

Morgan Lewis

REGISTERED FUNDS TRENDS AND DEVELOPMENTS

Quarter in Review Series

Speakers: Jack O'Brien, Laurie Dee, Brian London and Jon Nowakowski
September 23, 2020

Overview

- Continuing to Manage Processes and Portfolios in the COVID-19 Environment and Remote Working
- Disclosure Reforms for Retail Funds
- Rulemaking Update: Derivatives, Valuation, Streamlined Exemptive Orders
- Product Developments: Actively-Managed ETFs and Closed-End Offering Reforms
- LIBOR on the Horizon

COVID-19: Managing Processes and Portfolios

- SEC and staff relief
 - In-person meeting requirements for boards and shareholders extended until further notice from the SEC, expiring no earlier than December 31, 2020
 - Closed-end funds permitted to supplement prospectuses rather than amend if a fund's NAV declines more than 10% from the fund's NAV as of the effective date of its registration statement
 - Negative Yields permitted on Form N-MFP
 - Issuance and sale of senior securities by BDCs
 - Expanded relief for BDCs with existing co-investment orders
 - Relief for audited financial statements under the Custody Rule
 - SEC forms cross-divisional COVID-19 market monitoring group

Disclosure Reforms for Retail Funds

On August 5th, the SEC proposed a new disclosure framework for mutual funds and ETFs

- Mutual funds and ETFs would be required to prepare and deliver a streamlined shareholder report twice per year
- Traditional prospectuses would still have to be delivered for initial investments in funds shares, but annually updated prospectuses and traditional shareholder reports would not have to be delivered, unless requested
- Funds would be required to prepare summaries of fees and principal risks in a new, concise format, which would allow for more interactive, graphical and investor-friendly disclosures
- The proposal would overrule the application of Rule 30e-3, which allows funds to start to rely on a “notice and access” model for shareholder report delivery as early as January 2021
- Fund advertisements and sales literature would be required to present fees consistently with streamlined shareholder reports
- Despite potentially significant short-term expenses associated with implementing the proposed framework and coordinating with fund service providers, over time funds and shareholders likely would benefit from substantially reduced printing and mailing expenses

Rulemaking Update

Proposed Derivatives Rule (18f-4)

- In November 2019, the SEC proposed amendments to establish requirements for the use of derivatives and other financial transactions by registered investment companies, i.e., mutual funds, ETFs, and closed-end funds, and business development companies.
 - The Proposing Release consists of three parts: (1) new Rule 18f-4 under the Investment Company Act, which is designed to provide a comprehensive approach to the regulation of funds' use of derivatives and other financial transactions; (2) proposed sales practices rules designed to address investor protection concerns with respect to leveraged/inverse funds; and (3) proposed amendments to Forms N-PORT, N-LIQUID, and N-CEN
- Included in the SEC's spring 2020 short-term agenda

Rulemaking Update

Proposed Valuation Rule (2a-5)

- For the first time in nearly 50 years, on April 21st the SEC proposed to substantially revise the regulation of fund valuation
- Much of the current guidance is proposed to be rescinded
- Would implement a framework of risk-based principles, similar to the approach taken by the liquidity rule and proposed derivatives rule
- No indication that existing practices would have to be completely overhauled
- Fund boards would clearly be permitted to assign responsibility to fund advisers, but may want to consider whether the proposal imposes too heavy a burden
- * Included in the SEC's spring 2020 short-term agenda
- * Comments were due July 21st

Rulemaking Update

Streamlined Exemptive Orders

- On July 6th, the SEC adopted amendments to Rule 0-5 to establish:
 - an expedited review procedure for exemptive and other applications under the Investment Company Act that are substantially identical to recent precedent
 - A new informal internal procedure for applications that would not qualify for the new expedited process
- These changes should streamline the application process by making it more efficient, certain, and transparent.
 - The changes will also likely reduce the wait time to receive exemptive relief and lower costs
 - * Effective 270 days after the date of publication in the *Federal Register*

Product Developments

Actively-Managed ETF Reforms (Rule 6c-11)

