ADVANCED TOPICS IN HEDGE FUND PRACTICES CONFERENCE

Manager and Investor Perspectives

WEBINAR SERIES

Track 4: Key Hedge Fund Issues

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No Poach – Antitrust Considerations and Developments

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No Poach – Antitrust Considerations and Developments

Labor Markets & Antitrust

Agency Statements

Agency Prosecutions

Compliance Tools

Current Special Purpose Acquisition Company (SPAC) Issues

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Overview

The SEC recently proposed new rules and amendments relating to IPOs by SPACs and to business combinations involving shell companies and private operating companies.

Proposed rules are aimed at enhancing investor protections, but may have cooling effect on the volume of such transactions or materially increase costs of deal execution.

Key Provisions

- Additional disclosure requirements regarding SPAC sponsors, conflicts of interest and dilution; SPACs must disclose whether the transaction is fair or unfair to unaffiliated security holders.
- Alignment of deSPAC transactions with IPOs in relation to liability and investor protection provisions, such as co-registrant requirements, elimination of PSLRA safe harbor for forward-looking statements for SPAC filings and expanded underwriter liability, and financial statement requirements.
- Minimum mandated dissemination period for prospectuses and proxy/information statements filed in connection with a deSPAC transaction.
- A business combination transaction involving a shell company such as a SPAC now constitutes a sale of securities.
- New, nonexclusive safe harbor from the definition of "investment company" under Section 3(a)(1)(A) of the Investment Company Act of 1940 for SPACs.

What's Next?

Public comment period is open until June 13, 2022.

Portions of the proposal codify existing SEC guidance and practice, however, notable distinctions are underwriter liability and the proposed Investment Company Act safe harbor.

This proposal is one of many high profile proposed rulemakings from the SEC this year.

In general, the volume of new SPAC IPOs and deSPAC transactions has decreased in 2022 as compared to 2021.

Derivatives Update

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Fall Happenings

UMR – Initial Margin

- September 1, 2022
- 3 Regulators
- Broad applicability and low thresholds
- New documentation – IM CSA
- New parties in the case of swaps

FINRA 4210

- October 26, 2022
- Enter into or amend MSFTAs

On The Horizon

- **Possible changes to rules under Exchange Act Sections 13(d) and 13(g)**
  - More compressed filing deadlines for Schedules 13D and 13G:
    - 13D: File within 5 days (reduced from 10 days) and file amendments in 1 day.
    - 13G: Depending upon the investor, file within 5 business days after month-end or within 5 days (reduced from 45 days after year-end) and file amendments within 5 business days after month-end (reduced from 45 days after year-end).
  - Certain cash-settled derivatives confer ownership if the derivative is held with the purpose or effect of changing or influencing the control of the issuer of the reference securities:
    - option, warrant, convertible note or convertible preferred stock.
  - Clarify that groups arise by concerted action and do not require an actual agreement.

US Institutional Investor Access to Foreign Security Futures Contracts: Navigating the SEC/CFTC Joint Regulatory Regime

Morgan Lewis

Security Futures—What Are They and How Are They Regulated?

- **Single stock futures**
- **Futures on narrow-based indices**
- **Were illegal in the United States until the CFMA of 2000**
- **Who regulates? — Joint Jurisdiction**
  - CFTC
  - SEC
- **Exchange registrations**
- **Broker registrations and account types**
- **CTA/IA registration and exemption**

Foreign Security Futures

There are currently no US security futures

But . . . a large and robust foreign security futures market exists

US Persons not permitted by SEC to trade foreign security futures until 2009

- SEC 2009 Order
- CFTC 2010 Advisory

Conditions of the SEC 2009 Order

- **Eligible Products**
  - Futures on single-equity securities of foreign issuers
  - Futures on narrow-based stock indices
  - Futures on foreign sovereign debt instruments
- **Eligible Customers**
  - QIBs as defined in Rule 144A
  - Non US Persons as defined in Rule 902 of Reg S
  - BDs and Banks acting on behalf of QIBs or Non-US Persons
- **Eligible Exchange**
  - No direct market access from United States
- **Eligible Brokers**
  - BD/FCM or Rule 30.10 exempt firms
- **Clearance and Settlement Outside of the United Staes**

Narrow-Based Indices and Product Morphing

- Futures on narrow-based indices are security futures subject to joint SEC/CFTC jurisdiction
- Futures on broad-based indices are futures subject to exclusive CFTC jurisdiction
- Indices are not static due to the application of capitalization-weighting tests of the narrow-based definitio
  - They can morph from narrow to broad and from broad to narrow
  - Example: KOSPI 200 Index
- SEC/CFTC Transition Rules
- Product Transition Challenges for Investment Managers

