

## COMMODITIES, FUTURES & DERIVATIVES

### OVERVIEW

BCLP's Commodities, Futures & Derivatives Team represents and advises clients on the full range of legal and regulatory issues related to structuring, implementing, offering, and trading commodities and derivatives, as well as representing clients in litigation and enforcement matters relating to these products. Our team represents and advises domestic and international institutions—including futures commission merchants, proprietary trading firms, introducing brokers, advisors, commodity pool operators, banks, designated contract markets, derivatives clearing organizations, swap execution facilities, swap dealers, broker/dealers, and agricultural, energy, and precious metals end-users—as well as individuals in investigations, examinations, enforcement actions, and litigation brought by the Department of Justice, the CFTC, the SEC, the FCA, the PFA, the NFA, FINRA, exchanges, and U.S. state regulators.

Our cross-border team includes former federal prosecutors and enforcement attorneys, who previously worked in the Securities and Commodities Fraud Section of the United States Attorney's Office and the FCA's Enforcement Division and served as Chief Regulatory Officer of NYSE Liffe US and Senior Trial Attorney in the CFTC's Division of Enforcement. Our team combines its extensive experience and insights with a deep knowledge of our clients' businesses to reach effective and successful outcomes.

We also provide practical advice, counseling, and training regarding legal, regulatory, and compliance issues.

## MEET THE TEAM



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## **RELATED PRACTICE AREAS**

- Structured Products & Derivatives
- White Collar
- Broker-Dealer and Investment Advisor Regulatory Enforcement, Disputes and Investigations

## **EXPERIENCE**

- Tried *United States v. Jitesh Thakkar* in the first-ever criminal case charging a non-trader with a form of market manipulation. After Renato Mariotti's cross-examination of the government's star witness caused the witness to admit there was no conspiracy, the judge acquitted Mr. Thakkar of conspiracy, finding that no rational jury could find him guilty. When 10 out of 12

jurors voted for acquittal on the remaining counts, the Justice Department dismissed them shortly thereafter, resulting in complete acquittal for Mr. Thakkar.

- Conducted an internal investigation for a large trading firm into an employee's theft of the firm's trade secrets. We investigated the theft, confronted and fired the employee, and arbitrated a case against the employee. We also convinced the FBI to initiate an investigation of the employee.
- Represented a large futures commission merchant in an investigation by ICE Futures U. S. 's Market Regulation Department into allegations of misappropriation of material non-public information, front-running, and pre-hedging. Through our advocacy with Market Regulation and our submission of a written position statement to ICE's Business Conduct Committee, we were able to obtain a very favorable settlement for our client, which did not include any findings that the firm engaged in front-running.
- Represented a large trading firm in a CFTC investigation related to allegations of spoofing that involved the firm's CCO. Through our advocacy with the CFTC, they ultimately dropped the case. We also handled a CME investigation for the same firm, which CME ultimately dropped as well.
- Represented three traders in a CFTC investigation into alleged wash trading. Renato advised these traders to cooperate with the CFTC investigation, which resulted in the CFTC bringing no charges against two of the traders and a very favorable settlement for the third trader. The trader's former firm paid a fine of \$5,000,000 based on the CFTC's investigation, and then demanded that our clients pay all or a substantial portion of that fine. We filed a declaratory judgment action regarding the firm's demand for payment of their fine and ultimately obtained a successful outcome for our clients in arbitration.
- Represented a trading firm and its principal in an investigation by CME's Market Regulation. This representation included preparing responses to requests for information from CME and preparing the client for an interview by Market Regulation. Our representation resulted in Market Regulation declining to bring an enforcement action against the firm or its principal.
- Represented an individual trader facing enforcement actions by CME and the CFTC. Our representation included preparing the client for CFTC testimony and preparing a response to a Wells notice from the CFTC.
- Represented a trader from a large U. S. bank who was under investigation by the SEC and the criminal section of DOJ for an alleged spoofing scheme. Following a Wells presentation we made to the SEC and advocacy with the DOJ, neither entity brought an action against our client.

