# Index

accountability 32-33 accounting provisions, FCPA 173-174 acquisitions 187-188 Action Memorandums 104, 105-106 administrative proceedings 110-111, 113, 142 admissions, SEC 112-113 AML see anti-money laundering anti-bribery provisions 173, 176-180 see also Foreign Corrupt Practices Act anti-money laundering (AML) 75, 119-120, 157 appeals 129, 153-154 arbitration 115-116, 120 assessments, FCPA 183-185, 187 attorney-client privilege 202-203 awards to whistleblowers 44-46

Barasch, Spencer 16 BCC *see* Business Conduct Committee Bear Stearns 24, 192, 205 boiler room operations 1.59 Bondi, Bradley J. 101–113 bounty programs 39–40 bribery *see* anti-bribery provisions broker-dealers FINRA examinations 69, 71, 85 SEC examinations 55–56, 57, 66 Brown Brothers Harriman & Co. 76, 119 Business Conduct Committee (BCC), NFA 147–150, 156 Bylaw 708, NFA 151 Bylaw 1101, NFA 94–95

cause examinations 57, 58–59, 67, 79 CCO *see* chief compliance officer CEA *see* Commodity Exchange Act CFTC *see* Commodity Futures Trading Commission

CFTC Enforcement 131-145 administrative proceedings 142 aggressiveness, increased 131-133 assumptions, flawed 143-144 defense strategies 144-145 Dodd-Frank Act 132-133, 142 experts, use of 140-141, 145 gray areas 143 process 137-138 SEC Enforcement 138, 142-144 settlement 141, 144 subpoena issuance 138 trends 142-143 triggers activating 137 types of action 133-136 "Wells" process 139-140 chief compliance officer (CCO) FCPA compliance 181-182, 187 FINRA examinations 81 SEC examinations 59, 62-63 CIGFO see Council of Inspectors General on Financial Oversight Citibank 111 comment letters 164-168 see also regulatory comment Commissioners, SEC 3-4, 100, 107-108 Commodity Exchange Act (CEA) 10 CFTC Enforcement 131, 132-133 CFTC whistleblower program 46 NFA examinations 87 Commodity Futures Trading Commission (CFTC) 3, 8-10 divisions 8-10 examinations 96-97 overlap with SEC 207-211 Wasendorf fraud 17-18 whistleblower program 45-53 see also CFTC Enforcement

### 218

INDEX

commodity pool frauds 134 compensation, executive 29-30 complaints from whistleblowers 37-53 compliance 23-36 accountability 32-33 Dodd-Frank Act 25-28 ethical decision-making 34-36 executive compensation 29-30 FCPA 180-188 new regulations 23-36 OCIE 5-6, 57-67 policies/procedures 30-31 strengthening 23-36 TFCE 79 unethical cultures 33 concept releases 162, 163, 166 conferences 61-62, 65, 84, 152 conflicts of interest 72 Consolidated Supervised Entities (CSE) program 24 continuance motions, NFA 152 Corporate Finance (CorpFin), SEC Division 4 corrupt payments, FCPA 173-190 Council of Inspectors General on Financial Oversight (CIGFO) 211 CSE see Consolidated Supervised Entities program cultural aspects 33, 181-182 Custody Rule 67 cybersecurity 66, 76, 122-123 cycle examinations, FINRA 79, 85 David Lerner Associates (DLA) Inc. 73 D.C. Circuit Court 202-203 DCMs see designated contract markets decision-making, ethical 34-36 deficiency letters 65-66, 95-96 Department of Justice (DOJ) 12-13 acquisitions 187-188 FCPA 174, 177-179, 187-188 SEC Enforcement 99 designated contract markets (DCMs) 9 directors 28 disciplinary actions FINRA Enforcement 115, 116-123, 128-129 NFA Enforcement 147-148, 156-158 disciplining employees 32-33 disclosures 27-28, 101, 188-190 discovery 104-105, 111, 113, 152 disruptive practices 132-133 divisions, SEC 4-5

