



Benjamin J.A. Sauter

Lawyer

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Benjamin Sauter is an experienced litigator who focuses on cutting-edge financial products and services disputes. Mr. Sauter has particular experience with litigation involving commodities, futures, swaps, and other securities and derivatives. His representations often involve clients confronting regulatory and criminal enforcement proceedings.

For example, Mr. Sauter regularly represents industry-leading proprietary trading firms and individual traders in matters involving allegations of spoofing and market manipulation by the U.S. Commodity Futures Trading Commission and CME.

Mr. Sauter also regularly represents clients, both U.S.-based and abroad, in make-or-break disputes and investigations involving digital currency. His clients include leading digital currency exchanges and blockchain developers, high-volume market makers, and investment funds seeking to trace and recover assets across multiple jurisdictions. Leading legal and business publications frequently quote Mr. Sauter as a thought leader on digital currency regulation and litigation. He is a member of the Digital Currency & Ledger Defense Coalition.

Mr. Sauter also has experience in intellectual property litigation. He has represented patent owners at trial and on appeal at the Federal Circuit, and defended leading technology companies against allegations of trade secret theft and licensing violations.

Before joining Kobre & Kim, Mr. Sauter practiced with Cleary Gottlieb Steen & Hamilton LLP, where he focused on complex regulatory and commercial litigation. He clerked for Judge Fortunato P. Benavides in the U.S. Court of Appeals for the Fifth Circuit and for Chief Judge Sarah S. Vance in the U.S. District Court for the Eastern District of Louisiana. He received his JD *cum laude* from Harvard Law School.

Admissions

- New York
- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of Appeals for the First Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. Court of Appeals for the Fifth Circuit
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the Southern District of New York
- U.S. District Court for the Northern District of Illinois
- U.S. District Court for the Eastern District of Texas

Education

- Harvard Law School, JD, *cum laude*
 - Pomona College, BA
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Languages

- French
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Clerkships

- Honorable Fortunato P. Benavides, U.S. Court of Appeals for the Fifth Circuit
 - Honorable Sarah S. Vance, U.S. District Court for the Eastern District of Louisiana
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Select Engagements

Financial Products & Services Litigation

- Defense of large algorithmic digital currency trader whose assets were frozen on account of allegations of market manipulation by a large exchange, resulting in the successful return of all frozen assets and dismissal of all claims brought by exchange.
- Representation of fraud victim who lost substantial funds in the form of the digital currency XRP. First-ever digital currency fraud case to recover misappropriated digital currency and successfully obtain a multi-million dollar money judgment for three times the amount lost.
- Representation of a proprietary trading firm in responding to allegations of illegal “spoofing” activity in relation to U.S. Treasury futures on the Chicago Board of Trade exchange.
- Defense of a proprietary trading firm in civil action alleging disruptive trading and market manipulation in U.S. Treasury futures markets, resulting in dismissal of claims following motion to dismiss.
- Defense of News International’s former CEO, Rebekah Brooks, in a putative securities class action pending in the U.S. District Court for the Southern District of New York.

Government Enforcement Defense

- Representation of leading digital currency exchange in responding to formal and informal information requests from multiple U.S. regulators.
- Representation of leading digital currency exchange in defending against antitrust claims concerning digital currency mining.
- Representation of large blockchain developer in responding to inquiry by the U.S. Securities and Exchange Commission (SEC) related to Initial Coin Offering (ICO).
- Representation of foreign-based trader in defending against a CFTC-issued subpoena related to a sudden decline in the market price of a well-known digital currency.

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- Representation of foreign-based trader in responding to CFTC subpoena relating to allegations of “spoofing” in multiple markets.
- Representation of DRW Investments LLC in a highly publicized case brought by the U.S. Commodity Futures Trading Commission (CFTC) over alleged market manipulation of interest rate swap futures. After a bench trial in the U.S. District Court for the Southern District of New York, the Court returned a verdict in favor of the defense and against the CFTC on all causes of action.
- Representation of a precious metals dealer in an enforcement action brought by the CFTC in the U.S. District Court for the Northern District of Illinois involving an unprecedented theory of CFTC jurisdiction over leveraged commodity transactions and allegations of fraud.
- Representation of a proprietary trading firm in defending against a CFTC enforcement action involving claims of illegal “spoofing” and manipulation in relation to numerous financial products and markets.
- Representation of global asset management company in internal and government investigations related to alleged accounting fraud and violations of the Foreign Corrupt Practices Act (FCPA).

