disclosure and municipal securities market structure issues. He works with broker-dealers, municipal advisors, state and local governments, investors, trade groups, industry vendors, and other key market structure entities on a broad range of municipal bond and 529 college savings plan market matters. In addition, Mr. Lanza has transactional experience working as bond counsel to state and local governments as well as underwriter's counsel on numerous public sector capital financings for a wide variety of public infrastructure, health care, single and multifamily, and other private activity projects totaling in excess of \$10 billion.

Previously, Mr. Lanza was the Deputy Executive Director for the Municipal Securities Rulemaking Board (MSRB). As second ranking MSRB executive, he served several key senior executive functions, including overseeing market structure matters, transparency initiatives, development of the MSRB's economic analysis policy, research initiatives (internal MSRB publications and the MSRB-commissioned Report on Secondary Market Trading in the Municipal Securities Market) and governmental affairs functions. Prior to his time as Deputy Executive Director, Mr. Lanza served as the MSRB's Chief Legal Officer/General Counsel responsible for all organizational legal and rulemaking matters, including board and staff governance issues; regulatory and compliance issues; contractual, intellectual property and other corporate legal matters; and regulatory coordination with the Securities and Exchange Commission and the Financial Industry Regulatory Authority. Mr. Lanza conceived and led the design, development, and initial launch of the MSRB's Electronic Municipal Market Access (EMMA) website, and was responsible for the MSRB's strategic vision for municipal market transparency initiatives. He also developed the broker-dealer regulatory framework for the 529 college savings plan market and was responsible for interpreting the MSRB's landmark pay-to-play rule.

Mr. Lanza received his B.A., *cum laude*, from Harvard University, and his J.D. from the University of Pennsylvania Law School, where he was editor of the *University of Pennsylvania Law Review*.

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**Stuart D. Levi** (Chapter 31) is a partner and co-head of the Intellectual Property and Technology Group at Skadden, Arps, Slate, Meagher & Flom LLP, and heads the firm's outsourcing practice. He has a broad and diverse practice that includes outsourcing transactions, technology and intellectual property licensing, technology transfers, strategic alliances and joint ventures. Mr. Levi also counsels clients on a variety of issues, including intellectual property matters, privacy issues and legislative compliance. His background in computer science and the information technology industry allows Mr. Levi to understand the technology and business drivers underlying agreements and transactions in this area.

In the outsourcing arena, Mr. Levi handles a wide variety of transactions, including the outsourcing of: data centers; infrastructure and desktop support; application development and maintenance; business processes; HR and benefits; recruitment and relocation services; financial services processing; and call centers. His experience also stretches across a broad range of industries, including financial services, insurance, manufacturing, telecommunications, energy, consulting, travel, media and publishing. Mr. Levi supports clients through all stages of an outsourcing project—from preparing the initial RFP and facilitating vendor selection to negotiating all aspects of the definitive agreement and schedules—and is actively involved in the legal, business and technology components of each outsourcing deal he handles.

**Keith Loveland** (Chapter 28) is an attorney with Loveland Consulting and is a nationally recognized author, attorney, consultant, and teacher within the fields of investments, securities and securities offerings, ethical versus fraudulent practices regarding investments and securities, and fiduciary matters. He has been qualified as an expert regarding the above matters in state and federal courts, and in AAA and NASD/FINRA arbitrations, and also has served as an arbitrator and qualified neutral mediator.

Mr. Loveland served as a subject matter expert to the New York Stock Exchange Qualification Committee from 1983 to 2001 as to all matters related to business entity formation and offerings of investments, among other matters. He currently serves as a subject matter expert to the North American Securities Administrators' Association as to the requirements necessary for offerors of investments and securities under state law, and fraudulent practices related thereto, among other matters.

Mr. Loveland has been a teacher for many years. Among other engagements, he was Adjunct Professor, William Mitchell College of Law, from 1978 to 1987. He is currently Adjunct Faculty for The Center for Fiduciary Studies, teaching the Prudent Practices for Investment Stewards.

Mr. Loveland is a member of the American Bar Association, Business Law Section, Committee on Federal Regulation of Securities, and Committee on State Regulation of Securities. He has been a member of the Financial Planning Association since 1983, serving on their Board of Directors from 2011 to 2013. He was a recipient of their Heart of Financial Planning Award in 2010. Mr. Loveland earned his B.A. from the University of Minnesota, Duluth, and his J.D. from William Mitchell College of Law. He is admitted to practice law in Minnesota, as well as the Federal District Court and the Court of Appeals.

