

TOBIN & COMPANY

SECURITIES

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Member FINRA/SIPC

TOBIN & COMPANY



Justine Tobin  · 2nd
Investment Banker * Entrepreneur * Founder * Securities
Professional

 **Tobin & Company**
Investment Banking Group...
 **Columbia Business School**

Bio: Tenured Investment Banker with 39+ years of experience. Founder and CEO. Expertise and savvy built at Goldman Sachs, Salomon Brothers, Bank of America and Tobin & Company Investment Banking Group (TOBIN). Experienced Board Member. Regulatory Risk and Compliance Expert. Enthusiastic mentor.

Marketing and Private Placements

FINRA and the SEC

The SEC - Securities & Exchange Commission

- The primary purpose of the SEC is to enforce the law against market manipulation.
- The SEC was created in the aftermath of the Wall Street Crash of 1929.

FINRA - Financial Industry Regulatory Authority

- FINRA plays a critical role in ensuring the integrity of America's financial system, by undertaking the efforts to protect the investing public against fraud and bad practices.
- FINRA's predecessor, NASD, was founded in 1939 as part of amendments to the Securities Exchange Act of 1934
- FINRA is an SRO (self-regulatory organization), self-governed and policed by the SEC

Securities Laws

Securities Act of 1933

- This Act requires that investors receive financial and other significant information concerning securities being offered for public sale; and prohibit deceit, misrepresentations and other fraud in the sale of securities.

Securities Exchange Act of 1934

- The Securities Exchange Act of 1934 was enacted to govern securities transactions on the secondary market, after issue, ensuring greater financial transparency and accuracy and less fraud or manipulation.
- All companies listed on a stock exchange must follow the requirements outlined in the SEA of 1934.
- Primary requirements include registration of any securities listed on stock exchanges, disclosure, proxy solicitations and margin and audit requirements.
- The purpose of the requirements of the Securities Exchange Act of 1934 is to ensure an environment of fairness and investor confidence.

Securities Exchange Act of 1933

- This Act empowers the SEC with broad authority over all aspects of the securities industry.
- It includes the power to register, regulate and oversee brokerage firms, transfer agents and clearing agencies as well as the nation's securities self regulatory organizations (SROs).
- The various securities exchanges, such as the New York Stock Exchange, the NASDAQ Stock Market and the Chicago Board of Options are SROs. The Financial Industry Regulatory Authority (FINRA) is also an SRO.

Securities Laws

Trust Indenture Act of 1939

- This Act applies to debt securities such as bonds, debentures and notes that are offered for public sale.
- Even though such securities may be registered under the Securities Act, they may not be offered for sale to the public unless a formal agreement between the issuer of bonds and the bondholder, known as the trust indenture, conforms to the standards of this Act.

Investment Company Act of 1940

- This Act regulates the organization of companies, including mutual funds, that engage primarily in investing, reinvesting and trading in securities, and whose own securities are offered to the investing public.
- The regulation is designed to minimize conflicts of interest that arise in these complex operations.

Securities Laws

Investment Advisors Act of 1940

- This law regulates investment advisers. With certain exceptions, this Act requires that firms or sole practitioners compensated for advising others about securities investments must register with the SEC and conform to regulations designed to protect investors.

Sarbanes-Oxley Act of 2002

- On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002, which he characterized as "the most far-reaching reforms of American business practices since the time of Franklin Delano Roosevelt."
- The Act mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures and combat corporate and accounting fraud, and created the "Public Company Accounting Oversight Board," also known as the PCAOB, to oversee the activities of the auditing profession.

Securities Laws

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

- The Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law on July 21, 2010, by President Barack Obama
- The legislation set out to reshape the U.S. regulatory system in a number of areas including but not limited to consumer protection, trading restrictions, credit ratings, regulation of financial products, corporate governance and disclosure and transparency

Jumpstart Our Business Startups Act of 2012

- The Jumpstart Our Business Startups Act (the "JOBS Act") was enacted on April 5, 2012
- It aims to help businesses raise funds in both public capital markets and private markets by minimizing regulatory requirements
- This is how General Solicitation and Crowdfunding started, making private placements more accessible

Source: [investor.gov](https://www.investor.gov)

Why?

