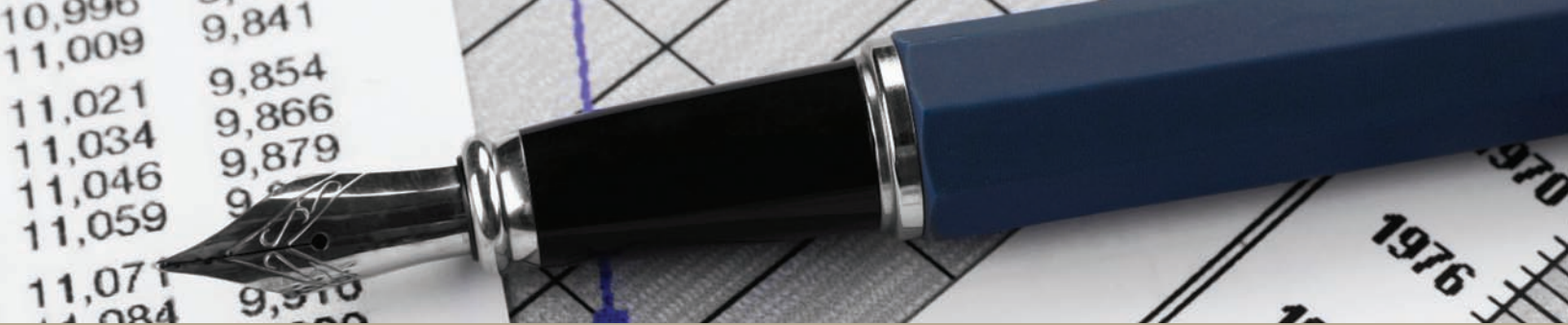




EXCHANGE-TRADED FUNDS

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## Industry Knowledge

Recent years have seen significant development and growth of exchange-traded funds (ETFs) and related products, such as exchange-traded notes (ETNs) and physical and financial commodities-based exchange-traded vehicles (ETVs). Sutherland attorneys serve as counsel to some of the leading industry innovators of exchange-traded products. We guide exchange-traded product sponsors through complex and uncharted legal waters by using an interdisciplinary approach that joins our financial services attorneys with other Sutherland attorney specialists in commodities, derivatives, tax and other related areas. Our experience has resulted in creative solutions that help clients bring novel products to market in an efficient and timely manner.

## Exchange-Traded Funds

ETFs are regulated as mutual funds under the Investment Company Act of 1940 (1940 Act), but because of their unique structure and distribution, they also are subject to additional requirements under federal securities laws. Sutherland counsels clients in all aspects of launching and operating ETFs, including the preparation of corporate and SEC filings, organization and documentation of board activity, compliance manuals, and all necessary contracts and agreements.

## Other Exchange-Traded Products

A variation of the ETF is the exchange-traded vehicle. ETVs are similar to ETFs, except that they invest in commodities futures contracts (e.g., oil and natural gas futures contracts) or other types of financial instruments that are not securities and are not regulated under the 1940 Act. This latter regulatory aspect of ETVs raises unique legal issues. Sutherland's financial services attorneys work closely with attorneys from the firm's tax, commodities and derivatives practices to help clients successfully develop, launch and operate differing types of ETVs.

Yet another variation of the ETF is the exchange-traded note. ETNs are similar to ETFs and ETVs in that the shares trade in the secondary market and seek to provide returns based on underlying securities, commodities or other indexes. They differ in that they are notes constituting the general debt obligation of an issuer, typically a commercial bank. Sutherland's financial services and tax attorneys have experience advising exchange-traded product sponsors on issues associated with the structure of ETNs.

## Cutting-Edge Practice

Our cutting-edge practice has permitted us to:

- Advise clients in all aspects of developing, launching and operating ETFs and ETVs.
- Assist a commodity pool operator in all regulatory aspects of developing and operating one of the first exchange-traded commodity pools investing in oil futures contracts and other oil interests.
- Counsel a client in developing innovative ETFs to invest in credit default swaps.
- Represent a client in developing leveraged and inverse leveraged commodity ETVs.
- Advise a client regarding the development, operation and liquidation of ETFs investing in U.S. Treasury securities.