**Steven S. Lucas** (Chapter 38) is a partner with Nielsen Merksamer Parrinello Gross & Leoni LLP, and specializes in political law, including campaign, election, lobby and ethics laws in various federal, state and local jurisdictions. He specializes in state and local ballot measures, and maintains a fifty-state national compliance practice in the area of campaign and lobby law. As a lecturer in law at Stanford Law School, he teaches "Law and Politics" and "Election Law" for second- and third-year law students. He is also on the faculty of, and an author for, the Practising Law Institute's "Advanced Compliance and Ethics Workshop," addressing national campaign and lobby compliance and pay-to-play issues. Since 2003, Mr. Lucas has served on the Board of Directors of Stillwater Mining Company (NYSE:SWC), a company that mines platinum and palladium in Montana and is developing gold, PGM and copper mines in Canada and Argentina. He serves as the Chairman of the Compensation Committee, as well as a member of the company's Audit Committee. Mr. Lucas previously served at the appointment of the Governor of California as Chairman of the Bipartisan Commission on the Political Reform Act. He is a past president of the California Political Attorneys Association. He has also served on the California Secretary of State's Task Force on Online Disclosure, as well as the FPPC Chairman's Advisory Task Force.

Mr. Lucas has published numerous opinion-editorial columns relating to constitutional and other legal issues in the *Los Angeles Times* as well as other California newspapers, and has experience working for federal and state public officials and political campaigns.

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Mr. Lucas received his law degree from Harvard Law School, *magna cum laude*, where he was cross-enrolled at the John F. Kennedy School of Government, Institute of Press, Politics and Public Policy. He received a B.A. in Economics/Business, *magna cum laude*, from the University of California, Los Angeles, and is a member of Phi Beta Kappa.

**Richard D. Marshall** (Chapter 35) is a partner in Ropes & Gray's New York office. Since entering private practice, Mr. Marshall has conducted compliance reviews of investment companies, investment advisers, and broker-dealers; represented individuals and regulated entities in investigations by the Securities and Exchange Commission and self-regulatory organizations; created hedge funds; and provided advice and sought no-action relief for investment companies, investment advisers, and broker-dealers. Before joining the firm, Mr. Marshall had been Senior Associate Regional Administrator in the New York office of the Securities and Exchange Commission. In that position, Mr. Marshall supervised a staff of seventy that conducted inspections of investment companies and advisers in the New York region and oversaw enforcement matters related to those entities. Mr. Marshall has also been a branch chief in the Division of Enforcement of the Securities and Exchange Commission in Washington, D.C. He speaks and writes regularly on topics related to the federal securities laws and is the editor of *The Investment Lawyer*, a legal publication devoted to issues related to money management.

**Daniel J. Martin** (Chapter 15) is an associate in the Washington, D.C. office of WilmerHale and focuses his practice on broker-dealer compliance and regulation. Mr. Martin previously worked as a summer associate at WilmerHale, where he assisted with a variety of securities and regulatory matters. While pursuing his law degree, he completed an internship for the Honorable Jan E. DuBois of the United States District Court for the Eastern District of Pennsylvania. Before entering law school, Mr. Martin spent several years at Google, where he managed corporate communications on various technology policy issues and led the company's public affairs strategy for Google Fiber. Mr. Martin received his B.A., *magna cum laude*, from the University of Notre Dame, his M.B.A. from The Wharton School, University of Pennsylvania, and his J.D. from the University of Pennsylvania Law School, where he was a Levy Scholar and Associate Editor of the *Journal of Business Law*.

**Ben Marzouk** (Chapters 7 and 10) is an associate in the Washington, D.C. office of Eversheds Sutherland. Mr. Marzouk is a financial services attorney who advises broker-dealers and investment advisers on their regulatory compliance matters with the U.S. Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA), as well as state rules and regulations. Before joining Eversheds Sutherland as an associate, Mr. Marzouk participated in the firm's Summer Associate Program in 2010 where he assisted primarily with financial services matters. He previously worked as an analyst for a global consulting firm where he analyzed testing documents as part of a large-scale SAP implementation for the United States Army's financial branch. Mr. Marzouk is admitted to the Virginia State Bar. His work is supervised by District of Columbia bar members. He received his B.A., *magna cum laude*, from the College of William and Mary, and his J.D. from the University of Virginia School of Law, where he served as President of the William Minor Lile Moot Court Board, and on the Editorial Board of *The Virginia Journal of Social Policy & the Law*.

**Carol T. McClarnon** (Chapter 42 and Chapter 42 Summary) is a special attorney in the Washington, D.C. office of Eversheds Sutherland. Ms. McClarnon has more than twenty years of experience providing legal guidance on ERISA and tax compliance to both employers and employee benefit service providers. A member of Eversheds Sutherland's Tax Practice Group, Ms. McClarnon typically advises financial services companies on ERISA and tax issues that impact their retirement services and insurance product operations. In addition, she routinely works with securities counsel to perform legal analyses on cutting-edge annuity and retirement plan products that are under development. Ms. McClarnon represents plan sponsors and service providers before the Internal Revenue Service (IRS) and the Department of Labor, obtaining prohibited transaction exemptions, private letter rulings and/or voluntary compliance relief. She works with the full range of retirement plans for both public and private employers. She has been active in the American Bar Association, where she served as a vice chair of the Employee Benefits Law Committee of the Tort and Insurance Practice Section and as a member of the Employee Benefits Committee of the Section of Taxation.