Futures and Security Futures on Foreign Sovereign Debt

Two flavors

- Futures on sovereign debt approved securities exempted under SEC Rule 3a12-8
- Security futures on other sovereign debt

One category is treated as a regular future—CFTC rules apply

The other category is treated as a security future-SEC and CFTC rules apply

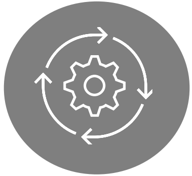
Impact:

- Who is eligible to trade?
- Intermediaries
- Direct Electronic Access

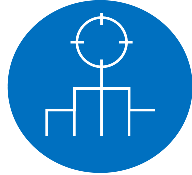
Big Picture Regulatory Lessons/Questions

- Bad idea to have products subject to concurrent jurisdiction of two regulators (CFTC and SEC)?

- Better to assign jurisdiction just to one regulator?



- Better to assign parallel jurisdiction (each could regulate under its own framework and mutually recognize each other)?



- Should this experience inform the jurisdictional debate over crypto?

LIBOR Transition – Recap

LIBOR is a floating reference rate of interest that is supposed to reflect the cost at which banks can borrow a number of major currencies from other banks on an unsecured basis for the relevant maturity

Published for five currencies (USD, GBP, EUR, CHF, JPY) and seven maturities (overnight, 1 week, 1 month, 2 months, 3 months, 6 months, 12 months)

USD LIBOR, GBP LIBOR, EURO LIBOR, CHF LIBOR, JPY LIBOR

Related IBOR: EUIRBOR, TIBOR, EUROYEN TIBOR, BBSW, HIBOR, and CDOR

24 of the 35 LIBOR settings ceased or became nonrepresentative after December 31, 2021

USD overnight, 1-month, 3-month, 6-month, and 12-month LIBOR settings will continue to be published on a representative basis until June 30, 2023

Industry Developments – United States Regulators and Trade Associations

ARRC 2.0 – In the US the Alternative Reference Rates Committee (ARRC) was charged with finding an alternative reference rate.

Trade Associations – ISDA, SIMFA, and LSTA have or are developing fallback protocols.

US Regulators – On March 15, 2022, President Biden signed into law the Consolidated Appropriations Act, which includes federal legislation that provides a solution for legacy financial contracts tied to LIBOR.

- Provides clarity and creates safe harbors for and prevents disruption of the transition from USD LIBOR to SOFR for tough legacy contracts at USD LIBOR cessation on June 30, 2023.
- Existing LIBOR-referencing contracts that are unable, before June 30, 2023, to either convert to a non-LIBOR rate or be amended to add fallbacks.

Secured Overnight Financing Rate (SOFR)

For USD LIBOR, the replacement reference rate will be the Secured Overnight Financing Rate (SOFR), which ARRC formally recommends as the LIBOR replacement rate

SOFR is an overnight US Treasury repo rate

SOFR is fully transaction-based (based on transactions in the Treasury repurchase market and seen as preferable to LIBOR since it is based on data from observable transactions rather than on estimated borrowing rates)

SOFR has a robust underlying market, with $800 billion in daily activity

SOFR is a nearly risk-free rate that correlates with other money market rates

SOFR covers multiple repo market segments allowing for evolution

Strategic Minority Stakes

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GP Stakes Transactions – 2021 Market Overview

Investment management transactions set new records in 2021 as we emerged from pandemic conditions and a "virtual" transaction setting:

- More than 390 total investment management deals globally across all asset classes – compared to 256 in 2020 and the previous record of 270 in 2019
- This transaction pace has accelerated relative to historical norms, and in 2021 involved $3.3 trillion of transacted AUM
- Three-quarters of deals in 2021 involved US target firms, with 54 deals involving European target firms
- While the majority of 2021 deals once again involved wealth manager targets, nearly 150 involved traditional or alternative asset managers
- Of these, nearly 80 target firms were private fund managers
- Three quarters of buyers in 2021 investment management transactions were US-based, with European buyers doing 49 deals
- Pricing increased significantly in 2021 deals from levels seen in recent years, resulting in a median run-rate EBITDA multiple of more than 13x

Types of Deals

Minority stakes transactions in 2021 were nearly half of total private fund manager deals:

- Private credit, real estate, and other illiquid/long-term lockup investment strategies have driven buyer appetite in recent years
- Hedge fund and other liquid strategy deals have nearly disappeared just six in each of the past two years, down from almost 20 such deals in 2019
- Majority deals returned in a significant way in 2021, with more than half of deals involving private fund managers being control transactions

Types of Deals

- Some strategic players continued to pursue majority deals with private fund managers despite a trend in recent years toward minority stakes
- A desire to deploy scale capital into a manager's underlying products accounts for some of this strategic difference, for insurer buyers in particular
- Asset managers of all types also sought to enhance their platforms with acquisitions of alternative firms in 2021

