

## White Collar Defense and Investigations



### AGGRESSIVE ADVOCACY FOR THE DEFENSE

In the wake of multiple infamous corporate scandals in recent years, the government is taking an increasingly aggressive posture toward businesses and executives. Criminal prosecutions and regulatory investigations – sometimes proceeding in parallel – have become more frequent and more complex, with increasing risk to companies and their officers and directors.

Brooks Pierce has been honored by numerous publications in this area, including recognition as a “Band 1” firm in white-collar criminal defense by Chambers USA: America's Leading Lawyers for Business (2009-18), and a “Tier 1” firm in white-collar litigation by U.S. News & World Report: Best Law Firms (2014-2018). Our lawyers include former Assistant United States Attorneys. Having previously prosecuted these cases on the government’s behalf, we are well positioned to defend against them.

Frequently, a single investigation will touch on several of the substantive areas described below. Much of our success lies in our ability to employ the full breadth of our partners’ subject matter experience in all of these areas. Key substantive areas include:

**Anti-Money Laundering.** We defend financial institutions and other regulated entities against investigations and prosecutions for violating the Bank Secrecy Act, for failure to prevent or report illegal money laundering, and failure to follow the “know your customer” requirements and other provisions of the USA Patriot Act. We also help our clients

develop and strengthen their compliance programs to avoid exposure from regulators and government investigators.

**Bank Fraud and Mortgage Fraud.** When the housing bubble burst and the resulting financial crisis set in, the government increased its emphasis on investigating and prosecuting fraud related to bank transactions and mortgages. Our practice has handled numerous such cases brought by the Justice Department, the Consumer Financial Protection Bureau, and state regulators. At times we work on behalf of those accused of fraud and, in other matters, on behalf of victimized companies.

**Computer Crimes / Theft of Trade Secrets.** As corporate databases have become increasingly, if not exclusively, electronic, threats to loss of that information have become correspondingly more frequent. Federal prosecutors commonly invoke the Computer Fraud and Abuse Act to combat electronic crimes, and Brooks Pierce has regularly negotiated favorable outcomes for clients in those matters, through trial if necessary.

**Environmental Violations and Compliance.** The government has dramatically increased criminal enforcement of environmental laws in recent years. Such prosecutions create unique defense problems because in these cases, unlike in most other white-collar criminal prosecutions, the government enforces criminal statutes that require little, if any, criminal intent. This problem is compounded by the fact that the consequences of an environmental-crime conviction for any business are serious—ranging from probation, fines and restitution to being barred from contracting with the federal and/or state government. We have a track record of robust, complex defense work in this area, due in large part to our partnership with the firm's highly regarded environmental practice group.

**Foreign Corrupt Practice Act Matters.** Our attorneys frequently advise clients on internal investigations involving suspected violations of the FCPA, as well as FCPA compliance programs and due diligence related to corporate transactions.

**Forfeiture (Civil and Criminal).** Federal and state prosecutors have increased emphasis on civil and criminal asset forfeiture in recent years. We have substantial experience with the forfeiture process, in the best methods to successfully protect our clients' assets, and in assisting lenders and other financial institutions to protect their interests in property seized by the government.

**Healthcare Fraud.** The government has made healthcare fraud issues a priority item for federal investigation and prosecution in recent years. This emphasis has led to increased federal and state scrutiny of transactions in the healthcare industry, which in turn has led to increased prosecutorial efforts. Our practice group has significant experience in defending against federal and state investigations for Medicare fraud, Medicaid fraud, kickbacks, and suspected violations of the False Claims Act. We have successfully represented pharmaceutical companies, insurance carriers, physicians, dentists, and other healthcare providers in responding to federal and state investigations.

**Mail Fraud, Wire Fraud, and Money Laundering.** Mail fraud, wire fraud, and money laundering are the most common tools the federal government employs in business-crimes cases. Each of these statutes allows the government to prosecute an incredibly broad range of conduct. Due to the breadth and scope of these statutes, the focus of the defense in this type of prosecution requires intensive fact-finding and, frequently, pre-indictment presentations to the government to persuade the government that prosecution is unwarranted. If that cannot be accomplished, we work to identify the weaknesses of the government's case and exploit those weaknesses in the courtroom.

**Securities, Accounting, and Financial-Institution Fraud.** We have extensive experience defending companies and individuals in a broad array of investigative and enforcement actions by the U.S. Department of Justice, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the North Carolina Securities Division, state attorneys general, and the Financial Industry Regulatory Authority. These matters have included charges of insider trading, financial accounting fraud, disclosure fraud, forex trading fraud, misuse and misappropriation of client assets, violations of the Investment Advisers Act, and violations of FINRA rules.

**Tax Offenses.** We are experienced in representing individuals and businesses in federal and state investigations and proceedings involving tax fraud and evasion. Often we see tax-related charges in conjunction with allegations of other crimes, including antitrust violations, securities fraud, money laundering, mail and wire fraud, and illegal currency

transfers.

**Parallel Proceedings.** Criminal matters now routinely proceed alongside civil investigations, and engaging counsel with experience in both criminal matters and civil regulatory investigations and litigation is vitally important. Put another way, a strategy that makes sense in one context could be disastrous when applied to a multi-pronged attack by the government. Uniquely among law firms in North Carolina, Brooks Pierce has prior prosecutorial experience in both criminal and civil settings, so clients' interests are protected on all sides.

### **Our Experience**

The services we routinely provide include:

**Trial and Appellate Litigation.** Brooks Pierce lawyers are courtroom lawyers, not just litigators. Our attorneys draw on their substantial trial experience in defending business and individuals in criminal prosecutions brought by the Department of Justice, the State of North Carolina, and other authorities. Designing and executing an effective trial strategy is essential to achieving the most common objective of our clients – a trial win or a favorable settlement. We have frequently pressed cases to trial and achieved acquittals or settlements that greatly exceeded offers initially made by the government. When necessary, we handle appeals of unfavorable rulings and defend against government appeals in federal and state appellate courts across the country.

**Grand Jury Practice.** Our clients are often the recipients of grand jury subpoenas. The grand jury is a powerful investigative tool, and carefully planning a strategy for responding to the subpoena is critical to an overall defense strategy. We routinely aid individuals in preparing for grand jury testimony and help businesses respond to extensive document requests. Working through the grand jury process frequently aids our understanding of an investigation and how to best respond to any subsequent prosecution.

**Civil Enforcement Investigations.** Similar to the criminal grand jury process, civil enforcement agencies including the SEC, CFTC, and CFPB wield broad subpoena authority to collect documents and compel testimony. Intelligent handling of this process can mean the difference between public charges and a quiet declination to proceed with an investigation. Our attorneys are quite familiar with the SEC's Wells process and other similar agency procedures, including the CFPB's Early Warning Notice process. We have been frequently successful in shepherding clients through investigations without charges, even when other similarly positioned executives have been unable to avoid enforcement action in the same matters.

[How can we provide aggressive advocacy for you?](#)