

# Financial Services

Providing Strategic Legal Guidance to the Global Financial Services Industry

**OCTOBER 26, 2020**

For more information,  
contact:

Robert Cooper  
+1 202 626 8991  
rcooper@kslaw.com

Dixie Johnson  
+1 202 626 8984  
djohnson@kslaw.com

Andrew Michaelson  
+1 212 790 5358  
amichaelson@kslaw.com

---

## King & Spalding

Washington, D.C.  
1700 Pennsylvania Avenue,  
NW  
Washington, D.C. 20006  
Tel: +1 202 737 0500

New York  
1185 Avenue of the Americas  
34<sup>th</sup> Floor  
New York, N.Y. 10036  
Tel: +1 212 556 2100

## DOJ Will Partner With SEC to "Lean In" on Aggressive Antitrust Policing of the Financial Services Sector

The Department of Justice Antitrust Division is intensifying its focus on the financial services sector and financial markets, and it is increasing collaboration with the Securities and Exchange Commission.

Deputy Assistant Attorney General Michael Murray said in a speech on October 14 that the Antitrust Division will continue to aggressively police the financial sector for “ever complex antitrust crimes,” while also updating its practices “to adapt to the new realities of the financial markets” and the industry. This includes organizational reforms within the Division to account for the evolution of the financial services sector, and monitoring trends related to the acceleration of (1) transactions involving acquisitions of nascent competitors in emerging technologies, and (2) vertical mergers and acquisitions. With respect to the latter, we expect the Antitrust Division to scrutinize proposed transactions that, if consummated, would give the acquiring entity control over a product or service that is important to its competitors’ business operations.

The Antitrust Division also will increase its collaboration with the SEC. As part of this, the first-ever Memorandum of Understanding between the two agencies recently was announced. This MOU will enhance the working relationship between the SEC and Antitrust Division and create a framework for the agencies to “discuss and review law enforcement and regulatory matters affecting competition in the securities industry” by establishing regular inter-agency communication.

How exactly these developments will play out—and the precise areas where the agencies will augment their cooperation—is not yet clear. What is clear is that the Antitrust Division has articulated that the financial services sector is a priority industry for vigorous antitrust scrutiny and enforcement. Among other things, this means that information provided to the SEC is more likely to make its way to the Antitrust Division, and the Division’s antitrust investigation and enforcement decisions will be



influenced by the SEC’s views on how markets operate. Moreover, it is doubtful that this cooperation will be a one-way street. For example, antitrust enforcement actions may give rise to SEC enforcement proceedings predicated on insufficient disclosures relating to alleged anticompetitive conduct. And both agencies will benefit from the other’s respective expertise on topics that have dual-enforcement angles, such inter- and intrafirm trading and sales practices.

At this point, we think the main takeaway for financial services market participants is that their securities and antitrust compliance and enforcement efforts cannot be siloed. Rather, firms need to mirror the DOJ-SEC collaboration and assess their business operations and practices through both lenses. Likewise, a financial services company confronting an investigation from either the Antitrust Division or SEC should promptly assess the degree to which the subject of that investigation may implicate enforcement priorities of the other agency.

---

### ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,200 lawyers in 22 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered “Attorney Advertising.” View our [Privacy Notice](#).

ABU DHABI	CHARLOTTE	GENEVA	MOSCOW	RIYADH	TOKYO
ATLANTA	CHICAGO	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.
AUSTIN	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY	
BRUSSELS	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE	