



# Insights: Top Disputes & Investigations

Securities, Accounting and  
Regulatory Enforcement





## — Securities, Accounting and Regulatory Enforcement

We expect the global pandemic to affect securities, accounting and regulatory enforcement in a variety of complex ways. In the U.S., share prices may have been affected by the impact of COVID-19; economic stimulus efforts like the CARES Act may require firms to show they complied with the terms of the legislation; and accounting authorities will likely offer new interpretations of accounting rules. These issues – and others – will also play out internationally in different ways.

We stand ready to meet the new challenges of the post-pandemic economy. We have deep expertise in a wide range of securities, accounting, and regulatory environments around the world. In this section, we highlight several recent engagements touching on these experiences. In this section, of our **2020 Insights: Top Disputes & Investigations**, we highlight our work helping clients resolve disputes on major Securities, Accounting and Regulatory Enforcement projects.



# Investigating Global Profitability for Engineering Company

A large international engineering and manufacturing company was facing regulatory investigations and litigation in several countries. Counsel retained FTI Consulting based on our robust knowledge of the business's structure and operations from prior engagements.

Because the investigation had an extremely limited timeline, FTI rapidly assembled a team of forensic accountants and data & analytics professionals. We analyzed and calculated the client's global profitability of the products under investigation across a variety of attributes, providing a level of granularity not previously available to the client.

We also interviewed accounting and sales personnel across the business's various entities. From these conversations, FTI was able to identify additional data sources, including production data, division-level financial data, and external market data, to create a complex model allocating global revenue and costs to the appropriate products. Through this structured, repeatable approach, FTI was able to successfully calculate the profitability of the products under investigation.

Ultimately, FTI developed a dynamic deliverable that allowed counsel to evaluate hundreds of different profitability scenarios which proved essential during negotiations with regulatory agencies. FTI's work helped reduce the company's penalties to less than half the amount initially estimated.

## Subject Matter Experts



**Adam Berry**  
Senior Managing Director



**Nicole Wells**  
Senior Managing Director



**Alex Tully**  
Director



**Audrey O'Connor**  
Senior Consultant

# Calculating Damages in Antitrust Class Action

A leading producer of electrical circuit components became involved in a Direct Purchaser Plaintiff (DPP) class action lawsuit alleging participation in a global price-fixing conspiracy. The company was accused of being a key member of a multi-year, international cartel of Japanese firms controlling the market for electrolytic capacitors. The alleged cartel was accused of raising and sustaining prices to an anti-competitive level, thereby imposing billions of dollars of purported overcharges on capacitors purchased by DPPs such as U.S.-based distributors, original equipment manufacturers (OEMs), and electronics manufacturing services (EMS) providers.

Legal counsel retained FTI Consulting to review and rebut analyses put forth by the Plaintiffs' expert, a well-known academic statistician. Using sophisticated econometric models that distinguished dynamics in the prices paid by different types of purchasers – distributors vs. OEMs vs. EMS – we demonstrated that the purported overcharges on our client's sales were orders of magnitude lower than the Plaintiffs' calculations and/or statistically insignificant.

Our analysis was critical to our client settling with DPPs for a fraction of the damages estimated by the DPPs' expert.

## Subject Matter Experts



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Senior Managing Director



**Sreevidhya Devarajan**  
Senior Director



**Ara Demirjian**  
Director



**George Derpanopoulos**  
Director

# Analysis of Post-IPO Stock Price Decline

A tech company ran into legal trouble when it saw its stock price decline following an IPO. The company was sued in state court by a class of investors under Section 11 of the Federal Securities Act, who alleged that the company's registration statement at the time of the IPO was materially incorrect and incomplete. There has been a sharp increase in the number of Section 11 cases since 2018 when the Supreme Court ruled in *Cyan, Inc. v. Beaver County Employees Retirement Fund* that Section 11 cases can be heard in state courts.