**Douglas F. McCormack** (Chapter 31C) is counsel in Sidley Austin LLP's Investment Funds, Advisers and Derivatives group. Mr. McCormack has over sixteen years of legal experience and he focuses on legal and

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regulatory matters related to U.S.-registered investment companies (with an emphasis on money market mutual funds), distribution, compliance, sub-advisory relationships and related matters. He is recommended in Alternative/hedge funds and Mutual/registered funds in the 2013 edition of *The Legal 500 U.S.* and in Mutual/registered funds in the 2016 edition. Mr. McCormack earned an A.B. degree in Philosophy and a certificate of concentration in Latin from Princeton University in 1995 and a J.D. degree from Harvard Law School in 1998. Prior to joining Sidley, Mr. McCormack was a Director in the Legal & Compliance Department at BlackRock (2007–2012) and an associate in the New York office of an international law firm (1998–2007).

**Sean P. McDonnell** (Chapter 31B) is an associate in Mayer Brown's Washington, D.C. office and a member of the Litigation & Dispute Resolution practice. He has experience in a wide variety of civil and criminal matters, ranging from contractual disputes to complex regulatory enforcement actions. Mr. McDonnell also has substantial investigation experience, having assisted in the conduct of internal investigations related to SEC and Department of Justice activity on behalf of corporate clients.

Mr. McDonnell was also a member of the litigation team that successfully represented then-candidate Rahm Emanuel against residency challenges to his mayoral candidacy, culminating in a unanimous decision in the Illinois Supreme Court.

Prior to joining Mayer Brown, Mr. McDonnell served as law clerk to the Honorable Rebecca Pallmeyer of the United States District Court for the Northern District of Illinois. He graduated *magna cum laude* from Harvard Law School in 2009, where he was the Senior Policy Editor of the *Harvard Law and Policy Review*.

Mr. McDonnell has been a guest lecturer at Northwestern University School of Law on topics relating to the nexus between law and politics. He is an executive board member of the Democratic Party of Evanston and is active in the American Constitution Society.

**Edward R. McNicholas** (Chapter 31C) is co-leader of Sidley Austin LLP's global Privacy, Data Security, and Information Law practice, and has an extensive practice representing technologically sophisticated clients facing complex cybersecurity, privacy, and data challenges. Commended by *The Legal 500 U.S.* for his "deep knowledge of privacy and information security," he spearheads Sidley's cyber crime focus and has significant experience with litigation and counseling matters

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involving privacy and data protection, cyber crime, cloud computing, the Internet of Things, data science, and national security.

Sidley's Privacy, Data Security, and Information Law practice was named 2014 Privacy Practice Group of the Year by *Law360*, and Mr. McNicholas is frequently recognized as a leader in his field. The *National Law Journal* recognized Mr. McNicholas in its 2016 list of Cyber Security Trailblazers, and the Cybersecurity Docket included him on its inaugural "Incident Response 30" list of the nation's best cybersecurity and data breach response lawyers. The *Washingtonian* named him in its inaugural listing of best Cybersecurity lawyers, he has been named in a *Computerworld* survey as one of the "Top 25 Privacy Experts" in the country, and he has been included in *The International Who's Who of Internet, e-Commerce & Data Protection Lawyers* since 2011. *Chambers USA* has included him in its rankings of the country's Leading Lawyers since 2008 and notes that he "impresses sources with his outstanding knowledge and responsive service . . . handling complex privacy matters in his trial and appellate practice." *Chambers Global* has recognized the global reach of Mr. McNicholas's data protection practice since 2011.

Mr. McNicholas frequently assists corporations with preparation for and responses to sophisticated cybersecurity incidents. For example, his practice includes representing major retailers experiencing congressional, litigation, and investigative challenges after cybersecurity attacks including in *Moyer v. Michaels Stores, Inc.*, 2014 WL 3511500 (N.D. Ill. 2014), and *Frank v. Neiman Marcus Group*, No. 1:14-cv-233 (E.D.N.Y. 2014). He also advises on cutting-edge Internet governance issues as part of Sidley's counsel to working groups for the Internet Corporation for Assigned Names and Numbers (ICANN) during the transition of the Internet Assigned Names Authority (IANA) function.