Bernie Madoff



- Responsible for the largest Ponzi scheme in history, defrauded thousands of investors out of tens of billions of dollars over the course of 17 years, possibly longer
- Was sentenced to 150 years in prison and forced to forfeit \$170 billion in 2009
- Former Chair of Nasdaq in early 1990s

Sam Bankman-Fried



- Sam Bankman-Fried, or SBF, was the founder and CEO of the now-bankrupt crypto exchange FTX
- Before founding his own crypto firm, the 30-year-old graduated from the Massachusetts Institute of Technology (MIT)
- In November 2022, a major liquidity crisis led to the bankruptcy of FTX and its affiliated entities



What happened?

- Deregulation of banks led to dishonest practices
- Banks lied about what their MBS contained
- Subprime loans

Why is this relevant?

- Similar to the banks lying about the ratings on loans that were in the MBS they were selling to investors...
- Any misrepresentation of your financials
- (Ex. ∞ IRR) is illegal and misleading to investors

What to take from this:

- Honesty about securities offerings is of the utmost importance
- Following the '08 financial crisis, there is more scrutiny towards false documentation/calculations

Safeguarding Investors and Clients Through Rigorous Due Diligence



Advertising and Communications with the Public

FINRA Rule 2210



Communications with the public:

- Must not contain false, misleading or promissory claims
- Must balance the conveyance of potential investment benefits of the securities product or service *as well as* the associated risks
- Must not contain predictions or projections of investment performance to investors that are prohibited by this FINRA rule

Advertising Regulation



Marketing Rule:

- The SEC recently modernized the Marketing Rule for Investment Advisors to catch up with FINRA and Broker-Dealers
- Advisers must standardize certain parts of performance reports so that investors can correctly evaluate and compare different investment opportunities

Source: [finra.org](https://www.finra.org)

A Closer Look at FINRA Rule 2210 – Communications with the Public

FINRA Rule 2210



What is a Registered Representative?

- This is someone who makes a commission from the investments they sell

How would hiring a Registered Representative change things?

- Marketing materials (decks, website, all marketing materials sent to retail investors) become Retail Communications per FINRA Rule 2210
- The following disclosures would need to be included on every retail communication (including the website):
 - “Investments in private placements are illiquid, speculative and can lose their entire value”
 - “Securities offered through Tobin & Company Securities (Member FINRA/SIPC), an affiliate of Tobin & Company Investment Banking Group”

FINRA Rule 2210



Regardless of Registered Rep Status all marketing documents should be free from:

- 1) Errors
- 2) Misleading statements
- 3) Promissory statements, claims and facts

In addition:

- All facts should be supported with evidence and substantiated to TOBIN regardless of the presence of a Registered Representative.

Consequences of Skipping Compliance



Due Diligence: Because Orange Isn't Your Color



What are business ethics?

Business ethics are the moral principles, policies and values that govern the way businesses and individuals engage in business activity.