Under the law, a defendant will prevail if it can show "negative loss causation," that is, the alleged misrepresentation or omission did not lead to a decline in the share price. To assist counsel, FTI Consulting identified several prominent testifying experts and performed several types of analyses relating to the company's stock price. We analyzed the efficiency of the market and traditional valuation metrics. We developed event studies and analyzed these in the context of the registration statement. Our analysis was used by the client to settle the case favorably.

## Subject Matter Experts



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**Paul Wazzan**  
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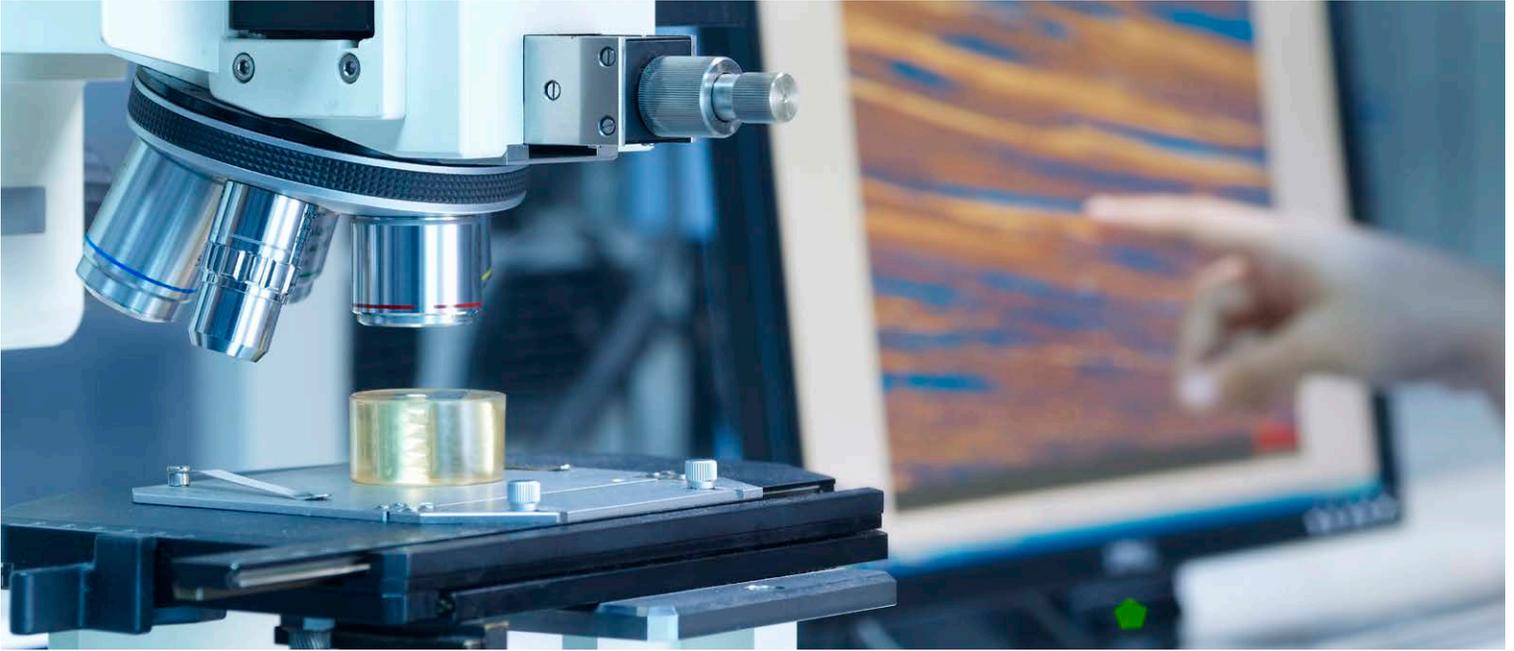
**Tiko Shah**  
Managing Director



**Erica Rose**  
Senior Director



**Joe Tanimura**  
Senior Director



# Mitigating Fraud Risk at Minerals Laboratory

A bribery allegations probe into a global minerals laboratory led to FTI Consulting being engaged as an independent compliance expert over a five-year period. Several lab employees were accused of fraudulently changing laboratory results in exchange for monetary compensation. FTI provided annual assessments of the internal controls and compliance procedures related to the company's domestic and international operations.