Prior to joining Sidley, Mr. McNicholas served as an Associate Counsel to President Clinton. In that capacity, he advised senior White House staff regarding various Independent Counsel, congressional, and grand jury investigations. He has developed unique experience representing clients in the midst of media-driven legal challenges. His crisis management skills are particularly useful in coordinating the swirl of complex litigation, congressional hearings, and federal and state investigations that can follow from major privacy and cybersecurity incidents.

A recipient of a 2010 Burton Award for Legal Achievement for one of his articles, Mr. McNicholas is a frequent lecturer and commentator

on privacy, data security, and information law issues. He is the lead author of the *Federal Trade Commission Enforcement of Privacy and Data Security* (2014) and *Privacy and Security Issues in Cloud Computing* (2014). Many of his other articles and writings are gathered at [www.Sidley.com/InfoLaw](http://www.Sidley.com/InfoLaw) and on the Sidley privacy blog at [www.DataMatters.Sidley.com](http://www.DataMatters.Sidley.com).

He received his A.B., *summa cum laude*, from Princeton University and his J.D., *cum laude*, from Harvard Law School, where he served as an editor in the Supreme Court Office of the *Harvard Law Review*. He also served as a clerk for the Hon. Paul V. Niemeyer of the U.S. Court of Appeals for the Fourth Circuit.

**William Michael, Jr.** (Chapter 31B) is a partner with Mayer Brown LLP and Co-Chair of the White Collar Defense & Compliance practice group. He is an experienced trial attorney with more than 100 jury trials in state and federal courts focusing on complex federal white collar and regulatory defense, civil and criminal health care fraud, anti-trust and complex internal investigations. Mr. Michael represents both individuals and corporations in these matters, including: internal investigations, criminal antitrust, health care, securities fraud, criminal tax, qui tams, money laundering, conspiracy, environmental, and the Foreign Corrupt Practices Act.

**Charles R. Mills** (Chapter 11) is a partner in Steptoe & Johnson LLP's Washington, D.C. office, where he practices in the Energy and Financial Services Groups. He represents a broad array of registered market intermediaries and advisers, financial and non-financial end users such as energy and other operating companies, commodity traders, and investment funds, and their directors, officers, and traders in regulatory matters, governmental investigations, litigation, and arbitrations. His practice focuses on regulatory counseling and representation in regulatory and enforcement matters before the Commodity Futures Trading Commission, the Federal Energy Regulatory Commission, the National Futures Association, the Securities and Exchange Commission, the Financial Industry Regulatory Authority, and the principal futures, swaps, and securities exchanges and trading facilities.

Mr. Mills has extensive experience in defending investigations of alleged derivatives, commodities, and securities market abuses and violations of the laws and rules administrated and enforced by those agencies and self-regulatory organizations. Typical regulatory matters concern advocacy with respect to proposed agency rules, compliance

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training for derivatives, commodities and securities, registration, licensing, trade reporting, risk disclosure and other requirements, and preparing internal compliance policies, procedures, and controls. Litigation has included securities and commodities class actions.

Mr. Mills is the past Chair of the ABA's Derivatives and Futures Law Committee. He is on the Board of Editors of Thompson/West's *Futures & Derivatives Law Report*. He has served multiple terms on the executive committee of the Law and Compliance Division of the Futures Industry Association. He was an adjunct professor at the Georgetown University Law Center for twenty-one years, where he taught graduate-level courses in securities and derivatives law.

Mr. Mills is ranked by *The Best Lawyers in America* as a "Best Lawyer" for both Derivatives Law and Securities Capital Markets; by *Super Lawyers* for Administrative Law; and by Martindale-Hubbell as AV Preeminent. *Best Lawyers* named Mr. Mills as its "Lawyer of the Year" for Derivatives Law in 2012 and again in 2017 for the Washington, D.C.—Baltimore region, and the *Compliance Reporter*, a publication of *Institutional Investor*, honored Mr. Mills as one of its "Lawyers of the Year" for his precedent-setting victory in *WHX Corp. v. SEC*, 362 F.3d 854 (D.C. Cir. 2004). Prior to entering private practice, Mr. Mills served as a litigator and regulatory attorney in the Office of the General Counsel of the CFTC. He received his law degree from the Georgetown University Law Center in 1977 and his undergraduate degree from Occidental College in 1974.

**Vivek K. Mohan** (Chapter 31C) is a privacy and cybersecurity attorney in private practice. Mr. Mohan was most recently associated with Sidley Austin LLP's Privacy, Data Security, and Information Law practice group in the Washington, D.C. and Palo Alto, CA offices. His practice at Sidley focused on technology-related regulatory response and litigation, including privacy, cybersecurity, and information law issues. At Sidley, Mr. Mohan counseled major technology, healthcare, industrial, and telecommunications companies on privacy and security program management, cyber incident response, surveillance and information sharing, and attendant global public policy considerations.