- The SEC recently issued exemptive orders to Blue Tractor Group, Natixis/NYSE, T. Rowe Price, and Fidelity approving their respective “semi-transparent” active ETF structures
- The orders, which were preceded by the order issued to Precidian Investments in May 2019, grant necessary exemptions from the Investment Company Act to permit the operation of actively managed ETFs that do not fully disclose their portfolios on a daily basis
- The orders are only available to ETFs that invest in specific securities described in the application to the order, such as listed equities and futures, that principally trade during US market hours

Product Developments

Closed-End Offering Reforms

- On April 8th, the SEC adopted a series of rule and form amendments that will modify the registration, communications and offering processes for BDCs and registered closed-end funds, including interval funds
 - The new rules implement certain provisions of the Small Business Credit Availability Act and the Economic Growth, Regulatory Relief and Consumer Protection Act
 - The Rules will allow the affected funds to use the securities offering rules that are already available to operating companies
 - These amendments will improve the affected funds' access to public capital markets and to modernize and increase the flow of information to their investors
- * The Rule became effective August 1, 2020

LIBOR on the Horizon

- The discontinuation of the LIBOR is expected to occur after 2021
 - The OCIE examination priorities for 2020 includes Registrant preparedness for the transition away from LIBOR
 - On June 18th, OCIE issued a Risk Alert, which stated that OCIE will review, among other things, whether and how a Registrant has evaluated the potential impact of the LIBOR transition on the organization's:
 - business activities;
 - operations;
 - services; and
 - customers, clients, and/or investors
 - OCIE will focus on and review the plans that Registrants have developed and steps taken to prepare for the LIBOR discontinuation

ATTORNEY BIOGRAPHIES

Jack O'Brien



Philadelphia

T +1.215.963.4969

F +1.215.963.5001

john.obrien@morganlewis.com

Jack counsels registered and private funds and fund managers in connection with organizational, offering, transactional, and compliance matters. He regularly works with a variety of different fund structures, including open-end and closed-end funds, exchange-traded funds, and hedge funds. He also counsels investment adviser and broker-dealer clients on various matters, particularly with respect to registration and disclosure, marketing regulations, pay-to-play issues, and transactions in exchange-traded funds.

Laurie A. Dee



Orange County

T +1.714.830.0679

F +1.714.830.0716

laurie.dee@morganlewis.com

Laurie A. Dee concentrates her practice in the area of the Investment Company Act of 1940 and Investment Advisers Act of 1940. Laurie advises investment advisers and registered investment companies in all aspects of their organization, registration, and operation, including the regulatory and compliance areas. Laurie's practice also includes formation and representation of domestic and offshore hedge funds. Her clients include mutual funds and closed-end investment companies, independent mutual fund trustees and directors, private US and offshore hedge funds, investment advisers, and private investors.

Brian London



Philadelphia

T +1.215.963.5886

F +1.215.963.5001

brian.london@morganlewis.com

Brian T. London represents mutual funds, exchange-traded funds (ETFs), closed-end funds, private funds, and their investment advisers in US and international legal, regulatory, and transactional matters. His experience extends to work in several areas, including the development and launch of new funds, fund reorganizations, corporate governance matters, and ongoing compliance issues. Additionally, Brian counsels investment adviser clients on the applicability and interpretation of securities laws, including with respect to business combinations, registration and disclosure, and pay-to-play issues.

