Morgan Lewis Hedge Fund University™

EVERYTHING YOU NEED TO KNOW TO LAUNCH A HEDGE FUND

Regulatory & Compliance and Key Operational Issues

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Key Regulatory & Compliance Issues and Investment Adviser Registration Issues

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Key Regulatory Considerations

- **Investment Company Act (Fund)**
  - Private pooled investment vehicles typically rely on an exemption or exception from ICA registration
    - Most common:
      - 3(c)(1) – Less than 100 investors
      - 3(c)(7) – Qualified purchasers
    - Others:
      - 3(c)(5)(C)
      - 3(c)(6)
- **Securities Act (Fund Interests/Securities)**
  - The securities issued by the fund need an exemption from registration under the Securities Act
  - Reg D
    - 506(b) – Accredited Investors/no general solicitation
    - 506(c) – Accredited Investors/general solicitation permitted/verification requirements

Advisers Act Considerations

- **Investment Advisers Act of 1940**
  - Applicable to Management Company/General Partner(s)
  - Principles based regulatory regime
- **Fiduciary duty under the Advisers Act**
  - The Advisers Act imposes a fiduciary duty on advisers by operation of law
    - Duty of Loyalty – obligation to act solely for the benefit of its clients
    - Duty of Care – obligation to act with an appropriate degree of care, skill, prudence and diligence under the circumstances
- **Advisers are fiduciaries that have an affirmative duty to act in utmost good faith and provide full and fair disclosure of all material facts. This is particularly so where the adviser may have a material conflict of interest.**
- **Possible for other regulatory schemes to be applicable as well.**
  - CFTC/NFA, FCA, FINRA, DOL, etc.

Registration

- **SEC Registration**
  - Advisers must register with the SEC unless they:
    - Qualify for an exception or exemption
    - Have less than $100 million in AUM
  - Advisers with less than $100 million in AUM may not register with the SEC unless the adviser:
    - Advises a RIC
    - Would be required to register in 15 or more states
    - Shares the same principal office with an affiliated adviser that is SEC-registered
    - Is a pension consultant or an Internet adviser
    - Has its principal office in a state that does not regulate advisers (Wyoming)
    - Has its principal office in a state that does not examine investment advisers (New York)

- **State authority**
  - Limited preemption of state law for SEC registered advisers and their supervised persons
  - States can require the registration of investment adviser representatives
  - States can investigate and bring enforcement actions involving fraud or deceit against advisers registered under the Advisers Act and their supervised persons

Key Exemptions and Exceptions from Registration

- **Private Fund Adviser Exemption** – All clients must be private funds; no more than $150 million in AUM in private fund assets managed from a place of business in the US
  - Nuances for Non-US-Based Advisers
- **Venture Capital Fund Adviser Exemption** – All clients must be VC funds that meet portfolio composition and leverage tests
- **Foreign Private Adviser Exemption** – No more than $25 million in RAUM attributable to United States clients and US investors; less than 15 clients/investors; no place of business in the United States; no holding out in the United States
- **Family Office Exception** – Exception from the definition of investment adviser for companies that only advise “family clients,” are wholly owned by family clients and exclusively controlled by one or more family members or family entities, and do not hold themselves out to the public as an investment advisers.

Key Requirements

- Written compliance policies and procedures
- Code of Ethics (Rule 204A-1)
  - A standard of business conduct that you require of your supervised persons, which standard must reflect your fiduciary obligations
  - Provisions requiring your supervised persons to comply with applicable federal securities laws
- Custody of funds and securities
- Cash payments for client solicitations
- Political contributions ("pay to play")
- Proxy voting
- Books and records

Fund Marketing and Offering of Fund Interests and Placement and Distribution Arrangements

US Marketing Considerations: Advisers Act

- Advisers Act Rule 206(4)-1
  - Significantly amended in December 2020
  - Effective date May 4, 2021; compliance date November 4, 2022
- Restrictions and requirements on contents of "advertisements"
- Definition of "advertisement" very broad
  - Examples of advertisements:
    - Pitchbooks
    - Websites
    - Fact sheets
    - Social Media
- Policies and Procedures
- Books and records requirements

Placement Arrangements

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Placement Arrangements

- **What Are Placement Agents?**
  - Placement agents are independent companies that assist hedge funds and their advisers in raising capital. As a general rule, a person will be required to register as a broker under Section 15(a) of the Securities Exchange Act if the person is engaged in the business of effecting transactions in securities for the account of others. Accordingly, anyone engaged in the business of marketing and selling interests in hedge funds in the United States, whether in private placements or public sales, must be registered with the SEC under the Securities Exchange Act. This registration requirement applies to individuals as well as to companies.
  - Formerly, the hedge fund industry was populated with persons describing themselves as "finders" who promoted their ability to raise capital informally for hedge funds. They were typically retired financial service executives. They claimed that they were exempt from registration as brokers with the SEC; there was little support for this position. With certain limited exceptions, this class of promoters/marketers has largely disappeared. The SEC tried during the previous administration to develop rules to permit finders to operate under some circumstances but this initiative appears to have been abandoned.

