

Commodities, Futures & Derivatives

Sullivan & Cromwell's Commodities, Futures and Derivatives Group advises clients on the full range of legal issues that arise in connection with structuring, offering and trading commodities and derivatives. The Firm assists clients in connection with transactional, advisory, litigation and enforcement matters relating to these products.

The Firm advises on the development of new products, the structuring and implementation of complex transactions, and the obtaining of necessary regulatory approvals and relief. S&C marshals insights and ideas from across the Firm's various disciplines to offer truly coordinated representation.

Clients also rely on S&C for responses to governmental inquiries and defense against governmental and private actions. Through a team headed by the former General Counsel of the Commodity Futures Trading Commission and including attorneys with deep regulatory, transactional and enforcement experience in the commodity and derivatives industry, the Commodities, Futures and Derivatives Group has extensive experience dealing with regulators in a wide range of investigations, inquiries and proceedings, as well as related litigation.

The Group handles matters such as:

- advice on the development of new technologies, financial indices, electronic trading systems, exchanges and clearing houses;
- regulatory, compliance and transactional advice regarding derivatives;
- regulatory and transactional advice to hedge fund groups;
- investigations of commodities and derivatives businesses, including both internal reviews and reviews led by numerous agencies and other authorities, including the U.S. Department of Justice, the Commodity Futures Trading Commission, the National Futures Association, the Securities and Exchange Commission, FINRA, the Federal Energy Regulatory Commission, the Federal Trade Commission, and any of a number of other domestic and foreign regulatory authorities and self-regulatory organizations;
- civil litigation brought under the Commodity Exchange Act or otherwise arising from transactions involving commodities, futures and derivatives;
- policy, legislative and regulatory comment, advocacy and advice relating to commodities, securities, banking and international law issues affecting commodities and derivatives;
- advice to banks, investment banks, hedge funds, private equity funds, utilities and others on trading issues; and
- coordinating global advice regarding the status of trading, advisory and information systems under the laws of multiple jurisdictions.

SELECTED REPRESENTATIONS

Highlights of Sullivan & Cromwell's representations are below:

Regulatory and Transactional

- Advised on the development of new technologies, financial indices, electronic trading systems, exchanges and clearing houses in connection with the trading and clearing of futures, options, OTC derivatives and other innovative financial products, including advice

PRACTICES & CAPABILITIES

General Practice

Financial Services

- **Bank Regulatory**
- **Broker-Dealer**
- **Commodities, Futures & Derivatives**
- **Corporate Governance**
- **Digital Assets**
- **Economic Sanctions and Financial Crime**
- **Exchange/Alternate Trading Systems**
- **Financial Services Capital Markets**
- **Financial Services Investigations & Litigation**
- **Financial Services Mergers & Acquisitions**
- **FinTech**
- **Insurance**
- **Investment Management**
- **Payments**

PRACTICE CONTACTS

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on structuring, regulatory, intellectual property and other issues and transactional representation.