Jonathan J. Nowakowski



Orange County

T +1.714.830.0640

F +1.714.830.0700

jonathan.nowakowski@morganlewis.com

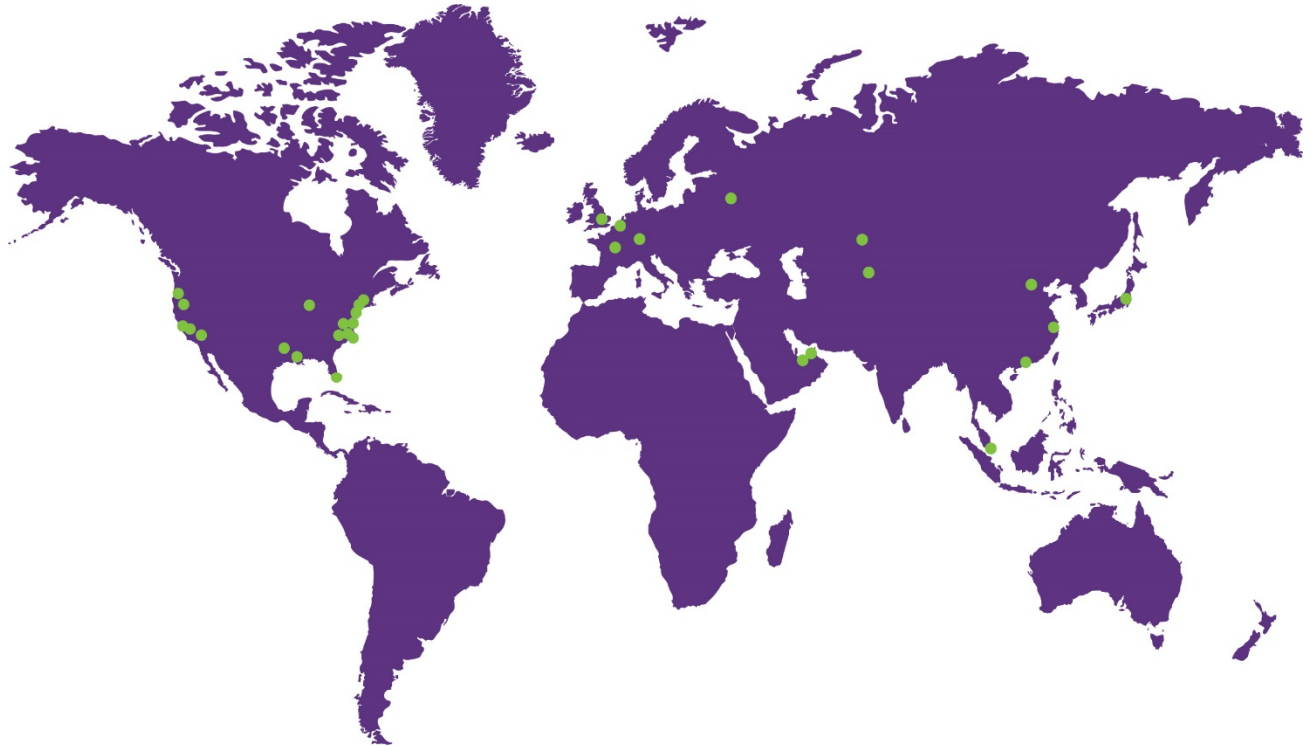
Jonathan J. Nowakowski advises investment companies, investment advisers, and private funds on a variety of regulatory compliance, corporate, and transactional matters. Jon counsels clients in all aspects of their organization, registration, operation, and liquidation. Before joining Morgan Lewis, Jon served in various compliance, risk management, and legal roles at an international bank and broker-dealer, a large national law firm, and a global investment bank. He also previously held a FINRA Series 7 license.

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Abu Dhabi
Almaty
Beijing*
Boston
Brussels
Century City
Chicago
Dallas
Dubai
Frankfurt
Hartford
Hong Kong*
Houston
London
Los Angeles
Miami
Moscow
New York
Nur-Sultan
Orange County
Paris
Philadelphia
Pittsburgh
Princeton
San Francisco
Shanghai*
Silicon Valley
Singapore*
Tokyo
Washington, DC
Wilmington



Morgan Lewis

*Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan Lewis operates through Morgan, Lewis & Bockius, which is a separate Hong Kong general partnership registered with The Law Society of Hong Kong as a registered foreign law firm operating in Association with Luk & Partners. Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

THANK YOU

© 2020 Morgan, Lewis & Bockius LLP

© 2020 Morgan Lewis Stamford LLC

© 2020 Morgan, Lewis & Bockius UK LLP

Morgan, Lewis & Bockius UK LLP is a limited liability partnership registered in England and Wales under number OC378797 and is a law firm authorised and regulated by the Solicitors Regulation Authority. The SRA authorisation number is 615176.

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan Lewis operates through Morgan, Lewis & Bockius, which is a separate Hong Kong general partnership registered with The Law Society of Hong Kong as a registered foreign law firm operating in Association with Luk & Partners. Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship. Prior results do not guarantee similar outcomes. Attorney Advertising.