Types of Buyers

A wide range of buyers participated in 2021 investment management transactions:

- Other asset managers remained the most active buyers, doing two-thirds of total 2021 deals
- Financial sponsors came in next, focusing on minority stakes in alternative firms and wealth management platform deals
- Numerous "middle market" sponsors have also entered the fray

Market Forces

Institutional clients continue to push managers toward holistic investment solutions and a greater product mix

These clients are also pushing their managers toward increased succession planning and “institutionalization” of alternative firms

Active managers continue to face pressure from passive funds and new technology entrants

ESG and “impact” investing are driving a significant and increasing portion of the market based on considerations other than investment performance

Key Elements of GP Stakes Transactions

Up-front purchase price versus contingent or "earn-out" payments

- Time horizon for payment and conditions/metrics for achieving earn-out
- Treatment of buyer's contributed AUM/AUM raised through buyer distribution
- Monetization of "in the ground" carry in some alternative transactions

Retained autonomy with buyer receiving standard minority protections

- Top-line versus bottom-line economic participation for buyer affects scope
- "Managed margin" protections around partner compensation and similar items
- Minority consent rights

Spreading equity ownership, succession planning, and "institutionalization" of target firm's business often play a role

Investor may also seek co-investment or other deal flow opportunities

Key Elements of GP Stakes Transactions

- Capital committed by buyer to target firm's products and toward its GP capital commitment obligations
- Distribution and other strategic resources of buyer made available to target firm on an "as requested" basis
- Liquidity provisions for majority equity retained by management owners
- Buyer liquidity rights to transfer minority stake, take portfolio public, and/or put the stake back to the target firm into certain circumstances

Predictions for 2022 and Beyond

Pricing pressure, client demands for diverse product offerings, and increasing regulatory and compliance costs will continue driving small and medium-sized players to consider doing deals with larger players

Specialized and otherwise differentiated investment strategies including ESG will continue to drive buyer interest and pricing (less susceptible to passive competition)

Minority stakes will continue to comprose a large portion of the PIF deal sector due to retained autonomy and equity upside retained by management

Strategic players will continue to build out product offerings through acquisitions of alternatives managers

Transaction pricing will remain robust for premium/differentiated managers

IP Issues in Hedge Fund Practices

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IP/Software Evaluation – Legal Considerations

Scenario:	Evaluating third-party proprietary technology in an acquisition or investment context but may need flexibility to independently develop similar technology in the future
Key Issue:	Software owner may allege trade secrets and/or confidential information software was stolen during evaluation
Key Considerations:	• Terms of Nondisclosure Agreements (NDAs) • Clean Rooms

Terms of Nondisclosure Agreements

- Consider whether to have one at all
- If an NDA is needed, consider modifying certain terms:

Scope
Limit scope of any shared confidential information to a particular technology component

Term
Some NDAs might be indefinite; consider a limited term (e.g., 1-3 years)

Disclosure Requirements
Require disclosing party to explicitly identify confidential information

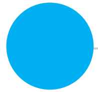
Use
Broaden to use for internal purposes rather than evaluation/inspection purposes

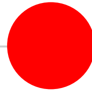
Access
Specify whether samples and/or documents will be shared or whether inspection of technology is online only or on premises

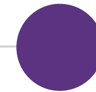
Clean Rooms

- If people evaluating technology are the same people tasked with independently developing the technology, consider forming a **clean room**
- Clean Room Considerations:
  - Notify all participants of the clean room
  - No communication of any confidential information
  - Secure all documents
  - Name new team leads as needed

Trademark and Copyright Considerations







Scope of Protection

- Source identifiers
- Original works of authorship

Clearance, Selection, and Registration

Benefits of Registration

Ownership vs. License Rights

- **IP Ownership and Chain of Title**
  - Employees vs. contractors
  - IP assignments need present-tense assignment language (not merely acknowledgment of ownership)
  - Sufficient consideration?
    - Is the assignment merely confirmatory, or a new term?
  - Consider local laws of relevant jurisdictions (if offshore resources are used in development), even if agreement states US law governs
- **Sufficient Rights to Use**
  - Ownership of derivative works

Some Practical Considerations

1 Publicly (or readily) available ≠ Public Domain

2 Terms and Conditions

3 Rights of publicity/privacy and use of images

4 IP implications of NFTs; Impact Investing

Privacy and Security

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SEC Regulatory and Enforcement Update

US Privacy Law – Sector Specific

Financial	Health	Education
• Gramm-Leach-Bliley Act; Reg. S-P; Reg. P • Fair Credit Reporting Act (FCRA) • State laws	• Health Insurance Portability & Accountability Act (HIPAA)	•Federal Educational Rights & Privacy Act (FERPA) • Children's Online Privacy Protection Act (COPPA) • State laws

Regulation S-P (2000)

Privacy Rule: Notice and opt-out requirements for “nonpublic personal information.” 17 C.F.R. 248.1 et seq.