Placement Arrangements

- **Why Use a Placement Agreement?**
  - Under SEC Rule 3a4-1, hedge fund advisers and their personnel may promote and sell interests in their funds without SEC registration. Rule 3a4-1 has a number of preconditions, one of which is that advisers relying on the rule are prohibited from paying sales commissions or other incentive compensation to their staff in the United States for selling interests in their funds in the United States unless the advisers and their personnel receiving the compensation are registered with an SEC-licensed broker-dealer. This makes it difficult for hedge fund advisers to pay incentive compensation to their marketing staff and to retain high-powered marketing teams.
  - To avoid the limitation on paying incentive compensation to the marketing team, hedge fund advisers can hire a placement agent that is a licensed broker, and the adviser can compensate the placement agent on the basis of interests actually sold. The placement agent can, in turn, pay its registered representatives incentive compensation.
  - The hedge fund adviser can also arrange to license its marketing team with the placement agent.

Placement Arrangements

- **Why Use a Placement Agreement?**
  - Hedge funds are offered and sold in the United States by private placement. This is necessary in order for the funds to avoid the need to register with the SEC under the Investment Company Act and to register their interests with the SEC under the Securities Act. This means that a hedge fund adviser may not offer interests in the funds through any means of general "public" solicitation, such as media, the Internet, or social media. In order to reinforce this prohibition, the SEC generally requires that hedge fund advisers only offer fund interests to persons with whom the adviser has a preexisting, substantive relationship. This would include, for example, existing investors in other funds managed by the adviser or clients of affiliates of the adviser.
  - This requirement to offer funds only privately and to persons known to the adviser places a severe limitation on advisers' ability to grow their funds except by word of mouth.
  - To expand the reach of marketing efforts a hedge-fund adviser may hire a placement agent and "piggy-back" on the placement agent's stable of clients or other persons with whom the placement agent has a substantive preexisting relationship. In other words, the adviser does not need to have a preexisting substantive relationship with every person to whom the placement agent markets the fund. This allows the hedge fund adviser to leverage the placement agent's Rolodex.

Placement Arrangements

- **Placement agents are compensated typically by receiving from the fund adviser:**
  - A share of the management fee received by the adviser with respect to investors introduced by the placement agent – this provides certainty of payment and immediacy of return to the placement agents, but it means that the adviser loses the use of those fees to offset other expenses.
  - A share of the incentive allocation received by the general partner with respect to investors introduced by the placement agent – this is less typical because the placement agents are not willing to wait to see when and if the general partner will receive the allocation.
  - Interests in a fund organized as a limited partnership and shares in a corporate fund are often offered in different classes to reflect different distribution channels and fee arrangements. For example, a class of interest offered through a placement agent might have a higher management fee in order to provide the adviser with the resources to pay a portion of the fee to the placement agent without severely impacting the adviser's cash flow needs.
  - Note that by having the adviser compensate the placement agent, the fund is not paying any expenses for marketing. This is a key issue for the SEC.

Placement Arrangements

- **How to document the relationship with the placement agent?**
  - Placement agreements are generally put in place after the launch of the fund but often the placement agent is intimately involved in the structuring and launch of the fund in order to maximize the fund's appeal to the targeted investor class.
  - Placement agent agreements can be structured between the adviser and placement agent or among the adviser, placement agent, and general partner. The second option is typical where the placement agent is to receive a portion of the incentive allocation.
  - The fund is generally not a party unless the placement agent insists on direct representations and warranties from the fund and recourse against the fund in the event of a dispute. The problem with making the fund a party is that we generally do not want to allow the placement agents to be able to bring claims directly against the fund or reach into the pockets of LPs for damages.
  - Placement agents are sometimes referred to as distributors. There are no substantive differences between these two terms although there are some minor differences in practice. For example, the term "distribution agreement" is often used in the context of sales of retail fund interests to a broader audience.