Our efforts included:

- A holistic review of physical procedures;
- Interviews with key and/or representative personnel;
- A detailed walkthrough of each domestic and international facility;
- An assessment of system and physical security as well as any potential exposure to FCPA violations;
- Reporting on material exceptions detected during the execution of the evaluation;
- Suggestions for addressing such exceptions; and,
- Recommendations for improvements.

At the end of each audit, we provided a detailed procedures and findings report to the company and to the Board of Directors.

## Subject Matter Experts



**David Alfaro**  
Senior Managing Director



**Mike Wei**  
Managing Director





# Program Fees Overcharges: Getting Ahead of the Problem

A domestic financial services firm learned that it incorrectly charged program fees to customer accounts associated with certain investment advisor programs. However, it did not know the full extent of how and why the assessed program fees varied from the disclosure documents. In response, and in advance of disclosing the problem to the SEC, the firm decided to retain FTI Consulting to identify and reimburse any clients that had been inadvertently overcharged and resolve the underlying issue.

Our scope of work included:

- Identifying all customers and customer accounts that were harmed;
- Identifying and collecting historical data for all factors that contributed to the program fee calculation;
- Proposing guidelines and assumptions to handle inconsistent or missing historical information;
- Recalculating historical program fees to determine the amount each customer account was overcharged;
- Preparing the proper documentation to support the revised calculations as well as any client refunds; and,
- Identifying programmatic and process issues that contributed to the original miscalculation.

FTI successfully completed the remediation analysis for the company and our results were presented to the SEC.

## Subject Matter Experts



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**Mike Wei**  
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# SEC Share Class Selection Disclosure Initiative

Over the past several years, the SEC has filed numerous actions in which an investment adviser failed to make required disclosures relating to its selection of mutual fund share classes that paid the adviser a fee pursuant to Rule 12b-1 of the Investment Company Act of 1940 (when a lower-cost share class for the same fund was available to clients). More recently, the SEC has presented the Share Class Selection Disclosure (SCSD) Initiative to identify and promptly remedy potential violations of these disclosure requirements. Under the SCSD Initiative, the SEC's Division of Enforcement can recommend that the SEC accept favorable settlement terms for investment advisers that self-report their failure to make necessary disclosures concerning mutual fund share class selection.

In response to the SCSD Initiative, FTI Consulting was engaged by a financial advisor network to independently assess the firm's exposure to potentially overcharged 12b-1 fees by gathering a broad set of information across their network:

- Relevant fund names, ticker symbol, and CUSIP;
- Amount of year-end assets held by the company;
- Total amount of fund-level 12b-1 fees incurred by the company's clients (for each share class of a mutual fund held by advisory clients);
- Amount of 12b-1 fees (if any) incurred by the company's clients had the assets been invested instead in the lowest-cost share class available to the company's clients;
- Amount of 12b-1 fees in excess of the lowest-cost share class;
- Total 12b-1 fees received by 1) the company, 2) the company's supervised person, 3) its affiliated broker-dealer, and 4) its affiliated broker-dealer's registered representatives; and,
- 12b-1 fees that the company plans to disgorge.

Using this information, we helped our client to prepare a remediation plan to refund any charges deemed inappropriate, minimizing the potential impact of any SCSD Initiative enforcement.