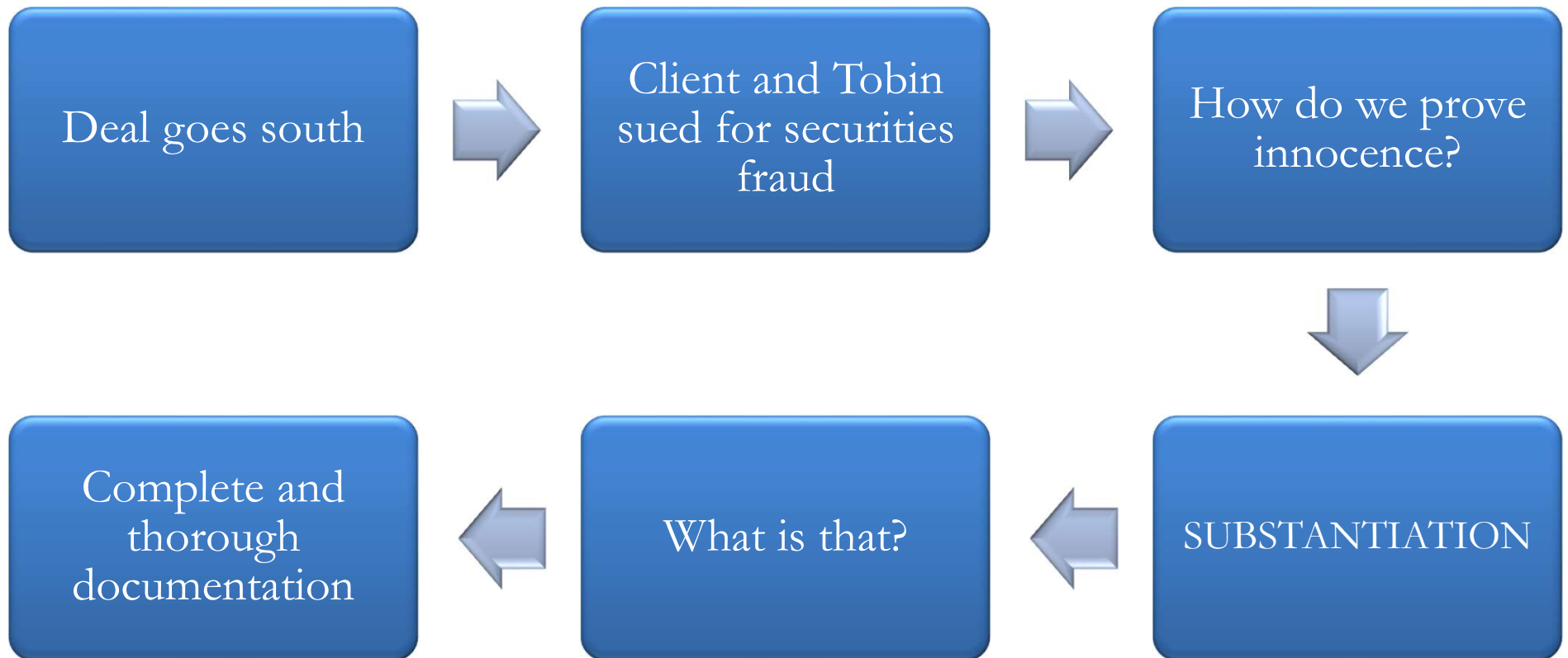


Why are business ethics important?

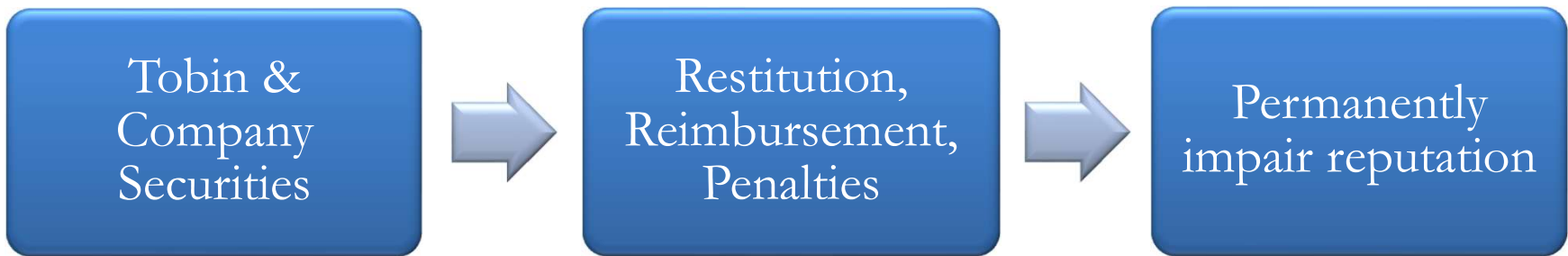
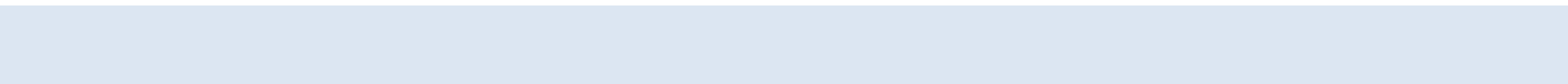
Following a certain standard of ethics when operating a business is essential to the success of the business. Having an ethical foundation is essential in establishing long-term relationships, especially when it comes to partnerships with legal counsel and financial intermediaries, both of whom deal with information of a sensitive nature.