DLA see David Lerner Associates Inc. documentation CFTC Enforcement 137-138 FCPA compliance 183 internal investigations 195-197, 199-203 NFA examinations 93-94 SEC examinations 60-61 Dodd-Frank Act 18 CFTC Enforcement 132-133, 142 compliance 25-28 effect upon SEC 205-208 governance 25-28 NFA examinations 90 overlapping jurisdictions 206-209 regulatory comment 161-162, 169 SEC Enforcement 110 whistleblowers 28, 41-43 DOJ see Department of Justice due diligence 182-183, 186, 187-188 Dwyer, Matt 78-23 economic in pacts of regulations 168-170 Economic and Risk Analysis (RiskFin), SEC Livision 5 employees 31-34, 52, 63, 198-199 enforcement FCPA 174-175, 179, 188 see also CFTC Enforcement; FINRA Enforcement; NFA Enforcement; SEC Enforcement entrance conferences, SEC 61-62 ethics 30, 32-36 accountability 32 author seminars 34-35 cultural aspects 33 decision-making 34-36 executive compensation 30 examinations CFTC 96-97 FINRA 69-85 NFA 87-97 SEC 55-67 Exchange Act, Securities and 26-28, 55-56 executive compensation 29-30 exit conferences, SEC 65 facilitating payments 176-180

false statements 132, 135–136 FBI *see* Federal Bureau of Investigation FCIC *see* Financial Crisis Inquiry Commission FCMs *see* futures commission merchants

#### Index

219

FCPA see Foreign Corrupt Practices Act FDIC see Federal Deposit Insurance Corporation Federal Bureau of Investigation (FBI) 174 Federal Deposit Insurance Corporation (FDIC) 2 federal financial structure 2-3 Federal Reserve System 2 Fifth Amendment rights 198 financial crisis 24-25, 205-206, 209-210 Financial Crisis Inquiry Commission (FCIC) 24 - 25Financial Industry Regulatory Authority (FINRA) 6-8, 16, 69-71 see also FINRA Enforcement: FINRA examinations Financial and Operational priorities, FINRA 76-77 Financial Stability Oversight Council (FSOC) 210-211 fines 72-73, 75-76, 158 FINRA see Financial Industry Regulatory Authority FINRA Enforcement 115-130 aggressive defending 130 appeal rights 129 challenges 125-126 conduct of hearing 126-128 disciplinary actions/sanctions 115, 116-123, 128-129 examination referrals 84 formal proceedings 125 process 123-125 settlement 128 small entities 129-130 trends 129-130 FINRA examination: 62-85 conclusions 83-84 conduct of 80-83 defending 69-85 educating examiners 84-85 Financial and Operational priorities 76-77 Market Integrity priorities 77-78 potential findings 83 priorities 71-78 qualification standards 70-71 risk-based approach 71 rules and regulations 70-71 Sales Practice 72-76 SEC examinations 78-79 types of examinations 79-80 types of examiners 82-83, 84-85

Foreign Corrupt Practices Act (FCPA) 173-190 acquisition targets 187-188 assessments 183-185, 187 compliance 180-188 culture of compliance 181-182 defending claims 173-190 DOJ/SEC guidance 177-179 due diligence 182-183, 186, 187-188 enforcement 174-175, 179, 188 exemptions 176-177 monitoring 182-183 penalties 176 provisions 173-174 reducing exposure 190 risk assessment 184-185, 187 SEC/DOJ guidance 177-179 self-disclosure 188-190 third parties 182, 185-187 training in compliance 181, 187 U.K. Bribery Act 179–180 violation: 175-176 Fox, Thoma. 180-190 Frank see Dodd-Frank Act fraud 14–19, 134 FSOC see Financial Stability Oversight Council futures see Commodity Futures Trading Commission; National Futures Association futures commission merchants (FCMs) 9-12, 87

gap analysis 183-184 General Counsel 62, 81 governance 23-36 accountability 32-33 Dodd-Frank Act 25-28 ethical decision-making 34-36 executive compensation 29-30 new regulations 23-36 policies/procedures 30-31 strengthening 23-36 unethical cultures 33

Hearing Officers, FINRA 126-127 Hearing Panel/Committee, NFA 150-151, 156 Hirst, Ronald 147-148, 150, 152-154, 159 hotline programs 51-52

improper payments, FCPA 178 internal investigations 191-204 commencement 193-194 documentation 195-197, 199-203 drafting the report 201