Safeguards Rule: Requires (a) adoption of written policies and procedures for the protection of customer information and records, including administrative, technical, and physical aspects; and (b) protection against anticipated threats or hazards to the security or integrity of customer records and information, and against unauthorized access to or use of customer records or information. 17 C.F.R. § 248.30.

Similar rules apply to non-SEC regulated financial institutions under Regulation P (Consumer Financial Protection Bureau) and the Safeguards Rule (FTC).

Other Laws

Breach notification laws

- First enacted in CA in 2002, now exist in all 50 states
- Apply based on location of individual's residence

State information security laws (about 30 states)

- Most well known and detailed are the MA Cybersecurity Regulations
- NY DFS Cybersecurity Regulations

State consumer privacy laws—limited application

- California Consumer Privacy Act
- Other states, Virginia, Colorado, Utah

Comprehensive privacy laws in jurisdictions around the world

- EU General Data Protection Regulations
- Chinese Personal Information Protection Law

Applicability

- Registered investment advisers
- Registered investment companies
- 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
- FTC has already beefed up cyber rules for non-SEC regulated financial institutions
- Clients and investors may not be receiving sufficient information on cybersecurity incidents

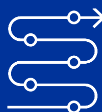
Proposal Elements

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

Comment Period

- The comment period ended on April 11, 2022

Cybersecurity Risk-Management Policies and Procedures



Proposed Rule 206(4)-9 and Proposed Rule 38a-2. Cybersecurity policies and procedures would be required to include the following elements:

- Periodic risk assessments;
- User security and access;
- Information protection (including oversight of third parties);
- Cybersecurity threat and vulnerability management; and
- Cybersecurity incident detection, response, and recovery.

Annual Reviews and Written Reports

- At least annually, advisers and funds would be required to (1) review the effectiveness of their policies and procedures, and (2) prepare written reports.

Board Oversight and Reporting

- Fund boards would be required to initially approve the policies and procedures and review the annual written report.
- Board oversight should not be a passive activity.

Reporting of Cybersecurity Incidents to the SEC

Proposed Rule 204-6

- Advisers would be required to submit proposed Form ADV-C to the SEC promptly, but in no event after more than 48 hours, after having a reasonable basis to conclude that a significant adviser cybersecurity incident or a significant fund cybersecurity incident had occurred or is occurring.
- Advisers would be required to amend any previously filed Form ADV-C within 48 hours:
  - (1) After information previously reported becomes materially inaccurate;
  - (2) If additional or new material information about a previously reported incident is discovered; or
  - (3) After resolving a previously reported incident or closing an internal investigation relating to a previously reported incident.

Proposed Form ADV-C

- Structured as a series of check-the-box and fill-in-the-blank questions.
- Captures, among other things, identifying information about the adviser, details about the nature and scope of the incident, whether law enforcement or other government agencies have been notified, and whether the incident is covered under a cybersecurity insurance policy.

Disclosure of Cybersecurity Risks and Incidents

Amended Form ADV

Proposed Item 20 of Form ADV Part 2A would require advisers to describe:

(1) Any cybersecurity risks that could materially affect the advisory services they offer and how they assess, prioritize, and address cybersecurity risks; and
(2) Any cybersecurity incidents that have occurred in the last two fiscal years that have significantly disrupted or degraded the adviser's ability to maintain critical operations, or has led to the unauthorized access or use of adviser information, resulting in substantial harm to the adviser or its clients.

- Proposed Rule 204-3(b) would require an adviser to promptly deliver interim brochure amendments to existing clients if the adviser adds disclosure of a cybersecurity incident to its brochure or materially revises information already disclosed in its brochure about such an incident.

Amended Fund-Registration Statements

- The proposal would also require funds to disclose, in their registration statements, any significant fund cybersecurity incidents that have occurred in the last two fiscal years.
- Disclosure must include (1) entity or entities affected; (2) when the incident was discovered and whether it is ongoing; (3) whether any data was stolen, altered, accessed, or used for any other unauthorized purpose; (4) the effect on the fund's operations; and (5) whether the fund/service provider has remediated or is currently remediating the incident.

SEC Focus on Cybersecurity

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- SEC Division of Examination 2021 Priorities
- SEC Risk Alerts
- Enforcement Actions

Three Recent Actions Charging Deficient Cybersecurity Procedures (Aug. 2021)

- Eight firms were charged in three actions for failures in their cybersecurity policies and procedures that resulted in email-account takeovers exposing the personal information of thousands of customers and clients at each firm.
- Two of the firms also sent breach notifications to the firms' clients that included misleading language suggesting that the notifications were issued much sooner than they actually were after discovery of the incidents.
- The firms settled with the SEC for fines ranging from $200,000 to $300,000.

