

## James G. Lundy

### Partner

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A former Securities and Exchange Commission (SEC) enforcement supervisor and senior trial counsel, James (Jim) Lundy empowers public companies and financial services firms to overcome investigations by enforcement regulators while preserving their reputations and stakeholder relationships.

Jim is a partner and litigator within the Securities Enforcement & Litigation Practice Group at Foley & Lardner LLP, based in the firm's Chicago office. He helps protect clients under investigation by the SEC, Commodity Futures Trading Commission (CFTC), and other regulatory bodies by leveraging his experience working in the SEC's Division of Enforcement for almost a decade. He spent the last several years of his service with the SEC helping lead the Division of Examinations program in the Midwest.

Public companies and their boards of directors, investment advisers, broker-dealers, hedge and private equity funds, investment banks, futures trading firms, and the leaders of these organizations regularly turn to Jim for counsel. He has helped clients resolve high-stakes SEC and other regulatory investigations with no charges filed, and he has lowered enforcement settlement demands by hundreds of millions of dollars. Jim also leads internal investigations; serves as an independent monitor; provides counsel on governance, compliance, and policy issues; handles cybersecurity regulatory investigations; and defends clients in complex financial services litigation.

Jim is also an active member of the following firm practice areas: Government Enforcement Defense & Investigations (GEDI), and Fund Formation & Investment Management. Additionally, he is a member of the firm's Cannabis, Digital Assets, Web3, & NFT (DAWN), and Sports & Entertainment Industries and the Innovative Technology Sector.

### **Representative Experience\***

#### **Public Companies, Internal Investigations, and Insider Trading**

- Represented a CEO and public company in the logistics industry in a parallel investigation by the SEC and the Department of Justice (DOJ) into the company's accounting practices after a multiyear restatement that led to the resignation of the CFO and subsequent charges against him and two other corporate officers. While the CFO was criminally convicted, no charges were filed against Jim's CEO client, and the SEC settled with the company client for minimal relief. Also provided counsel to the company's board of directors and audit committee throughout the investigative process, and worked closely with the company's audit firm.
- Represented a CEO in the automotive industry concerning an SEC enforcement investigation pursuant to the SEC's Earnings Per Share Initiative. Resulted in no charges against the CEO.
- Representing a high-stakes, large-volume trader and former institutional broker in an insider trading case filed against him by the SEC and in the parallel criminal case filed by the DOJ for his alleged several million-dollar insider trading scheme in the securities of special purpose acquisition companies (SPACs).
- Represented the former chairman of the board of a public company investigated by the SEC for misleading statements made by the CEO regarding revenue recognition. Resulted in no charges against the former chairman.
- Led an internal investigation of an international company in the semiconductor industry regarding potential internal control and financial reporting violations due to misappropriations of company funds by an officer of an Asian subsidiary, and provided counsel to the company's board of directors and audit committee. As a result of the internal investigation, the client self-reported to the SEC, which did not pursue an enforcement action.
- Led an internal investigation of a multibillion-dollar private equity real estate fund complex into alleged misappropriations by the controller and control deficiencies by the firm. Resulted in the implementation of a remediation program, but no self-reporting to the SEC.
- Representing the CEO of a public company in an active SEC insider trading investigation regarding trading in the stock of his company and a second company.

### **Investment Advisers, Broker-Dealers, and Other Firm/Fund Work**

- Represented a dual registrant in an investigation conducted by the SEC's Asset Management Unit (AMU) after a referral from the Division of Examinations, and obtained termination notices for both the investment adviser and the broker-dealer, closing the investigation without charges, despite the Division of Examinations' deficiency letter alleging obstruction of justice and securities fraud violations by the firm.
- Representing a foreign-based SEC-registered investment adviser in litigation against the SEC, in which the SEC has alleged multiple securities laws violations and is seeking more than US\$20m in disgorgement.
- Representing a large dual registrant in the SEC's national initiative regarding off-platform messaging and potential books and records violations.