## 220

INDEX

internal investigations (Continued) high-profile examples 192-193 how to conduct 191-204 improvement recommendations 201-202 initial steps 195 interviews 195-200 investigators 193-194 lesson learned 192-193 limiting exposure 191-192 management briefings 200-201 obtaining information 195-196 outside investigations 194-195 protecting files 202-203 retaining the report 204 interviews 195-200 clear answers 200 documentation 199-200 employees/former employees 198-199 internal investigations 195-200 obtaining information 195-196 OTRs 123-124, 125 SEC Enforcement 104-105 strategies for conducting 197-200 investigations NFA Enforcement 149-150 SEC Enforcement 103-104 whistleblowers 50-51, 191-192 see also internal investigations investment advisors 56, 57, 66 Investment Advisors Act 1940 56, 67 Investment Management, SEC Division 4-5 Johnson & Johnson 35 jurisdictions 1-22 CFTC 3, 8-10 DOJ 12-13 federal financial structure 2-3 FINRA 6-8 fraud 14-19 NFA 10-12 overlapping 19, 206-209 SEC 3-6 justice see Department of Justice Knight, Jay 162-172

*Lawson v. FMR* 47 letters 65–66, 95–96, 164–168 listing companies 27 LPL Financial LLC 73, 118–119, 121 Lynch, Amy 57–66 Madoff, Bernie 14-16, 38-39, 67, 103, 192, 195, 199-201, 205-206 manipulation cases, CFTC 135 Market Integrity priorities, FINRA 77-78 markets 4, 9, 69, 77-79, 84 Markopolos, Harry 38 Matters Under Inquiry (MUIs) 102 McCracken, Kenneth W. 137–144 Member and/or Associate Responsibility Action (MRA/ARA) 147-149, 151, 154-155 Merrill Lynch 75 MF Global 209-210 mock audits/examinations 59-60, 92 money laundering see anti-money laundering monitoring, FCPA 182-183 Monson, Deborah 90-97 MRA/ARA see Member and/or Associate Responsibility Action MUIs see Matters Under Inquiry National Adjudicatory Council (NAC) 129 National Credit Union Administration (NCUA) National Futures Association (NFA) 10-12, 17-19 see also NFA Enforcement; NFA examinations NCUA see National Credit Union Administration NFA see National Futures Association NFA Enforcement 147-159 appeals process 153-154 complaints triggering 148-149 conduct of hearing 152-153 disciplinary actions 147-148, 156-158 Hearing Panel/Committee 150-151, 156 investigative process 149-150 MRA 147-149, 151, 154-155 penalty types 155-156 preparing a defense 159 settlement 150-151 trends 159 written decisions 153, 155 NFA examinations 87-97 CFTC examinations 96-97 compliance with details 97 conclusions 95-96 conduct of 93-95 defending 87-97 Dodd-Frank Act 90 entities under jurisdiction 87-89

#### Index

length of 93-95 preparation for 92 processes 90-92 risk-based analysis 91 notice of proposed rulemaking (NPR) 163 see also rule proposals OCC see Office of the Comptroller of the Currency Office of Compliance Inspections and Examinations (OCIE) 5-6, 57-67 Office of the Comptroller of the Currency (OCC) 2 Office of Thrift Supervision (OTS) 2 on-the-record interviews (OTRs) 123-124, 125 Operational priorities, FINRA 76-77 OTC see over-the-counter markets OTRs see on-the-record interviews OTS see Office of Thrift Supervision outside investigations 194-195 over-the-counter (OTC) markets 69 Paperwork Reduction Act 169-170 Peace Corps 192-193 Peregrine Financial Group (PFG) 17-19 performance and compensation 29 PFG see Peregrine Financial Group point persons 62-63, 81-82 policies 30-31, 51-52 politics and rule-making 165 Ponzi schemes 14-16, 38-39, 67, 403, 135, 192, 201, 205 pre-hearing conferences, NFA 152 precious metal transactions 134-135 reckless misconduct 132 regulatory agencies 206-211 see also individual agencies regulatory climate, current 212-213 regulatory comment 161-172 after deadline 171

alternative approaches 167 candidates for comments 163 comment letters 164–168 counsel assistance 172 Dodd–Frank rulemaking 161–162, 169 economic impacts 168–170 effective letters 168 learning about rulemaking 171–172 meetings with officials 170–171 positive feedback 166–167