Mr. Mohan's experience includes work with major technology and data-driven clients to respond to governmental inquiries relating to product development, "Big Data," as well as to address national security—and surveillance-related issues. He has represented clients in matters before government agencies, including the FTC, SEC, FCC,

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state attorneys general, Department of Homeland Security, and Department of Justice, as well as in private litigation. He serves as guest faculty for Harvard's cybersecurity course offerings, and from 2011–2016, served as a fellow (and later nonresident associate) with the Cybersecurity Project at the Harvard Kennedy School.

Mr. Mohan has substantial experience with privacy and security issues confronting multinational corporations, including cloud computing, cross-border data flows, data localization, and data transfer agreements. While at Sidley, he spent six months embedded as a legal advisor to General Electric's Chief Privacy and Data Protection Officer, where he was responsible for the development, deployment, and restructuring of a global privacy and security program, ranging from the development and implementation of policies to contract negotiations.

Mr. Mohan has a particular focus on the emerging field of cybersecurity governance, regulation, and oversight, and serves as a key member on several high-profile internal investigations relating to cybersecurity incidents. He has worked with clients from the point an attack or breach is suspected through the process of incident response, including preparation for congressional testimony, response to government investigations, and associated litigation. He often serves as a technical liaison with forensic experts and internal information security personnel.

Mr. Mohan was a part of the Sidley team that advises working groups of the Internet Corporation for Assigned Names and Numbers (ICANN) on governance and accountability issues relating to the "stewardship transition" of the Internet Assigned Names Authority (IANA).

Mr. Mohan joined Sidley from the Harvard Kennedy School, where he was a Fellow at the Belfer Center for Science and International Affairs. At Harvard, he taught classes with professors from the Law School and School of Engineering and Applied Sciences that focused on privacy, cybersecurity, and Internet governance. In addition, he provided strategic advice to policymakers at the European Commission (on issues related to the development of cyber insurance markets), and the Federal Communications Commission's Open Internet Advisory Committee (on "specialized services"). He has also held a special appointment with the Internet Bureau of the Office of the New York State Attorney General, and previously worked as an attorney at Microsoft's Innovation & Policy Center, based in Washington, D.C.

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Mr. Mohan received his J.D. from Columbia Law School, where he served as Articles Editor for the *Columbia Science and Technology Law Review*. He earned his B.A. in Economics, *magna cum laude*, from the University of California, Berkeley. He is a Certified Information Systems Security Professional (CISSP) and a Certified Information Privacy Professional (CIPP/US, CIPP/E).

**Bridget Moore** (Chapter 16) is a partner in the Washington, D.C. office of Baker Botts L.L.P. Ms. Moore's practice focuses on securities enforcement, internal investigations, and white collar defense. In particular, she helps clients resolve enforcement matters brought by the Securities and Exchange Commission (SEC).

Prior to joining Baker Botts in May 2003, Ms. Moore worked as a staff attorney in the Division of Enforcement at the SEC. While at the SEC, she conducted investigations involving the antifraud provisions of the federal securities laws, proxy violations, insider trading and various disclosure and reporting violations. In addition, Ms. Moore participated in trials centering on the fraudulent promotion of stocks, earning her the Enforcement Division Director's Award for Trial Work.

Ms. Moore was short-listed as one of five national finalists for the "Up and Coming Regulatory Lawyer of the Year" award presented by *Chambers USA* (2012). She received her B.B.A. from Loyola College, and her J.D., *cum laude*, from Catholic University of America Columbus School of Law, where served as a Staff Member of the *Catholic University Law Review* and Deputy Vice Chancellor of the Moot Court Association, and received the ABA-BNA Award for Excellence in the Study of Labor and Employment Law.

**Jeremy Moorehouse** (Chapter 18) is a senior associate in Wilmer-Hale's Securities Department, where he advises and represents broker-dealers, banks and other financial institutions, hedge funds, securities exchanges, and securities trade associations regarding compliance with federal and state securities laws and regulations, futures rules and regulations, and the rules of self-regulatory organizations. He works closely with clients to establish, maintain and revise retail and institutional compliance and supervisory policies and procedures. Mr. Moorehouse also assists clients in conducting internal investigations, responding to regulatory inquiries, and implementing business changes.

Mr. Moorehouse received his B.A. from Northwestern University, and his J.D., *magna cum laude*, from Loyola University Chicago

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School of Law, where he received Alpha Sigma Nu Honors, and served as Executive Editor of the *Loyola University Chicago Law Journal* and was a Member of the *Public Interest Law Reporter*. Mr. Moorehouse is admitted to practice in the District of Columbia and New York.