UK/EU Fund Marketing and Offering of Fund Interests

EU Cross-Border Distribution of Funds

- New measures applicable to AIFs and UCITs funds which supplement and extend the AIFMD and UCITS Directive in relation to marketing funds to investors in the EU
- A directive (Directive (EU) 2019/116) and a regulation (Regulation (EU) 2019/1156)
- Apply from 2 August 2021
- Applicable to:
  - EU fund managers marketing funds to EU professional investors
- Depending on local EU country policy, potentially applicable to:
  - non-EU fund managers marketing funds to EU professional investors under national private placement regimes (NPPRs)
  - the directive contains a recital which hints that EU countries should consider applying pre-marketing regime to non-EU fund managers marketing funds to EU professional investors
- Post Brexit, these new requirements are not applicable to UK or other non-EU fund managers marketing to UK investors – UK AIFMD NPPR continues without overlay as the UK starts to diverge from the EU incrementally

Two key aspects:

- under the directive, the pre-marketing regime which is intended to standardize the hitherto patchwork approach across EU member countries to the concept of when 'marketing' of a fund commences for AIFMD regulatory purposes; and
- under the regulation, the requirements for the form and content of "marketing communications"

Pre-marketing

- Definition of "pre-marketing"

  *"provision of **information or communication**, direct or indirect, **on investment strategies or investment ideas** by an EU AIFM or on its behalf, to potential professional investors domiciled or with a registered office in the Union in order to test their interest in **an AIF** or a compartment **which is not yet established, or which is established, but not yet notified for marketing** … in that Member State where the potential investors are domiciled or have their registered office, and which in each case **does not amount to an offer or placement** to the potential investor to invest in the units or shares of that AIF or compartment"* (presenter's emphasis)

  This allows 'soft marketing' to gauge investor interest in a proposed new fund before having to commit to making a full marketing notification and accepting the fees and obligations associated with that notification

- Aims to establish a uniform approach in the EU as to the activities which can be undertaken with prospective professional investors before triggering a full marketing notification
- EU countries are required to permit pre-marketing; the only requirement for fund managers is to provide an informal notification to the applicable EU regulator within two weeks of commencing pre-marketing
- Pre-marketing does not permit the provision of final form offering documents or constitutional documents or subscription forms in draft or final form

Pre-marketing: Impact on Reverse Solicitation

- EU professional investors are not permitted to subscribe for interests in funds as a result of pre-marketing only; investors may only acquire fund interests following a full marketing notification
- Subscription by an EU professional investor for an interest in a fund within 18 months of the pre-marketing taking place will be treated as having resulted from the pre-marketing and will be subject to a full marketing notification
- Conducting pre-marketing in an EU country rules out the ability to rely on reverse solicitation in relation to investors in that country for a period of 18 months following the cessation of the pre-marketing, unless the pre-marketing was reverse solicited
- EU Commission was required to produce a report on reverse solicitation in 2021, but such a report still awaited

Requirements for Marketing Communications

- The Cross-Border Distribution Regulation creates a new requirement for marketing communications (to EU investors) to:
  - be identifiable as marketing
  - describe the risks and rewards of investing in an equally prominent manner
  - be fair, clear and not misleading
- Marketing communications include a wide range of marketing materials, including pitchbooks and other presentations
- The regulation expressly does not apply to non-EU fund managers and is not intended to do so; however, local EU countries may choose to apply the same regime to non-EU fund managers
- ESMA guidelines on the application of the requirements for marketing communications prescribe detailed form and content requirements and came into effect on 2 February 2022

ESMA: Marketing Communications Guidelines

- The marketing communications guidelines set out ESMA's expectations in relation to:
  - the manner in which risks and rewards are described (including mentioning risks and rewards at the same level or one immediately after the other)
  - including prominent disclosure that a relevant communication is a marketing communication and specific disclaimer language
  - meeting the "fair, clear and not misleading" requirement, including verification of factual statements, adequately describing the features of the investment, clarification whether a fund is passively or actively managed, limiting use of overly optimistic wording, provision of information on costs, requirements when providing information on past or expected future performance, and requirements relating to the presentation of sustainability-related aspects of investments

