



Contact

**Benjamin J. Catalano**

**Partner**

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Benjamin J. Catalano is a securities regulatory and enforcement lawyer and co-head of the Broker Dealer Practice.

Ben has extensive experience advising financial services companies on compliance with all aspects of federal and state securities laws and self-regulatory organization (SRO) rules. He represents clients in securities litigation and enforcement matters. He also conducts internal investigations and reviews for financial services companies and other corporate clients on a broad range of subjects pertaining to their businesses.

He has represented major U.S. and international financial institutions, including J.P. Morgan Chase & Co.; Nomura Securities International Inc.; Instinet LLC; The Bank of New York Mellon Corp.; Pershing LLC; Neuberger Berman; Goldman Sachs; Credit Suisse; Société Générale S.A.; Needham & Company, LLC; Cowen & Co. LLC; BNP Paribas Securities Corp.; Calyon Securities (USA) Inc.; HSH Nordbank Securities; Westpac Securities; Banco Espirito Santo de Investimento, S.A.; Banca IMI; Banque Privée Edmund de Rothschild; Apollo Investment Management, LLC; Ares Capital Corp.; Bain Capital; Toronto Stock Exchange; Montreal Stock Exchange; Tokyo Stock Exchange; Cürex Group Holdings, LLC; The Depository Trust and Clearing Corporation; The Depository Trust Company; and National Securities Clearing

Corporation.

### **Securities Law Compliance**

Ben advises U.S. and international banks, broker-dealers, investment advisers, exchanges, clearing agencies and other financial intermediaries on compliance with federal securities laws, state blue sky laws, New York Stock Exchange (NYSE), Financial Industry Regulatory Authority (FINRA) and other SRO rules.

He counsels clients and assists them in developing comprehensive compliance and supervisory programs in areas such: as advertising and correspondence; anti-money laundering; cross-border trading under Rule 15a-6; financial reporting; insider trading/information barrier procedures; licensing and registration; net capital, custody, and clearance and settlement, including introducing and clearing broker arrangements; market access; recordkeeping; Regulation M and IPO trading restrictions; Regulation NMS and related market structure issues; research restrictions, disclosures and Regulations AC; soft-dollar and commission sharing arrangements; swaps regulation and compliance.

### **Securities Litigation and Enforcement**

Ben represents clients in securities related litigation, enforcement proceedings and investigations.

Ben has represented financial services companies and individuals in numerous enforcement proceedings before the SEC, NYSE Regulation, FINRA and other SROs in various matters including trading and sales practices, insider trading and market manipulation, trade reporting, research analyst conflicts, net capital compliance, supervision and recordkeeping.

He has represented clients in litigations and arbitrations involving suitability, sales practices, unauthorized trading, fraudulent transfers and derivatives transactions. Ben succeeded in obtaining summary judgment in favor of a broker-dealer that inadvertently transferred stolen stock certificates. In a case of first impression under Article 8 of the Uniform Commercial Code, *Decker v. Yorkton Securities, Inc.*, Court of Appeals of the State of California, 1st Appellate District, the Court held that in order to hold a broker liable to a third party with an adverse claim to securities

transferred by the broker, the plaintiff must show that the broker had subjective knowledge of a significant probability of the adverse claim.

Ben also counsels clients in SEC and SRO examinations and reviews.

### **Internal Investigation and Reviews**

Ben frequently is called on to conduct internal investigations, examinations and reviews of business practices, employee conduct, supervisory systems and operations of financial services companies and other corporations.

He has served as or acted on behalf of the SEC or SRO mandated independent consultant or third party examiner in a number of securities industry enforcement matters. He also has conducted numerous investigations, examinations and reviews to assess compliance with regulatory requirements in various areas for broker-dealers, investment advisers, securities exchanges and other financial service providers.

Examples of some of the client matters he has handled include the following:

- Examination of OTC trading and sales practices by a major broker-dealer in response to an SEC administrative proceeding, NYSE hearing panel decision and NASD Acceptance Waiver and Consent (AWC) mandating retention of an independent consultant
- Examination of Trade Allocation Policies and Procedures by a major broker-dealer in response to an NYSE hearing panel decision mandating retention of an outside consultant
- Evaluation of remediation methodology and payments in connection with mutual fund sales subject to NAV transfer programs in response to NASD AWC mandating retention of a Third Party Examiner
- Examination of trade execution and related functions of designated dealers on a major securities exchange
- Investigation of possible insider trading by an employee of a broker-dealer
- Investigation of trading in compliance with NYSE Rule 92 by an NYSE member firm

- Investigation of possible interpositioning by equity traders of a broker-dealer
- Review of business practices relating to the sale of auction rate securities by a broker-dealer
- Review of research distribution and trading practices in compliance with Rule 15a-6 by a major international bank and its U.S. broker-deal affiliate
- Review of anti-money laundering policies and procedures by a major financial services company and its broker-dealer subsidiaries
- Review of compliance with Regulation NMS by a major broker-dealer
- Review of business practices of a primary research facilitator in compliance with federal and industry standards for prevention of the misuse of material non-public information
- Review and implementation of swap dealer business conduct requirements

Prior to the practice of law, Ben was the chief compliance officer for the Capital Markets Division of PaineWebber Incorporated (now UBS Financial Services, Inc.). He began his career in the legal and compliance division of Drexel Burnham Lambert Incorporated.

### **Selected Articles and Presentations**

"Someone Should Have Done Something! A Critical Examination of Liability for Failure to Supervise under Federal Securities Laws," *The Business Lawyer*, Vol. 78, Winter 2022-2023.

"The Promise of Unfavorable Research: Ramifications of Regulations Separating Research and Investment Banking for IPO Issuers and Investors," *The Business Lawyer*, Vol. 72, Winter 2016-2017.

"Analysis of the SEC's MiFID II No-Action Relief," *The National Law Review*, January 2018.

"Investment Advisers Act Implications for Client Commission (Soft Dollar) Arrangements – Part I," February 2014, *available at* <https://www.proskauer.com/video/investment-advisers-act-implications-for-soft-dollar-arrangements-part-1>

“Investment Advisers Act Implications for Client Commission (Soft Dollar) Arrangements – Part II,” February 2014, *available at* <https://www.proskauer.com/video/investment-advisers-act-implications-for-soft-dollar-arrangements-part-2>

“A Look at Regulations for Non-U.S. Investment Advisers and Portfolio Managers Doing Business in the United States,” *The Metropolitan Corporate Counsel*, May 2012.

“Regulation of Non-U.S. Broker-Dealers Doing Business in the U.S. – Part I,” *The Metropolitan Corporate Counsel*, April 2008.

“Regulation of Non-U.S. Broker-Dealers Doing Business in the U.S. – Part II,” *The Metropolitan Corporate Counsel*, May 2008.

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#### Practices

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Investment Management, Securities Enforcement, Broker-Dealer, Securities Litigation, Capital Markets

#### Industries

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Asset Management, Private Capital, Private Equity, Financial Services

#### Market Solutions

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Corporate Governance, Regulatory & Compliance, Capital Markets Regulatory Solutions

#### Education

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St. John's University School of Law, J.D.

Boston College, B.A.

#### Admissions & Qualifications

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New York

#### Court Admissions

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U.S. District Court, New York, Eastern District

U.S. District Court, New York, Southern District

U.S. Court of Appeals, District of Columbia

#### Memberships

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American Bar Association

New York State Bar Association

New York City Bar

Securities Industry and Financial Markets Association (SIFMA)

Luxembourg American Chamber of Commerce