## Subject Matter Experts



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**Laura Derian**  
Director

# Analyzing Insider Trading: Coffee Company Stock

FTI Consulting was retained on behalf of an individual Defendant who was alleged to have engaged in insider trading in the stock of a company that produces and sells coffee, teas, and other beverages. To prove that the Defendant improperly made use of material, non-public information, the SEC had to demonstrate that: 1) the Defendant breached a fiduciary duty or other relationship of trust and confidence; 2) the information was non-public and material; and 3) that the Defendant entered into transactions based on this information. In this particular case, the SEC was able to document that the Defendant had access to insider information but could not demonstrate that he had acted on that information. In order to fill this gap in its case, the SEC asserted that the Defendant’s illegal actions could be “inferred” from direct observation of his trades (i.e., the Defendant had repeatedly taken winning positions in advance of earnings announcements).

In particular, the Defendant had entered into call and put option transactions wherein he was betting that the stock price would move up or down by a large amount. This type of trading strategy, commonly known as a “Strangle,” is neutral as to which direction the stock price moves, as long as the move is a large one. Importantly, this type of trading strategy is often used when the underlying stock price is highly volatile (i.e., subject to large movements). Over the relevant time period, the company’s stock price was indeed highly volatile.

FTI and counsel for the Defendant determined that it would be illuminating to ascertain whether other, non-insider, investors had engaged in Strangle transactions similar to those placed by the Defendant. To conduct this analysis, we reviewed all company stock and option transactions for the period November 12, 2010 through May 9, 2013. This transactional data, commonly referred to as “Blue Sheet” data, included trading and account holder information. Our analysis focused on three different types of Strangles, as summarized in the table below.

Type of Strangle	Description of Strangle	Traders (Approx.)	Unique Traders (Approx.)
Type A	Traders purchased both out-of-the-money call and put options on the same trading date; the options can have different expiration dates and the number of call and put options can be different.	4,600	2,700
Type B	Traders purchased both out-of-the-money call and put options - with the same expiration date - on the same trading date.	4,300	2,600
Type C	Traders purchased both out-of-the-money and put options - with the same expiration date - on the same trading date. In addition, these traders purchased the same number of call and put options.	2,000	1,700

Our analysis conclusively showed that thousands of non-insider investors were taking the same types of positions as the Defendant during the relevant time period. We showed that it was not possible to “infer” the use of material, non-public information simply by direct observation of the Defendant’s trades. At trial, the jury relied on the testimony of FTI’s expert and ultimately found in favor of the Defendant on all charges.

## Subject Matter Experts



**Paul Wazzan**  
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**George Derpanopoulos**  
Director



## Analyzing Phone Records in TCPA Cases

A major cable operator became involved in a Telephone Consumer Protection Act (TCPA) class action lawsuit alleging, among other things, that unsolicited calls were made to cellular telephones without consent.

FTI Consulting was retained by counsel to provide complex data and statistical analyses on a large data set involving more than 700 million call records to assess the merits of Plaintiffs' claims. We also assisted counsel in reviewing and rebutting the analyses that the Plaintiffs presented to support class certification. The judge denied class certification, agreeing with several arguments that FTI had assisted counsel in developing.

Counsel was pleased with our work and retained us for another TCPA litigation case for the same client. In that matter, FTI provided a team of more than 20 consultants to analyze another large dataset in a very short amount of time. That matter recently settled.