Let's get to the crux of this meeting

What happens when EVERYTHING goes wrong

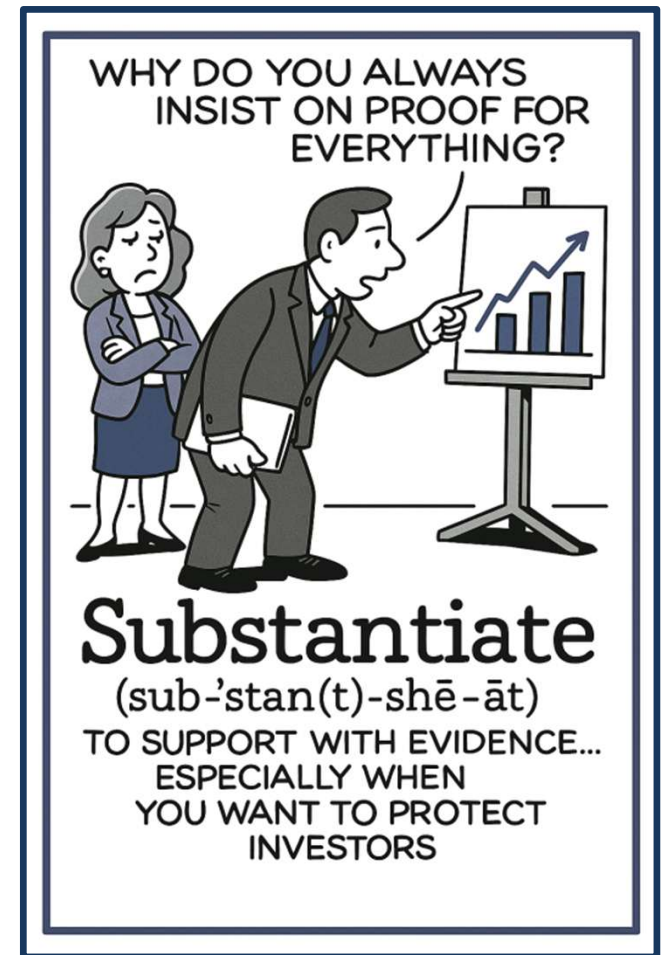


What if we are convicted of securities fraud?



What is substantiation?

- To *substantiate* is to give support to a claim.
- Every fact that you communicate (PPM, deck and marketing materials) needs to be documented.
- When putting together a pitch deck, every number and fact in there needs to have proof, and that proof needs to be in a place that is easily accessible. This is so that in the case that an investigator or a complaint comes knocking, you, and we, know where the proof is located.
- Examples of when we practice substantiation:
 - **Marketing deck**
 - **Track Record**
 - **Website**



The imperative for due diligence

Reasonable Investigation Requirement

“FINRA reminds broker-dealers of their obligation to conduct a reasonable investigation of the issuer and the securities they recommend — enforceable under federal securities laws and FINRA rules— in offerings made under the Securities and Exchange Commission's Regulation D under the Securities Act of 1933— also known as private placements.”



Source: <https://www.finra.org/rules-guidance/notices/10-22>

The imperative for due diligence

The need for a reasonable investigation

The duty to conduct a reasonable investigation emanates from the BD's "special relationship" to the customer, and from the fact that in recommending the security, the BD's "recommendation rests on the conclusions based on such investigation." Failure to comply constitutes a violation of the antifraud provisions of the federal securities laws and, particularly, Section 17(a) of the Securities Act, Section 10(b) of the Securities Exchange Act. It also can constitute a violation of FINRA Rule 2010, requiring adherence to just and equitable principles of trade, and FINRA Rule 2020, prohibiting manipulative and fraudulent devices.”



Due diligence: not just a suggestion.

Why must we document everything we say?



TOBIN

- Must conduct due diligence
- Keeps due diligence files
 - These must be accurate

Client

- Should make a habit of accurate records
- Establish corporate controls and provide completely trustworthy (financial) information**
- Should be prepared in the event of litigation or SEC investigation



We're in this together:

- Business relationships are of mutual benefit if conducted correctly and honestly
- We succeed together, or go down together

**John Ray III – November 2022

What would happen if we could not prove everything in the marketing materials?



Litigation – who's at fault?

- In a litigation scenario:
 - Client can be found liable for securities fraud
 - TOBIN can be found liable for the same

If the SEC comes knocking?

- In the event of a SEC investigation:
 - Client can be found liable
 - TOBIN can be found liable



What about FINRA?

- In the event of a FINRA investigation:
 - TOBIN can be found liable

False Advertising: Cigarette Ads in the 1950s



False advertising

- Cigarette ads contained false and misleading information.
- Depicted pregnant women smoking and claimed smoking made for an easier labor

How is this relevant?

- These cigarette companies got in big trouble
- Years of litigation and billions paid in damages

Specifically for the client

- Would be found guilty of securities fraud in the event of litigation if claims could not be proven as substantiated

[Photo Source](#)

What would happen if we could not prove everything in the marketing materials?

Tobin will automatically be presumed to be guilty and will have to defend every word, every action, every statement to prove that it wasn't fraudulent. The securities industry is pro-investor and the investor always wins unless you have a locked-tight defense and absolutely no errors.