Intellectual Property Litigation

- Representation in infringement litigation of inventor of mobile consumer and enterprise productivity solution for overcoming network coverage and reliability limitations, including arguing the appeal concerning patent validity in the U.S. Court of Appeals for the Federal Circuit.
- Representation of the Commonwealth Scientific and Industrial Research Organisation (CSIRO), the Australian government’s science agency and the inventor of the core technology underlying the IEEE 802.11a, g, n and ac wireless LAN standards, commonly known as Wi-Fi. The litigation ranks among the most successful recent efforts to enforce a single patent, resulting in payments to CSIRO totaling US \$400 million. In commending CSIRO’s inventors, the European Patent Office lauded the litigation as “a tremendous success,” stating that “only a few universities around the world are able to successfully commercialize their R & D by patenting their technologies, in particular to the scale of several hundred million dollars. One such exception is CSIRO.”
- Representation of semiconductor manufacturer in patent license dispute.
- Representation of Spanish R&D company Fractus S.A. in several patent infringement actions against the major U.S. cellular carriers (Verizon, AT&T, T-Mobile, Sprint) and two antenna manufacturers. After a successful trial representation in the Eastern District of Texas, Kobre & Kim obtained a favorable out-of-court settlement for the client resulting in the transfer of its base station antenna technology patent portfolio.

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- Representation of Daewoong, one of the largest pharmaceutical companies in Asia, in trade secret litigation in California against its main competitor, regarding a botulinum toxin drug.

Bankruptcy & Debtor-Creditor Disputes

- Representation of senior noteholders in intercreditor dispute against Bank of New York and Wilmington Trust, in relation to dispute over post-petition payments on collateral, arising out of the bankruptcy of Energy Future Holdings Corp. in the U.S. Bankruptcy Court for the District of Delaware.
- Representation of the unsecured creditors committee in the SunEdison bankruptcy in the U.S. Bankruptcy Court for the Southern District of New York, in adversary proceedings against first- and second-lien noteholders.
- Representation of private equity firm and executive in connection with the creditors' investigation into the bankruptcy of a medical-services portfolio company.

Professional & Community Involvement

- Digital Currency & Ledger Defense Coalition, Member
- French-American Bar Association

Publications & Presentations

- Co-author, "Protecting Your Business Against Automated Intruders" (*New York Law Journal Cybersecurity Special Report*, June 2019)
- Panelist, "Cryptocurrency at the Crossroads" (6th Asia Pacific Regional Forum Biennial Conference: Unified Asia, Tokyo, February 2019)
- Panelist, "Asset Recovery of the Future and the Challenges facing Liquidators" (Asset Recovery Americas, New York, September 2018)
- Moderator, "Regulatory Developments" (American Bar Association's 2018 Blockchain Technology, Digital Currency and ICO National Institute, New York, April 2018)
- Co-author, "A Recent Pair of US Enforcement Actions: A Harbinger for Chinese Digital Currency Companies" (*Hong Kong Lawyer*, November 2017)
- Co-author, "LedgerX and CBOE: The CFTC's Trojan Horse in an SEC Turf War" (*Coindesk*, August 2017)
- Co-author, "Law firm Calls Bancor ICO Interesting, Cautions Investors Participating in ICOs" (*Crowdfund Insider*, June 2017)
- Co-author, "Initial Coin Offerings: Where the SEC Might Stand" (*Coindesk*, June 2017)
- Panelist, "Advanced Legal and Practical Issues with Blockchain" (3rd Annual FinTech Vancouver Conference, Vancouver, May 2017)
- Co-author, "Innocent Foundations Beware: the US Government's Far-Reaching Power of Civil Asset Forfeiture, and what Innocent Foundations and Other Fiduciaries Need to Know to Prepare" (*Trusts & Trustees*, July 2016)

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- Co-author, "FATCA's Full Force Felt Offshore" (*Trusts Quarterly Review*, June 2014)
- Co-author, "A Timely Update On Recovering Legal Fees And Costs Through Criminal Restitution" (*Bloomberg BNA White Collar Crime Report*, April 2013)
- Co-author, "A Timely Update on Recovering Legal Fees and Costs through Criminal Restitution" (*Bloomberg BNA White Collar Crime Report*, January 2009)