**Michael C. Nicholas** (Chapter 42E) is a partner in the Securities Regulation & Investment Products (SRIP) Group of McCarthy Tétrault LLP in its Toronto office. Mr. Nicholas's practice is devoted to securities law matters generally, with an emphasis on registration or licensing matters; dealer, adviser, investment fund manager, market intermediary and marketplace regulation; related compliance and enforcement matters; litigation support; the regulation and implementation of derivative transactions; the development of new financial products and trading strategies, including monetization transactions, issuer put options, block trades and accelerated and prepaid share repurchases; and the regulation, development, restructuring, termination and unwinding of collective investment vehicles, including mutual funds and hedge funds.

Since 1982, Mr. Nicholas has been engaged either in the practice of corporate/securities law with McCarthy Tétrault LLP or in a regulatory capacity with the Ontario Securities Commission or the Hong Kong Securities and Futures Commission. In July 1983, he was seconded to the Ontario Securities Commission by the firm, where he acted as legal advisor to the Commission and served as a member of the Commission's Corporate Finance Division until September 1984. From July 1989 to July 1992, Mr. Nicholas served as the Director of Corporate Finance for the Hong Kong Securities and Futures Commission, where he was responsible for regulating and developing policy in relation to takeover and merger transactions. Mr. Nicholas is a past member of the Securities Advisory Committee to the Ontario Securities Commission and a past member of the National Policy No. 36 Committee of the Investment Funds Institute of Canada. During 2004, Mr. Nicholas served as co-chair of the Compliance and Legal Working Group, one of the committees established by the Ontario Securities Commission to consider the Fair Dealing Model prior to its evolution into the CSA Registration Reform Project. He is a co-author of CCH's *Canadian Securities Regulatory Requirements Applicable to Non-Resident Broker-Dealers, Advisers and Investment Fund Managers*, a handbook of Canadian securities regulatory requirements for non-resident securities firms published in 2012. Mr. Nicholas received his B.A. from the University of Guelph and his LL.B. from Queen's University. He was called to the Ontario bar in 1982.

**Stephanie Nicolas** (Chapters 15 and 27), a partner in the Securities Department at WilmerHale, works with major investment banking firms, broker-dealers, and other financial institutions to develop comprehensive compliance and supervisory procedures for a range of broker-dealer activities, including research activities (analyst conflicts of interest), firm-wide supervision, information barriers (“Chinese Walls”) and surveillance procedures, trading issues, and sales practice issues.

**Grady Nye** (Chapter 31C) is an associate in Sidley Austin LLP’s Privacy, Data Security and Information Law group. Mr. Nye’s practice focuses on issues related to privacy, cybersecurity, and consumer protection. He has experience counseling financial, healthcare, and energy companies on cybersecurity and privacy program management, data breach incident response, and regulatory compliance. He has also assisted with internal investigations related to various enforcement matters and has experience representing companies in Consumer Financial Protection Bureau enforcement actions. Mr. Nye earned his law degree at Stanford Law School and was a senior editor for the *Stanford Law & Policy Review*. He is fluent in Spanish.

**Andre E. Owens** (Chapter 18) is a partner in WilmerHale’s Securities Department, a member of the Broker-Dealer Compliance and Regulation Practice Group and a former member of the Executive Committee. He joined the firm in 2003. Mr. Owens has a practice that focuses on market regulation and investment adviser activities. Mr. Owens served as a member of the Counseling and Regulatory Policy Group of the SEC’s Office of General Counsel from 1992 to 1994, where he provided advice and recommendations on various proposals presented for Commission action, including proposed rulemaking actions, exemptive applications and enforcement matters. From 1994 to 1997, he served as Counsel to SEC Commissioner Steven M.H. Wallman and advised Commissioner Wallman on policy issues in the areas of market regulation and investment adviser activities, as well as on a variety of administrative law issues. After leaving the SEC in 1997, Mr. Owens returned to private practice. He currently counsels broker-dealer and other clients on a variety of market regulatory issues such as compliance with SEC, FINRA and NYSE rules; Regulation M and Regulation NMS; short sale and other trading rules; sales practice and order handling matters; and Regulation ATS and electronic brokerage issues. Mr. Owens also provides advice with respect to acquisitions of securities broker-dealers and investment advisers. Mr. Owens is a

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member of the Business Law Section of the American Bar Association, the Securities Industry Financial Markets Association's Legal and Compliance Division and the National Association of Securities Professionals. He also taught a course entitled "The Regulation of Securities Professionals and the Securities Markets" at the Georgetown University Law Center.

**Anna T. Pinedo** (Chapter 42F) is a partner in Morrison & Foerster's New York office. Ms. Pinedo has concentrated her practice on securities and derivatives. She represents issuers, investment banks/financial intermediaries, and investors in financing transactions, including public offerings and private placements of equity and debt securities, as well as structured notes and other structured products. Ms. Pinedo works closely with financial institutions to create and structure innovative financing techniques, including new securities distribution methodologies and financial products.