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## Our Experience

Sutherland attorneys have extensive experience advising clients on all legal matters pertaining to the formation, registration, operation, distribution and restructuring of ETFs and other exchange-traded products, including:

- **New Product Launches** – product development (including tax and other structural issues), agreements with service providers, securities and commodities pool filings, board-related documentation, compliance materials, exemptive orders and no-action letters, exchange listing requirements, and intellectual property and licensing issues.
- **Existing Products** – ongoing regulatory matters, reporting and filing requirements, sales practices, board reviews and approvals, general regulatory compliance, investment advisory and sub-advisory arrangements, service and selling agreements, advertising and other marketing communications.
- **Compliance Issues** – reporting, regulatory compliance, and compliance programs.
- **Industry and Regulatory Developments** – regulations, SEC no-action and interpretive letters, and other regulatory

developments and industry initiatives.

- **Distribution** – federal and state laws relating to distribution of products, and agreements with representatives of all distribution channels.
- **Derivatives** – master agreements, model documents and documentation policies, standardized collateral agreements, and other credit support arrangements.
- **Tax** – federal, international, state and local tax laws affecting exchange-traded products.

## Broad Firm Support

Sutherland has the depth of experience and industry knowledge essential to providing clients with the full range of legal services they require. We build customized teams that deliver services to clients efficiently, effectively and in a cost-sensitive manner.

Our experience includes advising sponsors, issuers and distributors of mutual funds, ETFs/ETVs, variable annuities, variable life insurance, hedge funds, and other collective investment vehicles. Additionally, a substantial portion of our financial services practice consists of counseling clients with respect to the organization, operation and distribution of registered and private investment companies.

To complement our Financial Services Practice Group and best serve our clients' business needs, we bring together attorneys experienced in a number of areas, including:

- **Federal Securities Laws**  
For 40 years, our financial services attorneys have advised clients on myriad regulatory requirements and challenges experienced by issuers of collective investment vehicles under the federal securities laws, including the Securities Act of 1933, the Securities Exchange Act of 1934, and the 1940 Act.
- **Derivatives**  
Sutherland attorneys address the complex and novel legal issues that arise as innovative derivative products are created to meet business needs and investment opportunities. Some of the services we provide include evaluating and negotiating master agreements (including those using documentation developed by the International Swaps and Derivatives Association), developing model documents and documentation policies, and advising on standardized collateral agreements and other credit support arrangements. We assist ETF clients in developing derivatives documentation, collateral, and compliance procedures relating to specialized types of exchange-traded



products, such as commodities- and other derivatives-based exchange-traded products. Our derivatives team monitors regulatory developments under a number of potentially applicable statutes, including the Commodity Exchange Act, federal banking laws, federal and state securities laws, federal and state bankruptcy laws, and state insurance laws. Sutherland is also a member of key organizations that affect the derivatives markets. Our attorneys have been nationally recognized in the practice of derivatives law.

■ **Tax**

Sutherland has a premier tax practice with attorneys who advise on virtually every area of the U.S. federal income tax, estate and gift tax, and excise tax law, as well as state and local income and sales taxes. Our specialty is balancing business objectives with

the constraints of tax laws to find solutions that meet clients' goals. Our tax attorneys have contributed to the development of innovative financial products and to the structuring of complex business transactions, including a number of groundbreaking ETFs. Sutherland's tax practice is ranked among the best in the world in *Chambers Global* (2008) and among the best in the country in the *Chambers USA: America's Leading Lawyers for Business* (2008).

■ **Intellectual Property**

Sutherland's Intellectual Property Practice provides a full range of services to financial companies needing intellectual property services, both domestically and internationally. We assist clients with patent prosecution, validity analysis, litigation and counseling; freedom to practice opinions and patent infringement strategic

counseling; technology transfer, licensing and other cooperative commercialization agreements; trade secret and technology counseling and litigation; trademark and copyright prosecution, litigation and counseling; due diligence reviews in connection with mergers and acquisitions; and intellectual property audits and evaluations. In the financial sector, our intellectual property attorneys work closely with our Financial Services Practice in preparing patent applications for ETF/ETV insurance products and trading tools that currently exist in the marketplace. Likewise, we counsel clients on patent infringement risks associated with starting new ETFs/ETVs. In addition, we counsel clients on the use and marketing of financial products tied to proprietary indexes. Sutherland's Intellectual Property Practice includes attorneys who are well-versed in the full range of financial products.

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**ABOUT SUTHERLAND** Sutherland Asbill & Brennan LLP is a law firm with global reach known for solving challenging business problems and resolving sophisticated legal issues for many of the world's largest companies. Founded in 1924, the firm handles matters throughout the United States and worldwide. Seven major practice areas—corporate, energy and environmental, financial services, intellectual property, litigation, real estate, and tax—provide the framework for an extensive range of focus areas, allowing Sutherland attorneys to serve a diverse client base that ranges from small and medium-sized start-up businesses to a significant number of Fortune 100 companies.