- Represented the CCO of a large mutual fund complex in a SEC investigation involving trading and valuation issues for certain illiquid holdings of a fixed-income mutual fund. The SEC focused its investigation on the purported mismarking of bonds to inflate their pricing at the end of a quarter. Based on a “white paper” submission and other strategies, the SEC issued a termination notice closing its investigation without charges.
- Represented a sub-adviser to a mutual fund in an investigation conducted by the SEC’s Complex Financial Instrument specialty unit regarding the client’s derivatives-based hedging strategy. Due to a “black swan” event, the mutual fund suffered almost US\$100m (US\$275m notional) in losses. Through a series of presentations and other advocacy efforts, persuaded the SEC to terminate the investigation without taking any action.
- Represented the general counsel and chief compliance officer (CCO) of a private equity fund in an investigation involving the valuations of Level 3 (illiquid) assets and complex custody-rule compliance issues. Resulted in no charges against this client.
- Represented multiple investment advisory firms in the SEC’s 12b-1 fee self-reporting initiative and the follow-up initiatives of the SEC’s AMU regarding conflicts and disclosures related to revenue sharing and other financial conflicts of interest.

### **Futures, Derivatives, and Digital Assets**

- Served for three years as the U.S. District Court-appointed monitor for the first spoofing enforcement action and settlement by CFTC.
- Representing the lead defendant in litigation against the SEC for an alleged US\$300m cryptocurrency pyramid scheme.
- Representing one of the largest publicly traded cryptocurrency exchanges in litigation against the Illinois Securities Department.
- Represented a futures trader affiliated with a futures commission merchant (FCM) in CFTC and CME Group Market Regulation investigations into the trader’s and the FCM’s practices regarding alleged manipulative trading in certain exchanges of futures for physical transactions. The CFTC and CME Market Regulation closed their investigations without taking action against the trader.
- Successfully represented multiple individuals in a parallel CFTC and DOJ investigation regarding alleged market manipulation in the oats futures markets.
- Represented multiple firms and traders in CME Enforcement Rule 575 disruptive trading investigations.

*\*Certain of these matters were handled prior to joining Foley.*

### **Awards and Recognition**

- Federal Bureau of Investigation’s Exceptional Service in the Public Interest Award
- Securities & Exchange Commission
  - Shannon D. Ayers Examination Award of Excellence
  - Chairman’s Award for Excellence
  - SEC Director’s Award (multiple)

- SEC Special Act Award (multiple)

## Affiliations

- Director and treasurer, Association of SEC Alumni/ASECA (2021-present)
- Investment Advisers Forum co-leader, National Society of Compliance Professionals (2022-present)
- Member (2016-present) and Executive Committee (2018-2020), Futures Industry Association
- Member, Securities Industry and Financial Markets Association (SIFMA) (2017-2022)

## Community Involvement

- Special Olympics Chicago
- The Warrior Scholar Project
- University Club of Chicago
- Marist High School Law Alumni Association
- St. Linus School
  - Board member, Athletic Club (2009-2011 and 2013-2018)
  - Distinguished Graduate Award (2017)
- Vice president, Oak Lawn Baseball (2011-2013)

## Presentations and Publications

- Co-author, “Artificial Intelligence (AI) and the SEC Present and Future Risks,” Lexis.com (June 26, 2024)
- Panelist, “The Role of Legal and Compliance in Cybersecurity and Crisis Management,” FIA Law & Compliance Conference (April 26, 2024)
- Panelist, “Ethics,” Derivatives & Futures Law Committee Meeting 2024 (January 27, 2024)
- Co-author, “Expert networks, alternative data and managing risks of material non-public information,” *Journal of Financial Compliance*, Volume 7, Number 2 (December 2023)
- Co-author, “CCO liability: enforcement director speech and update,” *IAA Today* (December 12, 2023)
- Quoted, “CFTC Case May Deter the SEC From Issuing No-Action Letters: Attorneys,” FundFire (October 13, 2023)
- Moderator, “Navigating Dispute Resolution and Complaint Matters,” National Society of Compliance Professionals Conference (October 12, 2023)
- Panel “Member-in-Charge,” “Modernizing Records Management,” National Society of Compliance Professionals Conference (October 12, 2023)
- Co-moderator, “Recent Trends in Insider Trading,” ComplySci Webinar (July 27, 2023)
- Quoted, “SEC Continues Books and Records Enforcement Streak,” *Agenda* (July 17, 2023)
- Panelist, “Ethics – Investigations Scenario,” FIA L&C Conference (April 28, 2023) Moderator, “NSCP Regulatory Interchange Webinar featuring the SEC,” NSCP Regulatory Interchanges Webinar (April 27, 2023)
- Panelist, “Prevention of Misuse of MNPI and Insider Trading: Alternative Data and Expert Networks,” Investment Adviser Compliance Conference (March 14, 2023)