refuting other positions 167-168 SEC rulemaking 162-165, 169 trade associations 163-165 regulatory and examination priorities, FINRA 71-79 regulatory failures 209-210 reports 136, 201, 204 retaliation protection, whistleblowers 47 risk analysis, SEC 5 risk assessment, FCPA 184-185, 187 risk-based approaches 71, 91, 182-183 Risk Management System, NFA 148 RiskFin, SEC division 5 Roth, Richard A. 116, 123-130 routine examinations 57, 59, 60-65, 93 routine governmental actions 176-177, 178 rule adoptions 162 rule proposals 162, 163, 166 rulemaking 161–165, 169, 171–172 see also regulatory comment Sales Practice, FINRA 72-76 sanctions 128-129 Sarbanes–Oxley Act 2002 47 SEC see Securities and Exchange Commission SEC Enforcement 99-114 CFTC Enforcement 138, 142-144 commencement 102-103 defense 99-114 discovery 104-105, 111, 113 as division of SEC 5 enforcement function 99-100 examination referrals 65-66 experts, use of 108-109, 114 exposure, minimizing 114 formal investigations 103-104 interview schedules 104-105 settlement 109-113 subpoena issuance 104 trends 110-113 triggers activating 101 violations, common 100 "Wells" process 105-108, 113 SEC examinations 55-67 authority to conduct 55-56 conclusions 65-66 defending 55-67 examiners 63-64, 67 FINRA examinations 78-79 OCIE 57-67 preparation 58

# 221

### 222

INDEX

SEC examinations (Continued) process 60-65 trends 66-67 types of exams 57-58 SEC whistleblower program 37-45 complaints since restructuring 43-45 Dodd-Frank Act 41-43 effect of program 52-53 failures 37-41 recommendations 40-41 Securities Exchange Act 1934 26-28, 55-56 Securities and Exchange Commission (SEC) 3-6 author investigations 192-193, 195, 198-201 Commissioners 3-4, 100, 107-108 criticisms 205-206 divisions 4-5 Dodd-Frank Act 205-208 FCPA 174, 177-179 offices 5-6 overlap with CFTC 207-211 Ponzi schemes 14-16, 38-39, 67, 103, 192, 201, 205 regulatory comment 162-163, 164-165, 169 whistleblowers 37-45, 47-50, 52-53 see also SEC Enforcement; SEC examinations; SEC whistleblower program, self-disclosure 101, 188-190 self-examination checklist, NFA 92 self-regulatory organizations (SROs) 1-2, 5-6, 12,69 self-reporting 49-51 settlement CFTC Enforcement 141,744 FINRA Enforcement 128 NFA Enforcement 150-151 SEC Enforcement 109-113 shareholder advisory notes 26 SIFIs see systemically important financial institutions SROs see self-regulatory organizations Stanford, Allen 15-16, 192, 205-206 stock options 29 supervisory aspects 74, 77, 80-81, 122, 136 swap dealers/participants 88, 91-92 sweep examinations 57, 79-80 systemically important financial institutions (SIFIs) 211

TFCE see Trading and Financial Compliance examinations third parties 182, 185-187 TMMS see Trading and Market Making examinations TRACE see Trade Reporting and Compliance Engine trade associations 163-165 Trade Reporting and Compliance Engine (TRACE), FINRA 8, 78 Trading and Financial Compliance (TFCE) examinations 79 Trading and Market Making (TMMS) examinations 79, 84 Trading and Markets, SEC Division 4 training 34, 181, 187 Tylenol incident 35-36 U.K. Bribery Act 2010 179-180 Upjohn Co. v. United States 203 U.S. Foreign Corrupt Practices Act (FCPA) 173-199 voluntary documentation provision 138 Wasendorf, Russell 17-19 Web Information Requests 80 "Wells" process 105-108, 113 CFTC Enforcement 139-140 FINRA Enforcement 124, 125 meetings 108, 109 notices 106, 124 SEC Enforcement 105-108, 113 submissions 106-108, 109, 124-125, 139-140 whistleblowers 37-53 120-day management window 47-50 CFTC 45-53, 132, 133 complaints management 37-53 Dodd-Frank Act 28, 41-43 internal investigations 191-192 internal officials, complaints to 47-51 policies/procedures 51-52 SEC Enforcement 101, 111-112 US supreme court decisions 46-47

Compiled by INDEXING SPECIALISTS (UK) Ltd.

see also SEC whistleblower program

written decisions, NFA 153, 155