Previous Significant Enforcement Actions

Sep. 2015

Missouri-Based Investment Advisor

- First SEC cybersecurity enforcement case.
- The SEC found that an investment adviser failed to establish required cyber policies and procedures under Regulation S-P in advance of a breach that exposed PII of approximately 100,0000 individuals.
- $75,000 penalty.

June 2016

Multinational Investment Bank

- The SEC concluded that the bank failed to adopt written policies and procedures reasonably designed to protect customer data, and the company paid a $1 million penalty.
- Former employee improperly accessed and transferred data from more than 700,00 accounts to his personal server, which was then hacked by a third party; conduct for which he was criminally convicted.

Sep. 2018

Internet-Based Financial Services Firm

- The SEC charged a broker-dealer and investment adviser with violation of the Safeguards Rule in connection with a massive data breach in 2016.
- The company was fined $1 million.

Enforcement Actions Against Public Companies for Disclosure Violations

Title Insurance Company

- June 2021
- The company failed to maintain disclosure procedures designed to ensure that the Company's senior management received relevant information about the identified vulnerability or lack of remediation.
- The company agreed to a cease-and-desist order and a $487,616 civil monetary penalty.

International Publisher

- August 2021
- In a media statement, the company referred to the breach as a hypothetical when the breach, in fact, had occurred, and it claimed that it had strict protections in place to prevent such a breach when it had known six months about the vulnerability that led to the breach.
- The company agreed to cease and desist from committing violations of these provisions and to pay a $1 million civil penalty.

Ransomware Attacks and Current Developments

Morgan Lewis

Ransomware Attacks – What Are They?

The increase in ransomware attacks is big news in the privacy and cyber fields.

700% increase in ransomware attacks for 2020, even more in 2021.

What are they?

- A threat actor enters a system and uses malware to encrypt the system to shut it down
- The threat actor sends a ransom note demanding payment in cryptocurrency in exchange for the key needed to decrypt the system
- Launched by organized criminal groups, typically located in Russia, China, or North Korea, with Darkside, Nightwalker, and Revil
- Dual threat — exfiltration of sensitive data

Ransomware Attacks – What Is Causing Them?

Change in business model — traditional attacks focused on exfiltration are more difficult to perpetrate and less lucrative.

- Companies avoid storing sensitive data, use encryption, and use multifactor authentication
- Payment network has evolved with chip technology and other changes
- Your data is already out there!

Fueled by the rise in remote work and distraction due to COVID-19 over the last year, which has opened companies to more vulnerability.

- Use of remote access tools, such as outdated VPNs and equipment, personal devices, unsecure Wi-Fi
- Microsoft found that the level of overall cyberattacks reached an all-time high in the three months immediately after WHO announced that COVID-19 was a global pandemic in May 2020.

Ransomware Attacks – How to Respond When They Occur?

- Convene the incident-response team
- Outside counsel's role
- Outside cybersecurity expertise
- Insurance
- PR and crisis communications
- Contacting law enforcement
- Negotiating a ransom payment
- Data mining
- Notification obligations

Ransomware Attacks – Is It Alright to Pay?

The US Department of the Treasury's Office of Foreign Assets Control (OFAC) recently issued an updated advisory on potential sanctions risks for companies facilitating payments in connection with ransomware attacks.

In September 2021, OFAC for the first time sanctioned a cryptocurrency exchange for its part in facilitating financial transactions for ransomware actors, and it will continue to impose sanctions on those who provide financial, material, or technological support for ransomware activities.

Violations of OFAC regulations may result in civil penalties based on strict liability.

OFAC strongly discourages companies from making ransomware payments and instead recommends focusing on strengthening defensive measures and reporting to/cooperating with authorities—actions that OFAC would consider to be "mitigating factors" in any related enforcement action.

Ransomware Attacks – How Can You Prevent Them?

Focus on backups—ensure that they are regular, complete, and segregated.

Know your system and end points—inventory and data maps are critical.

Consider vulnerabilities created in remote work environment.

Maintain good, consistent cyber hygiene

- Regular patches
- Updated antivirus software
- Authentication protocols (passwords and multifactor authentication)

The buck stops with your incident-response team and planning process.

Lawyer Biographies

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Katherine Dobson Buckley focuses her practice on the application of derivatives in trading, legal, and regulatory issues. She represents hedge funds, investment advisors, mutual funds, endowments and other market participants in complex cross-border and US futures, derivatives, prime brokerage, custodial, and commodities transactions. Katherine is a member of the firm's LIBOR working group. The LIBOR working group tracks and distils skilled market knowledge on LIBOR transition around the world. The working group acts as the firm's go-to resource on LIBOR transition across a range of jurisdictions and practice areas and continues to track evolving deadlines in relation to LIBOR replacements.