Ms. Pinedo has been recognized as a leading capital markets lawyer and derivatives lawyer in a number of rankings and directories, including *Chambers Global*, *Chambers USA*, *Legal 500 U.S.* and *PLC Which Lawyer?* Ms. Pinedo received the Burton Award for Legal Achievement in Writing in 2007. She has been recognized by The Glass Hammer as one of the "Top Ten Hispanic Women in Business" and by *Hispanic Business* magazine as one of the "100 Most Influential Hispanics," as well as by *Crain's* "Forty Under 40" and *Investment Dealers Digest* (IDD) "Forty Under 40."

**Andrew E. Porter** (Chapter 11) is a partner in K&L Gates LLP's Washington, D.C. office. Mr. Porter focuses his practice on government enforcement matters, regulatory counseling, and internal investigations. He represents clients in matters before the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Department of Justice, the Financial Industry Regulatory Authority and other regulatory entities. He has experience in counseling clients on complying with the federal securities laws and other regulatory requirements. Mr. Porter received his B.A. from the University of Michigan and his J.D. from Columbia University School of Law, where he was the Articles Editor of *Columbia Science and Technology Law Review*. He is admitted to practice in the District of Columbia and New York.

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**Laura S. Pruitt** (Chapter 3) is a partner in Alston & Bird LLP's Financial Services & Products Group, who counsels broker-dealers, investment advisers, self-regulatory organizations, and other market participants on securities law and market regulation issues, with particular emphasis on broker-dealer registration and compliance issues, trading rules, alternative trading systems, derivatives, investment adviser regulation, transfer agent rules, and anti-money laundering rules. Ms. Pruitt also represents a variety of clients before the Securities and Exchange Commission and self-regulatory organizations in connection with regulatory investigations and enforcement actions, and she has conducted independent compliance reviews in connection with the settlement of several enforcement actions. Ms. Pruitt spent several years at the Securities and Exchange Commission in Washington, D.C., both as senior counsel in the Office of the General Counsel (both as a litigator defending the Commission in federal court actions and in providing counsel to the General Counsel, and others, in connection with Commission rulemakings and enforcement actions) and as special counsel in the Office of the Chief Counsel in the Division of Market Regulation (now the Division of Trading & Markets). Ms. Pruitt earned her A.B. from Harvard University, and her J.D. from Columbia University. She is admitted to practice in the District of Columbia and New York.

**Brynn M. Rail** (Chapter 19) is counsel in the New York office of Ropes & Gray LLP. Ms. Rail represents U.S. and international broker-dealers on various regulatory and securities law issues, including registration, FINRA compliance, trading, margin, net capital, and clearance and settlement. In addition, Ms. Rail counsels investment advisers on the structuring and distribution of their private investment products, compliance with Advisers Act requirements, and issues relating to securities ownership filings required under the Exchange Act. She also has significant experience negotiating prime brokerage and custody agreements on behalf of those investment advisers and their clients. Ms. Rail also advises clients in connection with mergers and acquisitions involving broker-dealers and investment advisers, including conducting detailed reviews of the target's business and operations and preparing regulatory filings made in connection with those transactions.

Ms. Rail received her B.A. from Boston College and her J.D. from the University of Connecticut School of Law. She is admitted to practice in New York.

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**Jason C. Roberts** (Chapter 42A) is the Founder and CEO of the Pension Resource Institute (PRI) providing strategic consulting and training to retirement plan service providers (broker-dealers, RIAs, investment managers, recordkeepers, TPAs, etc.) and fiduciary education to plan sponsors. He is primarily responsible for tactical planning and business development at PRI and actively leads many of PRI's consulting projects.

Prior to founding PRI, Mr. Roberts was a partner and co-chair of the Financial Services Group at Reish & Reicher—a leading ERISA law firm—where his practice focused on employee benefits and securities regulation. Mr. Roberts continues to provide counsel on ERISA and investment-related matters through the Law Offices of Jason C. Roberts, Esq. and is frequently retained as an expert witness on fiduciary claims. He represents clients in federal and state court at the trial and appellate level (including the U.S. Supreme Court), FINRA arbitrations and government enforcement proceedings.

**Jerome J. Roche** (Chapter 47) is a Financial Services Regulatory & Enforcement partner in Mayer Brown's Washington, D.C. office. His practice focuses primarily on cross-border financial services matters. He has extensive experience counseling clients regarding the U.S. federal securities laws, the Commodity Exchange Act, the Commodity Futures Modernization Act, the Gramm-Leach-Bliley Act, the USA PATRIOT Act, and the Dodd-Frank Act. According to *Chambers USA* 2013, Mr. Roche is a "dynamic lawyer" who has "good substantive knowledge." He also received a *Martindale-Hubbell* peer review rating of AV-Preeminent in 2012 and 2013.