- Defended a large trading firm in a civil case that alleged violations of federal and state securities laws. We were able to obtain an order from the court that allowed our client to proceed anonymously throughout the case, and we successfully obtained a voluntary dismissal of the case against our client following the filing of our motion to dismiss.
- Represented a brokerage firm in a parallel investigation conducted by DOJ, FDIC, and the CFTC. Our representation included preparing and defending firm employees in interviews with DOJ, FDIC, and CFTC.
- Represented commodity pool operator and three of its senior executives operating a commodity exchange-traded fund in joint SEC and CFTC investigations arising from NYMEX crude oil futures closing at a negative price for the first time in history in April 2020, reaching a favorable joint settlements for the firm with no charges brought against any of the executives.
- Represented a large agricultural cooperative in a CFTC investigation related to alleged position limit violations in connection with the cooperative's anticipatory hedging program, reaching a favorable settlement.
- Represented a major agricultural cooperative and two of its traders in a CME Market Regulation investigation and ensuing disciplinary action involving alleged wash trades reaching a favorable settlement.
- Represented a broker-dealer, an affiliated commodities trading liquidity provider and six employees in a CME Market Regulation investigation and related disciplinary actions related to inter-affiliate trading, wash trade and block trade reporting rules, resulting in a favorable settlement for the firms and no charges being brought against the traders.
- Represented a futures commission merchant and three of its rates desk brokers in a CME Market Regulation investigation of execution of agency crosses, resulting in a favorable settlement for the FCM and brokers.
- Represented introducing broker in ICE Futures US Market Regulation investigation of its arrangement and reporting of block trades.
- Represented a broker-dealer and the head of its options desk, Chief Compliance Officer, and one of its options desk brokers in a NYSE Regulation investigation of the execution of agency options cross-trades culminating in a favorable settlement for the firm and the broker with no charges being brought against the desk head and CCO.
- Represent cross-border client in a 20+ state investigation of client's compliance with the Model State Commodity Code as adopted by 21 states and the related commodity provisions of New York's Martin Act.

## Advisory Engagements

### *Markets*

- Advised a designated contract market in setting up parallel digital asset cash market regarding both regulatory and legal issues arising from the related cash market.
- Assisted firm looking to launch derivatives trading in a novel asset class related to streaming revenues with its application with the CFTC for designated contract market status, drafting Exhibits A through U to Form DCM and engaging in discussions with DMO staff and the Chairman, along with negotiation of contract for clearing its products with a derivatives clearing organization.
- Advised derivatives clearing organization on application to amend its CFTC Order of Registration which only authorized it to clear fully-collateralized derivatives transactions to permit it to clear margined futures trades.
- Counseled firm developing a novel comparative performance equities index swap product with Commodity Exchange Act and CFTC regulatory issues, including designated contract market and derivatives clearing organization requirements.
- Guided spinoff of national securities exchange in setting up electronically-traded cash market for precious metals where title to the metals is recorded on a distributed ledger, providing advice regarding regulatory issues, drafting participant agreements and advising on commercial law issues arising from using electronic records of title recorded on a blockchain.

### *Intermediaries*

- Counseled major multi-asset class proprietary trading firm and liquidity provider on swap dealer registration issues.
- Advised major international precious metals producer on regulatory issues in building out a cash and derivatives trading desk addressing swap cross-border, swap dealer and swap reporting issues.
- Advise trust company on issues arising from its custody of customer digital assets and provision of trading support and settlement services to customers for both digital asset cash market and derivatives market transactions.
- Advised broker-dealer in setting up and registering a swaps-only introducing broker affiliate.
- Counseled firm on legal and regulatory issues in the launch of its sale of voluntary carbon credits.

## *Fund Managers and Advisors*

- Counseled EU-based alternative investment fund manager on CFTC reporting issues.
- Advised EU-based alternative investment fund on CFTC reporting issues.
- Guided several fund managers investing in both traditional commodity asset classes as well as digital assets in the application of commodity pool operator and commodity trading advisor regulations and exemptions to their investment programs.

## **RELATED INSIGHTS**

Events

Apr 24-26, 2024

### **Three BCLP attorneys to be featured at upcoming Futures Industry Association Conference**

Insights

Mar 21, 2024

### **CFTC's Annual Enforcement Results: Another Blockbuster Year**

The Commodity Futures Trading Commission ("CFTC") recently released its enforcement results for Fiscal Year 2023 ("FY 2023"), which ran from October 1, 2022, through September 30, 2023. In addition to detailing the imposition of over \$4.3 billion in penalties, restitution, and disgorgement, the published results also highlight a number of notable enforcement actions and trends, including a record-setting number of digital asset cases and two first-of-their-kind charges for "oracle manipulation" and "Pig-Butchering."

Insights

Jan 18, 2024

### **More fines, more admissions, more monitors: what is the future of CFTC enforcement?**

Insights

Jan 12, 2024

### **First "insider trading" case goes from bad to worse for CFTC**

Insights

Nov 01, 2023

### **The CFTC is not your friend**