Key Considerations for Non-EU Fund Managers

- Before ‘testing the water’ in relation to a new fund/investment strategy with potential investors in an EU country:
  - ascertain whether pre-marketing regime applies to non-EU fund managers in that country (nb: certain countries have applied/are expected shortly to apply regime to non-EU managers – e.g. Germany, Luxembourg, Finland, Denmark, the Netherlands)
  - consider pros/cons of pre-marketing vs reliance on reverse solicitation (pre-marketing will likely remove ability to use reverse solicitation)
  - ascertain whether requirements for marketing communications apply to non-EU fund managers in that country (e.g. Germany)
  - if so, assess impact on/update pitchbook, presentations, and other marketing materials and note detailed requirements of ESMA guidelines on marketing communications

EU Sustainable Finance Disclosure Regulation

- The EU Sustainable Finance Disclosure Regulation (EU SFDR) has been applicable since 10 March 2021
  - combats "greenwashing" through mandating transparency
  - increases comparability of disclosures for investors
- Three categories of rules which:
  - impose manager-level obligations
  - impose fund-level obligations applicable to all funds whether or not they have an ESG/sustainability focus
  - impose additional obligations applicable only to funds promoting environmental or social characteristics or having a sustainability objective
- Applicable to:
  - EU fund managers
  - Non-EU fund managers using NPPRs to promote their fund in EU countries are certainly subject to the fund level obligations. There are arguments that non-EU managers are not subject to the manager-level obligations but a recent Q&A from the European Commission suggests they are whilst leaving room for further clarification
- Not applicable to:
  - Non-EU fund managers relying on reverse solicitation
  - UK did not onshore EU SFDR into UK law as part of Brexit and is developing its own sustainability disclosure regime

Key Considerations for Non-EU Fund Managers

- Non-EU fund managers should consider a number of issues when marketing funds to EU investors under an NPPR:
  - ensure applicable fund-level disclosures are made in fund documentation:
    - a description of the manner in which sustainability risks are integrated into the manager's investment decisions for that fund and the extent to which sustainability risks might impact the performance of the fund either in qualitative or quantitative terms; and
    - whether and, if so, how the fund considers principal adverse impacts on sustainability factors or, if the manager is eligible, due to its size, to opt out of making that statement (and wishes to do so), disclose that the manager does not consider the adverse impacts of investment decisions on sustainability factors and why

Key Considerations for Non-EU Fund Managers

- Consider whether the manager meets the size requirement enabling it to opt out of the requirement to disclose how it considers principal adverse impacts on sustainability factors (the opt-out is not available to a manager which has or is the parent undertaking of a group which has an average of more than 500 employees during the financial year)
- Consider whether it is able to meet the manager-level disclosure requirements (which must be met through disclosures on the manager's website)
- Consider whether the fund promotes environmental or social characteristics or has a sustainability objective - if so, there are additional, more detailed disclosure requirements and ongoing reporting requirements for such funds which the manager will first need to double-check it can meet

CPO/CTA Registration

CFTC Registration

Threshold Question for CPO/CTA Registration

Essentially, do you manage a fund that invests in commodity interests or provide "commodity interest trading advice"?

Commodities: Not Just Corn

Commodity Interests

- The CFTC has exclusive jurisdiction over "commodity interests."
- "Commodity" is defined broadly to include, among other things, "all services, rights and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in."
- "Commodity" definition includes Agricultural Commodities, Metals, Energy, Currency, Interest Rates, Government Securities, Environmental, Economic Events, and Cryptocurrencies. The definition does <u>not</u> include onions, movie box office receipts, politics, or sports.

- Commodity interests include:
  - Futures
  - Options on Futures
  - Swaps (but not security-based swaps)
    - Interest Rate Swaps
    - Broad-Based Index Credit Default Swaps
    - Options on Commodities
    - Nondeliverable FX Forwards, FX Options, Currency Swaps
  - Retail FX and Retail Leveraged Commodities

CPO Registration and Exemptions

- **Commodity Pool Operators (CPOs)**
  - A CPO is "any person engaged in a business which is in the nature of a commodity pool and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests."
  - A CPO must register with the CFTC unless it can avail itself of an exemption.
- **Exemptions from Registration**
  - *De minimis* pool (CFTC Reg. 4.13(a)(3))
  - Offshore CPO of offshore pool that does not accept US investors (CFTC Reg. 3.10(c))
  - Exclusion from CPO definition for registered investment companies that satisfy the *de minimis* test (CFTC Reg. 4.5)

De Minimis Exemption

To rely on this exemption, one of the CFTC's *de minimis* tests must be satisfied. The *de minimis* tests include the aggregate initial margin calculation and aggregate net notional value calculation, described below.