Katherine has experience with International Swaps and Derivatives Association Master Agreements (ISDAs), Prime Brokerage Agreements, Master Repurchase Agreements (MRAs), Master Securities Loan Agreements (MSLAs), and Master Securities Forward Transaction Agreements (MSFTAs), as well as clearing, custody, options and futures account agreements, and related trading documentation. She also advises financial firms and other market participants on US and cross-border regulatory issues, including registration and exemption requirements with the US Commodity Futures Trading Commission (CFTC) and requirements of the Dodd-Frank Act provisions applicable to derivatives transactions.

Katherine spent time on secondment at the general counsel division of Credit Suisse, where she negotiated sophisticated derivative transactions. Katherine also worked as a law clerk for the US Securities and Exchange Commission, researching regulatory and securities fraud issues.

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Ezra D. Church counsels and defends companies in privacy, cybersecurity, and other consumer protection matters. He helps clients manage data security and other crisis incidents and represents them in high-profile privacy and other class actions. Focused particularly on retail, ecommerce, and other consumer-facing firms, his practice is at the forefront of issues such as biometrics, artificial intelligence, location tracking, ad tech, and blockchain. Ezra is a Certified Information Privacy Professional (CIPP) and co-chair of the firm's Class Action Working Group.

Ezra advises clients on compliance with data privacy and cybersecurity requirements such as the California Consumer Privacy Act (CCPA), the Gramm-Leach Bliley Act (GLBA), including Regulation S-P, Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM Act) laws, the Telephone Consumer Protection Act (TCPA), the Fair Credit Reporting Act (FCRA), the Illinois Biometric Privacy Act (BIPA), the EU's General Data Protection Regulation (GDPR), and state data breach notification laws. He has particular experience with children's privacy issues and has worked extensively with on educational technology firms and mobile app and game developers in connection with the Children's Online Privacy Protection Act (COPPA), the Family Educational Rights and Privacy Act (FERPA), and numerous state law regarding education privacy. Ezra has assisted hundreds of multinational companies with advice, planning and connections with GDPR and the Privacy Shield for data transfers to and from the United States to EU countries. He has advised on privacy and security issues related to cutting-edge technologies including facial recognition, voice recognition, iris and retinal scanning, artificial intelligent and machine learning, ad tech, location tracking and employee monitoring, and blockchain. He is a Certified Information Privacy Professional with the International Association of Privacy Professionals. He writes and speaks frequently on privacy and data security and has lectured on privacy law at Rutgers University Law School.

Ezra has worked with hundreds of companies facing data breaches, counseling them in the critical hours after an incident occurs, helping them understand and investigate the issues, and crafting an effective and appropriate notice program for affected individuals and government regulators. He also works with companies to anticipate and prepare for cybersecurity incidents before they occur, developing breach response plans to help prevent and mitigate future breaches. Ezra is a member of Morgan Lewis's Crisis Management Practice, with a focus on the management of the crises involved in cybersecurity incidents.

Beyond his counseling practice, Ezra has experience handling complex and unusual class action litigation, including some of the largest privacy and data security class actions in the United States. This includes the defense of major national retailers facing data security litigation and the representation of consumer-facing companies facing large class actions filed under the TCPA and other privacy statutes. He has handled all aspects of such cases from inception through trial and appeal and has rare experience litigation class actions all the way through class trial. He is the co-leader of the Firm's Class Action Working Group and regularly writes and speaks on class action issues. He is a contributor to the Firm's chapter on class action litigation in the leading treatise Business and Commercial Litigation in Federal Courts and co-author of a chapter in A Practitioner's Guide to Class Actions, among others.

Ezra has spent over 10 years advising and defending retailers and ecommerce companies, focused on helping them find practical ways to address the unique legal challenges they face. He has counseled and defended clients on matters related to privacy and data security, credit cards, gift cards, employee background checks, anti-money laundering, advertising and sales issues, vendor and supplier issues, return policies, marketing practices, loyalty programs, layaway, and unclaimed property.

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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, crypto 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. . His derivative experience extends to the repo, securities lending and physical and financial forward markets. He is fully conversant with all relevant industry documentation, including ISDAs, MRAs, MSFTAs, MSLAs, and GMRAs. 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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Christopher J. Dlutowski represents institutional investors—including public and private pension plans, family offices, sovereign wealth plans, universities, endowments, and funds of funds—on their investments in private equity, hedge, venture capital, private debt, real estate, infrastructure, hybrid, and other private funds, funds-of-funds, managed accounts, co-investments, and direct investments, and on governance and compliance issues. Christopher also counsels private investment funds—including US domestic and offshore private equity funds, hedge funds, and funds-of-funds—and investment management firms on the formation and structuring of funds, trading and other investment activities, capital raising, registration and other regulatory issues, and ongoing operations.

