



Morgan Lewis

REGISTERED FUNDS TRENDS AND DEVELOPMENTS

Quarter in Review Series: SEVENTH EDITION

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Overview

- New Cybersecurity Rule Proposal: More Than an IT Issue
- Revisiting the SEC's Marketing Rule
- Implementation Tips and Tricks: Derivatives Rule
- More Implementation Tips and Tricks: Valuation Rule

NEW CYBERSECURITY RULE PROPOSAL: MORE THAN AN IT ISSUE

Overview of Cybersecurity Rule Proposal

- **Applicability**

- Registered investment advisers, registered investment companies, and closed-end funds that have elected to be treated as business-development companies

- **Background**

- Growing number of cybersecurity risks for advisers and funds
- No existing SEC rules requiring comprehensive cybersecurity risk-management programs
- Clients and investors may not be receiving sufficient information on cybersecurity incidents

- **Proposal Elements**

- 1) Adopt and implement cybersecurity risk-management policies and procedures
- 2) Report significant cybersecurity incidents to the SEC
- 3) Disclose information about cybersecurity risks and significant incidents
- 4) Prepare and maintain related records

Key Takeaways and Industry Feedback

- **Fund Boards Need Additional Clarity Regarding Oversight Role**
 - Standard for board approval of cybersecurity policies and procedures
 - Oversight of fund third-party service providers
- **48-Hour Reporting Requirement Will Be a Significant Challenge**
 - Goes beyond most state and federal cybersecurity reporting requirements
 - Ongoing requirement to amend reporting creates additional burden
- **Oversight of Third Parties Could Be a Significant Challenge**
 - Likely a significant burden for smaller advisers and funds
 - Third parties may not be willing to accept certain contractual risks/terms
- **Maintain Thorough Records and Documentation**
 - Ensure that disclosure is consistent with and supported by records and documentation
 - Ensure that due diligence and oversight of third parties are sufficiently documented

REVISITING THE SEC'S MARKETING RULE

Revisiting the SEC's Marketing Rule

- Compliance date: November 4, 2022
- New rule (206(4)-1) will combine Advertising Rule and Solicitation Rule
- Broader definition of "advertisement," which also picks up private funds
- Seven General Prohibitions
- Testimonials and Endorsements
- Detailed treatment of performance
 - Gross and Net
 - 1-, 5-, or 10-Year or since inception
 - Related, extracted, and predecessor performance
 - Hypothetical performance

Revisiting the SEC's Marketing Rule (cont.)

Third-party rankings

Form ADV Amendments

Implications for books and records are significant

Proposed requirement for preapproval was not adopted

Certain no-action letters will be rescinded

No direct impact on registered-fund advertising

Early compliance permitted, but must be all-in (no à la carte compliance)

Tips for transitioning to compliance

IMPLEMENTATION TIPS AND TRICKS: DERIVATIVES RULE

Derivatives Rule – Implementation Tips and Tricks

- Establish Derivatives Risk-Management Program
 - Whose program is it anyway?
 - Derivatives Risk Manager (DRM) must be approved by the board
 - “Officer or officers of the adviser”; segregated from portfolio-manager functions
 - Role of DRM
 - Derivatives risk identification and assessment – documentation
 - Derivatives risk guidelines – responding to exceedances
 - Roles of (and delegation to) subadvisers – single vs. multimanager
- Derivatives policies and procedures
 - Limited Derivative User identification and compliance (including exceedance protocol)
 - Qualifications for DRM appointment

IMPLEMENTATION TIPS AND TRICKS: VALUATION RULE

Valuation Rule – Implementation Tips and Tricks

- Who is doing what? Clarify responsibilities
 - Designation of the fund's adviser
 - Specification of the titles and functions of individuals responsible for fair valuation (including pricing challenges)
 - Segregation from portfolio management
 - Describe interactions with other groups, including any escalation process
- Assess valuation risks
 - Describe frequency, documentation, and reporting
- Specific requirements
 - Identify testing methods as well as the minimum frequency
 - Description of challenge process, including when a challenge should be initiated
- Impact to cross-trading
 - Status of Rule 17a-7 municipal bond no-action letters

Biography



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With more than a decade of experience as senior in-house counsel with global investment managers, **Lance** has a deep understanding of mutual fund law and operation and is fluent in the myriad regulations applicable to investment managers. He is well versed in the creation of investment products and environmental, social and governance (ESG) and sustainability matters. Lance works extensively on regulatory policy matters engaging with various financial services regulators, including the US Securities and Exchange Commission, US Department of Labor, Internal Revenue Service, and US Department of Treasury.