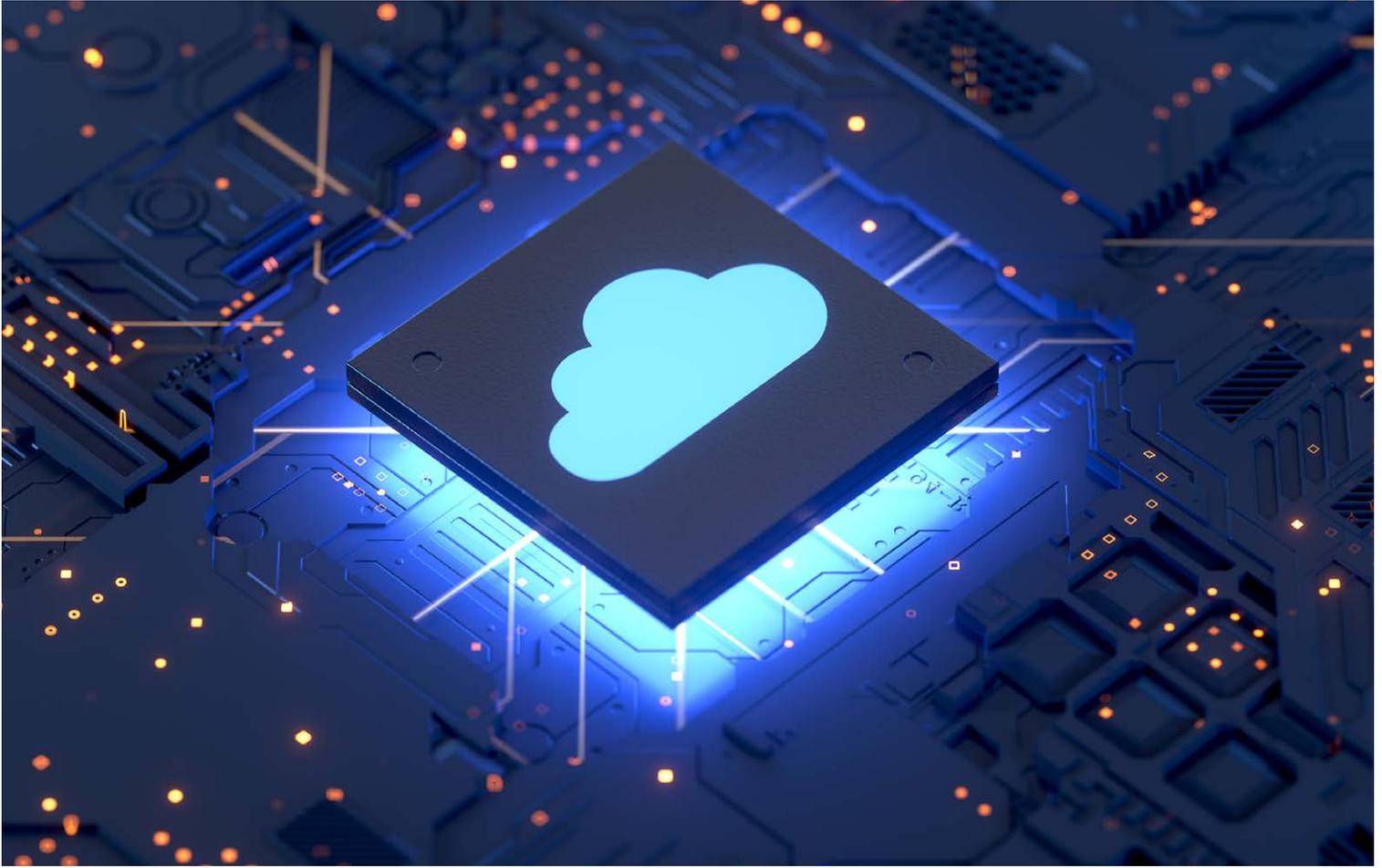
### Subject Matter Experts



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Senior Managing Director



**Bilal Shah**  
Director



# Correcting the Calculations in a Financial Software Fee Dispute

An investment fund administrator was accused by a former vendor of failing to pay sufficient software license fees. In pending litigation, counsel retained FTI Consulting to rebut the software provider's expert's claims of nearly \$80 million in damages based on 10 years of alleged underpaid fees.

FTI's team, led by a former Big 4 forensic partner and experienced royalty auditor, critically analyzed the opposing experts' damage calculations and the underlying software royalty audit findings. Our rebuttal report detailed how the software provider's calculations contradicted explicit provisions of the software distribution agreement, failed to consider crucial case evidence, and contained a myriad of other errors.

Our analysis refuted the entire amount of alleged underpaid fees and substantiated that the investment fund administrator actually overpaid license fees by approximately \$150,000 for the relevant period.

## Subject Matter Experts



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