(1) Aggregate Initial Margin Calculation

- The aggregate initial margin, premiums, and required minimum security deposit for retail forex transactions required to establish such positions, determined at the time the most recent position was established, will not exceed 5% of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into; Provided, that in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in §190.01(x) of this chapter may be excluded in computing such 5%.

(2) Aggregate Net Notional Value Calculation

- The aggregate net notional value of such positions, determined at the time the most recent position was established, does not exceed 100% of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into.
  - The term "notional value" shall be calculated for each futures position by multiplying the number of contracts by the size of the contract, in contract units (taking into account any multiplier specified in the contract), by the current market price per unit, for each such option position by multiplying the number of contracts by the size of the contract, adjusted by its delta, in contract units (taking into account any multiplier specified in the contract), by the strike price per unit, for each such retail forex transaction, by calculating the value in U.S. Dollars of such transaction, at the time the transaction was established, excluding for this purpose the value in U.S. Dollars of offsetting long and short transactions, if any, and for any cleared swap by the value as determined consistent with the terms of 17 C.F.R. part 45; and
  - The person may net futures contracts with the same underlying commodity across designated contract markets and foreign boards of trade; and swaps cleared on the same derivatives clearing organization where appropriate.

Other Exemptions for Registered CPOs

- **CFTC Reg. 4.7**
  - Relief from Disclosure Document, Monthly Account Statement (becomes a quarterly requirement), Recordkeeping, and other requirements.
  - Available to CPOs and Commodity Trading Advisors (CTAs) whose investors or clients are "qualified eligible persons"
    - Satisfies investment requirement (owns securities worth at least $2 million, has at least $200,000 on deposit with an FCM for initial margin and option premiums, or a combination thereof); or
    - Is a "qualified purchaser," "knowledgeable employee," non-US person, or regulated financial entity.
- **CFTC Reg. 4.12**
  - Relief available to CPOs of ETFs (funds whose interests are offered and sold pursuant to an effective registration statement under the Securities Act of 1933).
  - More extensive relief is available to CPOs of registered investment companies.

CTA Registration and Exemptions

- **Commodity Trading Advisors (CTAs)**
  - A CTA is "any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any [commodity interests]."
  - A CTA must register with the CFTC unless it can avail itself of an exemption.
- **Exemptions from Registration**
  - CPO/CTA is the same legal entity. A CTA that is also the CPO of a pool need not register as a CTA. Where the CPO is exempt from registration, it is also exempt from CTA registration (CFTC Reg. 4.14(a)(4), (5))
  - Commodity interest trading advice is solely incidental (CFTC Reg. 4.14(a)(8))
  - Fifteen or fewer clients (CFTC Reg. 4.14(a)(10))

CFTC and NFA Regulatory Considerations

CPO/CTA Registration

You need to register as a CPO or CTA…now what?

CPO/CTA Registration

- File Form 7-R with the National Futures Association (NFA)
- File Form 8-R with the NFA on behalf of each Principal and Associated Person
- Prepare compliance manual and appropriate policies and procedures

National Futures Association

- CFTC regulations require, with few exceptions, that CFTC-registered firms also be NFA members.
- NFA is a self-regulatory organization and its members are subject to NFA oversight.
- Fundamental requirements apply to member firms, including Bylaw 1101; monthly, quarterly, and/or annual reporting requirements; and marketing rules.
- NFA members are subject to periodic NFA examinations.

Personnel Registration

Principal

- Principal status is based on title/role within the organization or ownership.
- An entity may be a principal when it is a general partner or the direct owner of 10% or more of the outstanding shares of any class of an applicant or registrant's equity securities (other than nonvoting securities).
- Certain individuals or entities that have contributed 10% or more of an applicant or registrant's capital.

Associated Person

- An AP is an individual who solicits orders, customers, or customer funds (or who supervises persons so engaged) on behalf of a CPO or CTA.
- Generally, anyone who is a salesperson or who supervises salespersons of a CFTC registrant must be registered as an AP.
- Must take the Series 3 exam (with very limited exceptions).
- Swap proficiency examination requirements (effective as of Jan. 31, 2021).
- Supervisory Responsibilities
  - CFTC Regulation 166.3 requires a CFTC registrant to diligently supervise its employees and agents in the handling of commodity interest accounts carried, operated, advised, or introduced by the registrant in all aspects of their business as a CFTC registrant.

