

The Compliance Expert Advantage: A New Field Of Expertise In Financial Litigation

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Tom Werner via Getty Images

Introduction

The stakes are high in financial industry litigation. Banks and broker-dealers may be on the hook for millions or even billions of dollars. With compliance, controls, governance, and supervisory oversight often taking center stage, it is surprising there have been so few independent compliance experts called to testify. Like damage experts or forensic accountants, maybe “compliance expert” should be a category unto itself? Compliance officers are the true experts on suitability, misrepresentation, manipulation, fraudulent conveyances, money-laundering and many other topics. Working hand-in-hand with Legal Departments, Compliance Departments are the controls-implementers and fraud-preventers of financial institutions. Chief Compliance Officers participate in governance

committees and have the best understanding of how controls are implemented throughout an institution, and allegations of such failures are at the core of most securities litigation. Every day, compliance officers identify (or should identify) conflicts of interest and other red flags, analyze them and, with senior management, decide and document the way forward for the bank or broker-dealer. At trial, a compliance expert can aid judges and juries in understanding those regulatory and policy standards required to be implemented to protect consumers, investors, and other stakeholders. Obviously, as compliance obligations become more complex, the testimony of a specific, independent, compliance expert witness could move the needle in most cases alleging compliance and control failures.

The Value of Specialized Expertise

Financial litigation—especially cases involving banks and broker-dealers—is intricate. Asking, “What is the compliance angle?” is an early step to forming a convincing argument. These cases depend on a nuanced understanding of complex regulatory frameworks, industry best practices, and systems of controls, escalation, and governance. An expert’s ability to effectively analyze evidence, construct compelling arguments, and deliver clear testimony can be the difference between winning and losing.

Your Compliance Expert must know...

- ❑ **Regulatory Compliance:** A deep understanding of federal and state regulations that govern banking and broker-dealer activities is essential.
- ❑ **Supervision and Oversight:** Expertise in evaluating supervisory structures, policies, and procedures can provide valuable insights into the financial institution.
- ❑ **Governance and Controls:** A strong grasp of internal control frameworks and risk management practices can be critical in many cases.
- ❑ **Industry Best Practices:** Real-world experiences and extensive knowledge of industry standards and best practices offer a convincing perspective. Judges, juries, and arbitration panels need to understand complex regulatory obligations from an independent source.

How An Expert Can Help Win Cases

- **Case Assessment and Strategy:** Early expert analysis of case facts and evidence can help identify strengths, weaknesses, and potential legal strategies.
- **Document Requests and Analysis:** Know which policies, org charts, committee charters, supervisory procedures, and exception reports to ask for “up front,” early in discovery. Review and analyze them as a practitioner. Uncover hidden details.
- **Expert Reports and Testimony:** Prepare comprehensive expert reports and deliver clear, concise, and persuasive testimony.
- **Deposition and Trial Preparation:** Assist with deposition and trial preparation, including developing lines of questioning and preparing witnesses for cross-examination.

Plaintiff Strategy	Defense Strategy
Demonstrating business-line, compliance, and/or risk failures in surveillance, controls, and “red flags” regarding policies or regulations	Proving substantive compliance through evidence of overall strong policies, training, and controls
Highlighting missed escalation, failure to supervise, and poor governance	Establishing overall reasonableness and implementation of supervisory procedures

How I got on this path...

As a student of philosophy and business, I’ve always been on the periphery of lawyers’ and legal scholars’ inner circles. In practice, I’ve worked hand-in-hand with lawyers for my whole career, from regulatory depositions for the enforcement actions of the American Stock Exchange, through Goldman Sachs during the dot-com era, and Lehman Brothers through its bankruptcy at the center of the Great Financial Crisis. At the point of BNP Paribas’ \$8.9 billion settlement and guilty plea, I became Chief Compliance Officer, with remediation responsibilities accountable to the Department of Justice, OFAC, the CFTC, and the New York Department of Financial Services.

All that hard work paid off in a wonderful expat assignment as Global Head of Financial Markets Compliance at BNP Paribas, leading compliance and control teams for every trading market in the world where BNP had a presence. During this role in Paris and London from 2015-2019, my kids gained valuable international perspectives and language skills and my wife and I gained a taste for fine food and wine! Upon re-settling in the USA, I took an entrepreneurial path, including establishing (and unwinding) my own hedge fund. In 2023, I founded VEGA Compliance Consulting to assist financial firms in

augmenting their compliance programs. I've since expanded to assist law firms and their clients, including expert witnessing and litigation consulting on cases with a compliance angle (i.e., all of them.)

Author



Mike Evans

Mike is a dynamic entrepreneur, seasoned risk manager, a multinational Chief Compliance Officer with a business-focus, and now a testifying expert. His global experience has been instrumental in transforming the compliance,...

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