- Panelist, “Arbitrations: From the Starting Gate to the Finish Line,” *Futures Industry Association L&C Division* webinar (Sept. 22, 2022)
- Quoted, “‘Educators Are Angry’: Equitable’s \$50M Penalty Points to Wider 403(b) Problems,” *ThinkAdvisor* (July 27, 2022)
- Quoted resource, “Advisers should brace for tougher SEC scrutiny of expert networks for MNPI,” *Private Funds CFO* (July 19, 2022)
- Quoted, “Agenda-driven SEC determined to prevail despite critics’ pushback,” *InvestmentNews* (July 11, 2022)
- Quoted, “Small Indexers Gird for Potential SEC Rule,” *Ignites* (July 1, 2022)
- Quoted, “NYC Bar Proposal Could Quell Persistent ‘Fear’ CCOs Face,” *Law360 Pulse* (June 9, 2022)
- Quoted, “SEC fines 12 firms total of \$292,523 in Form CRS enforcement actions,” *Investment News* (Feb. 22, 2022)
- Quoted, “Expect Reg BI Enforcement Actions, DOL Rollover Crackdown in 2022,” *ThinkAdvisor* (Jan. 6, 2022)
- Presenter, “Insider Trading in the Crosshairs: Expert-Network Compliance Best Practices,” webinar (Dec. 15, 2021)
- Quoted, “Surge In Tips To SEC Exposes Gaps In Internal Reporting,” *Law360 Employment Authority* (Nov. 19, 2021)
- Quoted, “SEC to Require More Admissions of Wrongdoing,” *ThinkAdvisor* (Oct. 14, 2021) Quoted, “SEC’s New Enforcement Chief May Bring Wider Net to Reg BI,” *WealthManagement.com* (July 29, 2021)
- Developer, “Understanding and Avoiding Spoofing Behavior,” *FIA* (June 30, 2021)
- Quoted, “Companies Scramble To Meet SEC’s SolarWinds Info Deadline,” *Law360* (June 25, 2021) Quoted, “Your advisor might be able to sidestep this federal disclosure rule. That may not be a bad thing, some say,” *CNBC Advisor Insight* (Oct. 12, 2020)
- Speaker, “SEC Exam Trends, Prep and Expectations,” *AIMA May Fund Manager Briefing* — Chicago (May 21, 2019)
- Presenter, “Spoofing, surveillance, & supervision,” *FIA Law & Compliance Division webinar series* (Jan. 17, 2019)
- Quoted, “SEC wants mom and pop investors to weigh in on investment-advice rule,” *CNBC* “Your Money Your Future” (April 19, 2018)
- Quoted, “DOJ, CFTC Spoofing Cases Show Cooperation Running High,” *Law360* (Jan. 29, 2018)
- Co-author, “Compliance and Legal Officer Guidelines to Prevent Non-Line Supervisory Liability” (March 2017)
- Quoted, “Supreme Court ruling ‘changes the game’ for US crypto firms,” *Cointelegraph* (July 11, 2024)

## Sectors

- [Artificial Intelligence](#)
- [Cannabis](#)
- [Digital Assets, Web3 & NFTs](#)



FOLEY & LARDNER LLP

- Innovative Technology
- Sports & Entertainment

## Practice Areas

- Financial Institutions
- Fund Formation & Investment Management
- Government Enforcement Defense & Investigations
- Government Solutions
- Litigation
- Securities Enforcement & Litigation
- Securities, Commodities & Exchange Regulation

## Education

- DePaul University College of Law (J.D.)
- DePaul University Kellstadt Graduate School of Business (MBA)
  - Finance
- University of Illinois Urbana-Champaign (B.A.)