Compliance Considerations

- Part 4 of the CFTC's Regulations
- NFA Rules and Interpretive Guidance
  - Bylaw 1101
  - Cybersecurity
  - CPO Internal Controls
  - CPO Notification Requirements
  - Outsourcing
  - Business Continuity/Disaster Recovery
  - Virtual Currency Disclosure and Reporting

Reviewing Subscription Agreements

Subscription Documents

- **<u>Purposes of Subscription Documents</u>**
  - The agreement of the investor by which it subscribes for interests in the Fund
  - Investor substantiates its eligibility to participate in the Fund's offering and to be a "limited partner" as required by certain securities regulatory regimes
    - Makes certain representations, warranties, and covenants
    - Provides information on what type of investor it is
    - Provides AML and KYC information
- **<u>Primary Components of Subscription Documents</u>**
  - Subscription Agreement
  - Investor Profile Forms
  - Investor Questionnaires
    - Accredited Investor
    - Qualified Purchaser
    - Qualified Client
    - "New Issues" – FINRA Rules 5130 and 5131
    - "Bad Actor"
  - AML and KYC Forms and Document Requests
- **<u>Intake and Review Process is Coordinated By the Fund's Administrator</u>**

Derivatives

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Derivatives

- Purpose of derivatives
- Documentation for derivatives
- Regulation of derivatives
- Timing considerations

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Gregg Buksbaum focuses his practice on domestic and international business transactions, primarily representing private fund sponsors and institutional investors in the formation of, and investment in, various types of private investment funds, including private equity, hedge, venture capital, real estate, infrastructure, mezzanine, credit, distressed debt, special opportunity and funds of funds, among others. He has extensive experience with co-mingled funds and bespoke funds of one, managed accounts and similar investment management arrangements. Gregg also represents clients in private equity and venture capital transactions, joint ventures, financings, entity formation, and other domestic and cross-border transactional matters in developed and emerging markets in a variety of industries.

Gregg works with new fund and fund-less sponsor groups in helping them navigate the challenges of setting up operations and employing best practices, and with established sponsors who have more complex institutional needs, such as succession planning, profit-sharing schemes, and conflicts management due to expanding business platforms. He also advises on joint ventures between sponsor groups seeking to merge platforms and/or raise co-sponsored funds.

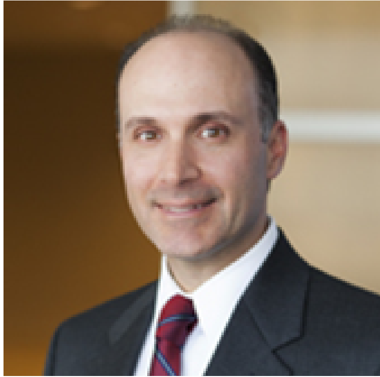
His experience also includes negotiating seeding and revenue sharing arrangements, sub-advisory arrangements, placement agent agreements, and providing counsel on investment adviser regulatory and compliance matters at the state and federal levels.

Gregg regularly advises institutional investors—including sovereign wealth funds, public pension plans, family offices, funds of funds, and other similar investors—in negotiating their investments in a variety of private investment funds and managed account platforms, as well as negotiating secondary transactions, co-investments, direct investments and arrangements with transition managers, prime brokers, custodians, and commodities trading advisers.

Notably, Gregg has served as outside counsel to fund managers, advising them on a range of fund management issues, best practices and compliance, as well as serving as outside counsel to private companies, counseling them on a range of corporate governance issues, as well as on issues concerning employment, tax, and regulatory matters.

Before joining Morgan Lewis, Gregg was a partner and chair of the private investment funds practice at another global law firm. He previously has counseled clients in the coordination and interplay of business and US foreign policy and has interacted with Congress and executive branch departments and agencies in those endeavors.

Thomas V. D'Ambrosio



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Thomas V. D'Ambrosio concentrates his practice on structured and complex derivative transactions, including related insolvency and regulatory issues. Thomas helps clients structure, negotiate, and analyze the risk inherent in a wide range of cleared and uncleared derivative and futures products. He represents clients in all asset classes, including equity, debt, credit, commodity, interest rate, currency, and exotic derivatives. His clients include Fortune 500 corporations, private companies, investment managers, hedge funds, financial institutions, pension funds, and high net-worth individuals.

Thomas is particularly active in advising enterprises that employ derivatives to hedge risks, monetize assets, and finance the acquisition of assets on favorable terms—with and without the benefits of leverage—including financing issuer equity and debt repurchase programs. He actively represents clients on LIBOR reform and Dodd–Frank derivative reform.

Thomas is a member of the Firm's LIBOR working group. The LIBOR working group tracks and distills expert market knowledge on LIBOR transition around the world.