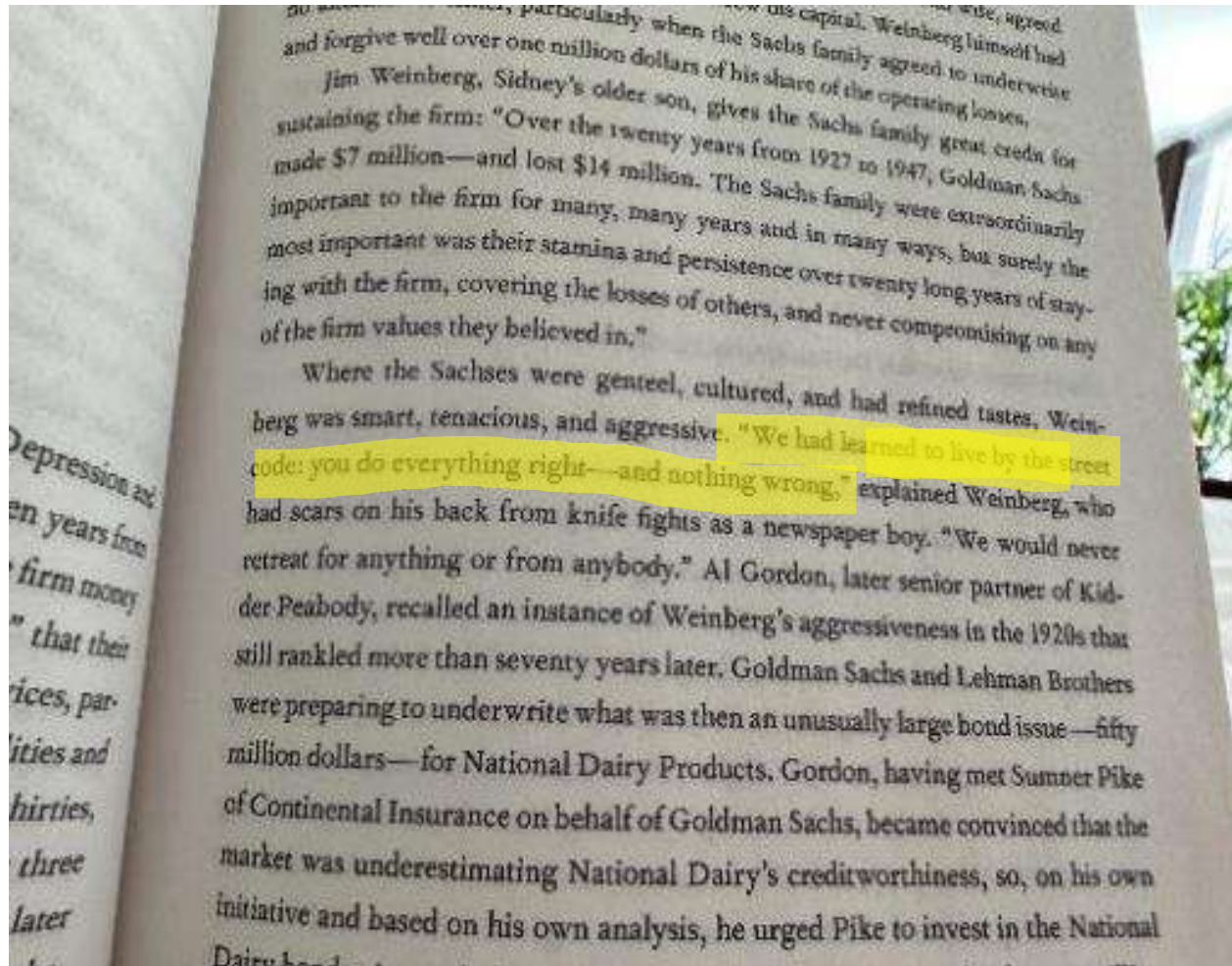
- There is no negotiating with regulators once they think you are in the wrong.
- So, you want to steer clear of even looking like you are violating rules.
- The SEC or FINRA decides that you have done wrong? You can't afford to fight them, so you accept it and move on.
- Therefore, we don't even want to skirt on the edges of the rules – we want to comply with them COMPLETELY.



VS.



Final Note: Goldman Sachs' Historical Approach to Business



Key Quote:

“We had learned to live by the street code: you do everything right—and nothing wrong”

—Sidney Weinberg

[Source:](#) The Partnership: The Making of Goldman Sachs, Charles D. Ellis

Disclaimer

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