**David E. Rosedahl** (Chapter 28) is Of Counsel, Business Litigation Section, Financial Markets Group of Briggs and Morgan, P.A. Mr. Rosedahl has more than thirty years of experience in the financial markets industry, specifically in the securities regulatory area. He practices primarily in the areas of regulatory compliance and enforcement, financial markets counseling, corporate governance, and dispute resolution. Mr. Rosedahl's unique background as a former chief regulatory officer of the Pacific Exchange; managing director and general counsel for Piper Jaffray Companies; and associate general counsel and corporate secretary for the Securities Industry Association allows him to provide a balanced perspective when advising clients concerning investment and financial services issues, regulatory investigations, enforcement actions, remedial work and general inquiries.



He is a frequent speaker on securities matters and has taught securities litigation as an adjunct professor at William Mitchell College of Law. Mr. Rosedahl received his B.A. and J.D. from Columbia University, and is admitted to practice in Minnesota and New York, and is a member of the Minnesota and American bar associations.

**Terence Rozier-Byrd** (Chapter 37B) is special counsel in the New York office of Baker Botts L.L.P. Mr. Rozier-Byrd concentrates his practice on the representation of institutional investors, private investment fund sponsors and investment advisers on a wide array of transactional matters. Mr. Rozier-Byrd also advises clients regarding the Investment Advisers Act of 1940 and the Investment Company Act of 1940. Prior to attending law school, Mr. Rozier-Byrd worked as an equity research assistant at Salomon Smith Barney in New York.

Mr. Rozier-Byrd received his A.B. from Princeton University, and his J.D. from Boston University School of Law.

**Brian L. Rubin** (Chapters 32A and 36) is a partner with Eversheds Sutherland. He represents broker-dealers, investment advisers, investment companies, public companies and individuals being examined, investigated and prosecuted by the U.S. Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority, and states. He also represents securities clients in litigation and arbitration, and counsels them on regulatory and compliance matters. In addition, Mr. Rubin conducts internal investigations. Before joining Eversheds Sutherland, he was Deputy Chief Counsel with the National Association of Securities Dealers' Enforcement Department, where he managed attorneys and examiners in the Washington, D.C. home office and in the district offices. Brian also was Senior Counsel in the SEC's Division of Enforcement, where he investigated and prosecuted violations of federal securities laws. He was also Senior Counsel in the SEC's Division of Enforcement. Mr. Rubin received his B.S., *cum laude*, from the University of Pennsylvania's Wharton School of Business, and his M.A. in Economics and his J.D. from Duke University.

**G. Philip Rutledge** (Chapter 5A) is a partner of Bybel Rutledge LLP. As an AV-rated lawyer by Martindale Hubbell, his practice focuses on corporate and securities law, regulation of financial intermediaries, and representation before the SEC, FINRA and state securities regulators. Mr. Rutledge is a nationally recognized expert in securities regulation and was instrumental in shaping various provisions of significant U.S. financial services legislation, including the *Securities*

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For many years, Mr. Sadler has been a special lecturer in various securities law topics at the University of Windsor, the University of Western Ontario, Dalhousie University and Queen's University. He is a co-editor of CCH's *Annotated Ontario Securities Legislation*. He is also a co-author of CCH's *Canadian Securities Regulatory Requirements Applicable to Non-Resident Broker-Dealers, Advisers and Investment Fund Managers*, a handbook of Canadian securities regulatory requirements for non-resident securities firms published in 2012.

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#### **Chapter 1 Introduction**

*Clifford E. Kirsch*

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**Chapter 14 Compensation**

*Susan Krawczyk*

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*Seth T. Taube & Bridget Moore*

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**Chapter 17 Research Analysts**

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**Chapter 21A Regulation SCI and Trends in IT and  
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*Elliott R. Curzon*

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*Stuart D. Levi*

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*Jack P. Drogin*

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## Preface

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The goal of this book is to present the regulatory framework applying to broker-dealers in practical and reader-friendly terms. The book follows other PLI titles that I have had the pleasure of completing: *Investment Adviser Regulation*, *Mutual Funds and Exchange Traded Funds Regulation*, *Financial Product Fundamentals*, and *Variable Annuities and Variable Life Insurance Regulation*. The feedback we have received on these books has been positive and, as a result, we have tried to stick with the same formula here.

I want to thank my wife for all of her helpful comments and suggestions on this project, especially when this book was in its formative stages. Also, I am very thankful to my Dad, who introduced me to the brokerage business years ago and who has taught me so much about the business over the years; and to my Mom, who has been so supportive of all of my efforts.

I am very grateful to the contributing authors and have learned a lot from working with them on this project.

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