Thomas also represents issuers in public and private sales of equity and debt securities. He advises purchasers and sellers in stock sales, asset sales, and merger transactions; counsels investment managers in leveraged private fund investments; and advises pension fund managers and wealthy families with respect to their investments in private funds.

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Ethan W. Johnson counsels clients on a variety of regulatory and transactional matters, with a focus on hedge fund and private equity fund formation, and guides investment managers through the legal intricacies of international operations. He also advises clients on establishing offices and operations outside the United States, developing and offering financial products and services sold on a global basis, and building global compliance programs.

Ethan's regulatory and transaction practice includes counseling clients on the creation of hedge funds, private equity funds, venture capital funds, real estate funds, Undertakings for Collective Investment in Transferable Securities (UCITS), and US Securities and Exchange Commission (SEC) registered funds. He also advises on the organization and operation of broker-dealers and investment advisers, and on corporate finance projects including public and private offerings of debt and equity securities.

Through Morgan Lewis's US, European, and Asian offices, he advises on the laws of more than 100 non-US jurisdictions, including all major financial centers, most emerging markets, and less-developed nations. He has experience counseling many US-based firms on US and non-US securities and regulatory matters—including joint ventures and investment projects—in Latin America, Europe, and Asia. In cross-border business matters, he helps clients comply with local marketing restrictions, and advises them on local authorizations and exemptive relief. He also works to ensure concurrent compliance with US and local laws.

A frequent author and lecturer, Ethan addresses topics including the regulation of broker-dealers and investment advisers; global distribution of investment funds; private equity real estate funds; investment in emerging markets; and corporate governance. He is an editor of the *Morgan Lewis Hedge Fund Deskbook,* published by Thomson Reuters/West.

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Christine Lombardo advises investment managers and broker-dealers on financial regulatory matters. She concentrates her practice on securities regulation for a broad range of financial firms including retail asset managers, private fund managers, family offices, broker-dealers, other professional traders, and high-net-worth individuals. Christine also counsels legal, compliance, and business personnel on the structure, operation, and distribution of advisory programs, including digital advisory offerings, and investment products, including hedge funds, private equity funds, venture capital funds, real estate funds, and other alternative investment products.

Christine also counsels financial firms through examinations by industry regulators, as well as on enforcement related matters. She also serves as a co-leader of the firm's financial technology (fintech) industry team. Before joining Morgan Lewis, she was an associate at an international law firm in New York and worked for the Division of Enforcement at FINRA.

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Leveraging her experience as a lawyer at the US Commodity Futures Trading Commission (CFTC), Sarah V. Riddell advises domestic and foreign exchanges, derivatives clearing organizations, swap execution facilities, and other financial institutions on a broad range of regulatory matters, including CFTC registration and compliance. Sarah also assists hedge fund and swap dealer clients with CFTC and National Futures Association (NFA) registration, compliance, and examination questions. While at the CFTC, Sarah worked on Dodd-Frank-related rulemakings and participated in examinations of derivatives clearing organizations, including those designated as systemically important.

In addition, Sarah helps clients understand and comply with the NFA's Information Systems Security Program interpretive notice and the New York Department of Financial Services (NYDFS) Cybersecurity Regulation, as well as related cybersecurity questions. Sarah has assisted clients who have experienced cybersecurity attacks, assisted in the cybersecurity investigations and assessments of forensic analyses about the incident, and has drafted and submitted notifications to customers and regulatory agencies. Sarah also advises funds, digital wallet businesses, and exchanges that invest in or issue crypto assets on regulatory issues, including the applicability of NYDFS regulations and federal and state laws and regulations.

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William Yonge has more than 20 years' experience advising global clients on regulation and related commercial issues arising in the financial services, investment management, securities, and derivatives sectors. Clients include asset managers across a wide range of asset classes and their funds, broker-dealers, corporate financiers, fintech and payment services firms, institutional investors, and market associations. Prior to entering private practice, he served as an in-house lawyer at the Securities and Investment Board (now the Financial Conduct Authority) and the Investment Management Regulatory Organisation.

William frequently helps clients to navigate UK and European regulatory issues that arise during fund formations, mergers and acquisitions, establishment of regulated investment management firms in the United Kingdom, and advises on customer and service provider documentation. He also counsels managers from the United States, Europe, Middle East, and Asia on structuring their private placements of funds to UK and European investors and establishing themselves in the United Kingdom.