Biography



Sean Graber

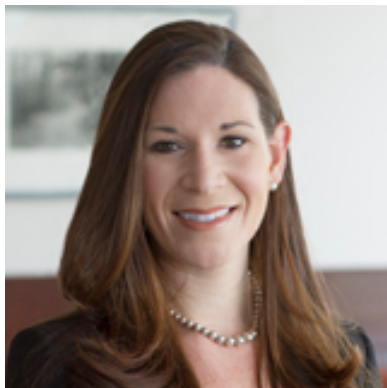
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Sean advises companies in the securities industry on investment management matters. Investment advisers, mutual funds, closed-end funds, private investment companies, registered funds of hedge funds, and exchange-traded funds seek his advice on organizational issues, registration, and ongoing regulatory compliance matters. He also serves as counsel to the boards of directors of mutual funds, and he advises insurance companies on regulatory matters relating to variable insurance products.

Biography



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Christine 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.

Biography



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Brian 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.

Biography



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Jonathan 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. In addition, Jon advises broker-dealers on various matters, particularly with respect to regulatory compliance issues, market making activities, and transactions in exchange-traded funds. Jon is also a member of the firm's environmental, social, and governance (ESG) and sustainability working group, and regularly counsels clients on ESG investing strategies, disclosure, and related regulatory issues.

Biography



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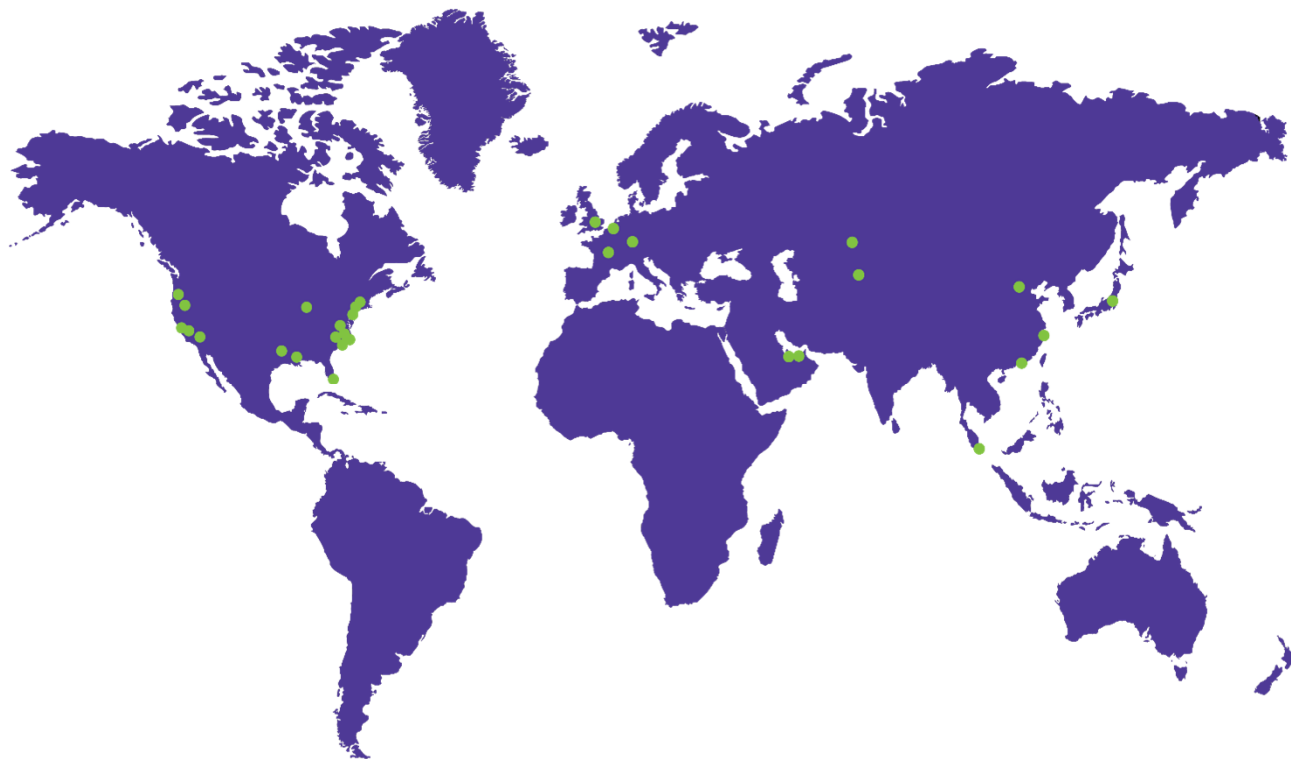
Ellen focuses her practice on a wide range of securities regulatory issues facing investment advisers, including private investment funds and large financial institutions. She provides counsel to these companies on regulatory compliance, SEC examinations, preparation of policies and procedures, and structure and operations.

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