Christopher has more than 25 years of experience in customized investment products, including strategic partnerships, captive funds, and co-investment funds, in all asset classes.

Christopher has presented on private investment funds topics at numerous investment management conferences and training programs. Prior to re-joining Morgan Lewis, Christopher was vice president and corporate counsel at Prudential Financial, Inc. where he advised investment management clients on their hedge funds and other alternative investment products, US and foreign institutional investor mandates, trading activities (including securities, derivatives, lending, and financing transactions), marketing efforts, domestic and foreign registration, and other regulatory issues.

Christopher is the chair of the firm's institutional investors working group, a co-leader of the firm's education industry team, and a member of the New York office's recruiting committee.

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Rob Goldbaum serves as co-leader of Morgan Lewis's investment management transactions practice and as a consultant with Morgan Lewis Consulting. Rob regularly advises a wide variety of industry leaders in the full range of asset and wealth management transactions, including mergers and acquisitions, strategic minority investments, sales, spin-outs and lift-outs, capital markets transactions, and "seed & stake" arrangements. Rob also provides strategic advice as a consultant to established and emerging financial services firms in connection with a range of business initiatives, including institutionalization of their businesses to enhance franchise value, governance and succession matters, product and channel diversification, and similar initiatives. He is a Registered Foreign Lawyer in England & Wales, and is admitted in New York only.

Rob counsels asset and wealth management clients in connection with mergers and acquisitions, strategic minority investments, sales, spin-outs and lift-outs, capital markets transactions, and "seed & stake" arrangements.

Prior to returning to private practice and consulting, Rob co-founded HighView Investment Group with Ralph Schlosstein (co-founder and former president of BlackRock), a platform targeting acquisitions of minority interests in alternative asset managers. Previously, he was senior vice president for new investments at Affiliated Managers Group, which he joined after more than 14 years in private legal practice. Throughout his career, Rob also has been engaged on a number of occasions by leading public and private asset managers to provide strategic and operational consulting advice to their c-suite executive teams.

Rob is a former member of the Visiting Committee of The University of Chicago Law School, a former member of the Professional and Judicial Ethics Committee of the NYC Bar, and a frequent speaker on industry panels.

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With a focus on financial institutions, Brian A. Herman counsels clients in civil and class action litigation in US state and federal court, and in arbitrations. He represents banks, broker-dealers, hedge funds, private equity funds, investment advisers, public companies, and other complex businesses. Brian also advises clients facing examinations by the US Securities and Exchange Commission (SEC), self-regulatory organizations, state regulators, and other regulatory agencies. Clients also turn to Brian for guidance with internal examinations and enhancing their business practices.

Brian's practice spans litigation matters involving contract disputes, lending practices, mergers and acquisitions, residential mortgage-backed securities (RMBS), loan servicing and foreclosure practices, investment funds, Ponzi schemes, and consumer protection.

Prior to joining Morgan Lewis, Brian served as a law clerk to Judge Ruth Abrams of the Massachusetts Supreme Judicial Court.

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Erin E. Martin focuses on counseling public companies and their boards with respect to securities regulation, capital market transactions, and corporate governance matters, drawing on her long tenure at the US Securities and Exchange Commission (SEC) in the Division of Corporation Finance. Erin regularly advises clients on complex matters of SEC disclosure and compliance.

Before joining Morgan Lewis, Erin served as legal branch chief in the SEC's Office of Real Estate and Construction, where she oversaw the legal reviews of transactional filings and periodic reports filed by a wide range of public companies, including special purpose acquisition companies (SPACs), real estate investment trusts (REITs), real estate platforms, and real estate-related finance companies. Throughout her career at the SEC, Erin served in other leadership roles, which included oversight of disclosure filings made by financial institutions, including fintech, marketplace lenders, banks, and bank holding companies, as well as offerings involving crypto assets.

She is admitted in New York only, and her practice is supervised by DC Bar members.

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Gene K. Park counsels clients on the full range of trademark and copyright matters, including licensing, prosecution and portfolio management, and enforcement. Gene advises companies in the financial services, technology, pharmaceutical, and other industries, as well as non-profits and trade associations on IP matters related to mergers and acquisitions, licensing, and franchising. Gene also drafts and negotiates all forms of IP transactional, eCommerce, and software agreements.