William advises clients on regulatory developments arising in the context of the United Kingdom's exit from the European Union (Brexit) and counsels firms on restructuring in light of Brexit-related regulatory change.

William's work includes advising on operational, regulatory, and compliance matters regarding the UK Financial Services and Markets Act 2000, the rules of the UK Financial Conduct Authority (FCA), and the UK Prudential Regulatory Authority (PRA) such as the perimeter of regulated activities, obtaining authorisation, conduct of business, changes of control, financial promotion, remuneration requirements, product development, anti-money laundering, trading issues, payment for research, market abuse, cross-border business, and EU passporting.

William provides clients with insight into the impact of current and proposed financial services legislation at European level, including the Alternative Investment Fund Managers Directive (AIFMD), Markets in Financial Instruments Directives (MiFID II), European Market Infrastructure Regulation (EMIR), the Investment Firms Prudential Review, and UK/EU Initiatives in ESG and Sustainability.

Addressing topical regulatory issues, William frequently writes articles for key publications including *Complinet*, *Hedge Fund Journal*, *FX-MM*, *Funds Europe*, *Global Risk Regulator*, *Global Funds Europe*, *EuroWatch*, *Lexology*, *Alternative Intelligence Quotient*, and *Private Debt Investor*. He also speaks regularly at hedge fund and private equity conferences and events.

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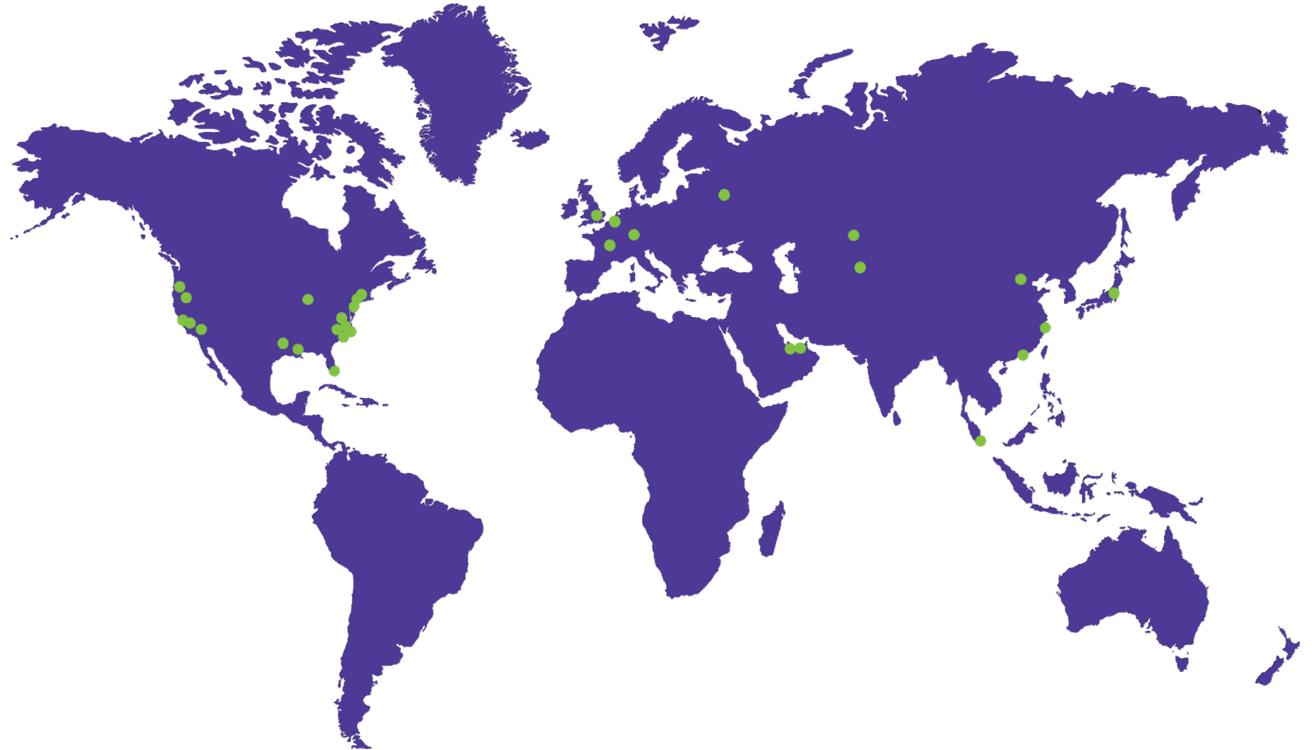

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