- Provided regulatory and transactional advice regarding derivatives, including advice on structuring and documenting complex derivatives transactions and advice on securities, commodities, banking, insurance, cross-border margin, insolvency and other issues.
- Reviewed compliance and investigatory policies of commodities and derivatives businesses, including training and development of internal policies and procedures to govern businesses and establishment of structured product review committees to comply with regulatory guidance.
- Provided policy, legislative and regulatory comment and advice relating to commodities, securities, banking and international law issues affecting commodities and derivatives.
- Represented banks, investment banks, hedge funds, utilities and others on trading issues including the establishment of trading ventures involving commodities, securities, currencies and derivatives.
- Coordinated global advice regarding the status of trading, advisory and information systems under the laws of multiple jurisdictions.
- Represented clients in connection with the enactment of the Dodd-Frank Act and the proposal and implementation of regulations pursuant to the Dodd-Frank Act, including regular and extensive written communications and meetings with Congress, the Commodity Futures Trading Commission (CFTC), the SEC and relevant banking agencies, and an ongoing role in the development of the regulatory model for OTC derivatives generally.
- Represented clients in reviewing and evaluating the proposals for the Commodity End User Relief Act and the commodity and derivatives aspects of the Financial CHOICE Act of 2017.
- Represented clients in connection with extensive regulatory review and reform efforts underway at the CFTC and SEC.
- Represented trade associations including International Swaps and Derivatives Association, Managed Funds Association, Futures Industry Association, American Investment Council, Securities Industry and Financial Markets Association, and others in meetings with regulators and legislators and in comments on a wide range of rulemaking issues.
- Structured, negotiated and documented joint ventures regarding electronic trading platforms, clearing operations and other services, including the organization of ICE and the clearing relationship between ICE and the London Clearing House, and the development of facilities to provide clearing services to the foreign exchange and other markets.
- Represented LCH.Clearnet in the development of the SwapClear client clearing model with respect to interest rate swaps, including the implementation of a futures commission merchant clearing model in the United States.
- Performed public offerings and private placements of a wide range of securities indexed to commodities, equity securities, currencies and indices.
- Developed new types of derivative products linked to energy commodities and credit and insurance references.
- Developed internal policies and procedures and training for energy companies, banks and others.
- Structured, developed and achieved regulatory approval of electronic exchanges and trading platforms including:
 - trueEX Group, a newly organized electronic exchange and swap execution facility for swaps;
 - Electronic Liquidity Exchange ELX, a consortium established primarily for the purpose of trading Treasury futures;
 - LCH.Clearnet in connection with the expansion of the SwapClear clearing service for interest rate swaps into the U.S. and the development of a futures commission merchant

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- clearing model; and
- IntercontinentalExchange.

Enforcement & Litigation

- Represented commodities firms and financial institutions in connection with inquiries by the Department of Justice, CFTC, Federal Energy Regulatory Commission and SEC, as well as matters before FINRA, NFA and various exchanges
 - Counsel to a leading electronic trading firm in an enforcement proceeding in Paris brought by the Autorité des marchés financiers alleging that electronic market making constituted price manipulation under European Union law.
 - Counsel to prominent international financial institutions in well-publicized, industrywide regulatory investigations by authorities in several countries, including the CFTC and DOJ, into potential irregularities in the setting of the LIBOR interest rates, in addition to related class action litigation.
 - Counsel to JPMorgan Chase in resolving a five-year-long CFTC investigation related to alleged manipulation of the silver market that was resolved without any charges being filed.
 - Counsel to BP in the settlement of DOJ and CFTC investigations of a commodities manipulation, including entering into a deferred prosecution agreement with the DOJ and a consent order with the CFTC.
 - Counsel to El Paso Merchant Energy, a unit of El Paso Corporation, in its settlement with the CFTC relating to the inaccurate reporting of information on natural gas trades to energy industry publications that compile and report index prices. Counsel to a number of energy trading companies in the CFTC's National Crude Oil Investigation.
 - Ongoing investigations of trading activities, including manipulation, market disruption, pre-hedging, EFRP, block trade, spoofing and related inquiries.
- Represented clients in class actions and complex private litigations, often arising from government enforcement efforts.
 - Morgan Stanley & Co. in reaching a favorable settlement of a three-plus-year litigation with a natural gas futures and options hedge fund before the U.S. District Court for Southern District of New York.
 - Barclays in persuading the New York Court of Appeals to unanimously reverse a lower appellate court's summary judgment ruling persuading the court on issues involving complex collateral transfers between the parties under their ISDA agreement.
 - Louis Dreyfus Company, Term Commodities Inc. and others in responding to a class action complaint alleging manipulation of the cotton market.
 - The Bank of Nova Scotia in responding to class action complaints alleging collusion on the London Gold Fixing and manipulation of the London Silver Fixing auction process. S&C was appointed coordinating counsel in a six-member joint defense group.
 - Goldman Sachs in responding to a suit filed against it by online trading start-ups, alleging that more than a dozen banks conspired to block fund managers from entering the market for interest-rate swap trading.
 - JPMorgan in responding to three commodities suits filed by silver futures traders alleging that JPMorgan manipulated the silver futures spread market.
- Coordinated responses to proceedings involving multiple agencies, including those occurring cross-border.