Before coming to Morgan Lewis, Gene was an associate at a general practice, commercial litigation firm in Washington, DC. While in law school, Gene worked as a student attorney for the Glushko-Samuelson Intellectual Property Law Clinic and co-authored an amicus brief in *Moseley v. V Secret Catalogue, Inc.*, a landmark US Supreme Court case interpreting the Federal Trademark Dilution Act.

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Michael M. Philipp counsels clients in derivatives, securities, and digital asset transactions and regulation. His advice encompasses federal, state, and self-regulatory organization (SRO) regulation, compliance, and enforcement matters. Investment managers, proprietary trading firms, dealers, banks, brokerage firms, exchanges, and commercial end users turn to him for guidance in connection with exchange-traded and over-the-counter derivative instruments and cryptocurrencies. Michael brings more than 30 years of experience counseling market participants and investment managers through business and regulatory cycles and trends impacting markets, including greater globalization and innovation in products and market infrastructures.

Michael has also been involved in a number of first-of-their-kind regulatory developments, including obtaining regulatory permission for the first swaps clearing house—well in advance of the Dodd-Frank swaps clearing mandate—and obtaining US Commodity Futures Trading Commission (CFTC) and US Securities and Exchange Commission (SEC) approval of a portfolio margining program involving SEC and CFTC products. He works with clients on matters related to Commodity Exchange Act, Securities Act, CFTC, SEC, National Futures Association (NFA), and exchange regulatory and enforcement-related issues. These issues include trade practices, swap clearing and reporting, registration of swap execution facilities (SEFs), futures exchanges, clearing organizations, and swap data repositories (SDRs); retail commodity and FX transactions; and futures commission merchant (FCM), introducing broker, swap dealer, commodity pool operator (CPO), and commodity trading advisor (CTA) registration and compliance, as well as regulation and licensing issues relating to digital assets. Michael conducts internal compliance investigations and represents clients in exchange, CFTC, NFA, and state inquiries, examinations, and proceedings, including matters involving allegations relating to disruptive trading practices, such as spoofing and market manipulation.

Michael advises clients on establishing or investing in funds or operating companies focused on commodities such as gold; energy, agricultural, and environmental products; and virtual currencies and other digital assets. He also helps clients maximize their opportunities and limit their legal risks in a frequently shifting regulatory environment, develops legally compliant structures, and provides counsel to anticipate and prepare for potential compliance requirements and legal and regulatory changes.

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Nathan R. Pusey advises public and private clients, primarily in the financial services industry, in mergers and acquisitions, joint ventures, and restructuring transactions. He regularly represents a variety of industry leaders in transactions involving traditional and alternative asset management firms, including acquisitions and sales of majority and minority investments, spin-outs, joint ventures, seed investments, and strategic relationships.

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Drawing on a background in electrical and computer engineering, Michael S. Ryan works with clients to protect and maximize the value of their intellectual property, preparing and prosecuting US and foreign patents, performing patent due diligence, and providing noninfringement and invalidity opinions and freedom to operate reviews in the business method/software, computer, and mechanical arts.

Michael's technical experience spans many disciplines, including semiconductor devices, storage devices, artificial intelligence, machine learning, photolithography, computer software, computer networking, printing systems and devices, image processing, and OLED displays and driving circuitry. He has experience managing patent portfolios of standard-essential patents in video coding (e.g., H.265/HEVC, VVC, AVI, and VP9), wireless technologies (e.g., 4G/LTE, 5G), and computer networks (e.g., IEEE 802.1). He also has experience with medical and healthcare related technologies including medical devices, healthcare monitoring systems, imaging and diagnostic systems, healthcare analytics systems, and healthcare information technology systems. In addition, he has experience with control systems, business methods, and consumer products.

Before joining Morgan Lewis, Michael was an associate with a boutique intellectual property law firm in Virginia. He has an M.S. in electrical engineering and a B.S. in computer engineering.

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Jon Roellke focuses on antitrust, trade regulation, and other commercial litigation, primarily counseling clients in the financial services and high technology industries. He handles class action and other complex litigation, advises clients on enforcement matters before state and federal agencies, and regularly counsels on competition issues, including refusals to deal, distribution and franchising restraints, tying arrangements, group purchasing, price discrimination, exclusive dealing, leveraging, joint ventures, and trade association activities.

Recognized annually in *Chambers USA* as a leading lawyer in antitrust, Jon's clients describe him as "a fabulous lawyer who has been a great all-around antitrust counselor." *Legal 500*, which also ranks Jon for his antitrust work, notes that his "legal acumen is priceless" and his advice is "practical and on-point." Jon serves as counsel to a number of financial markets organizations, including the Securities Industry Financial Markets Association, the Investment Company Institute, and the Federal Reserve's Financial Markets Lawyers Group and Alternative Reference Rate Committee.

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Middle East
North America

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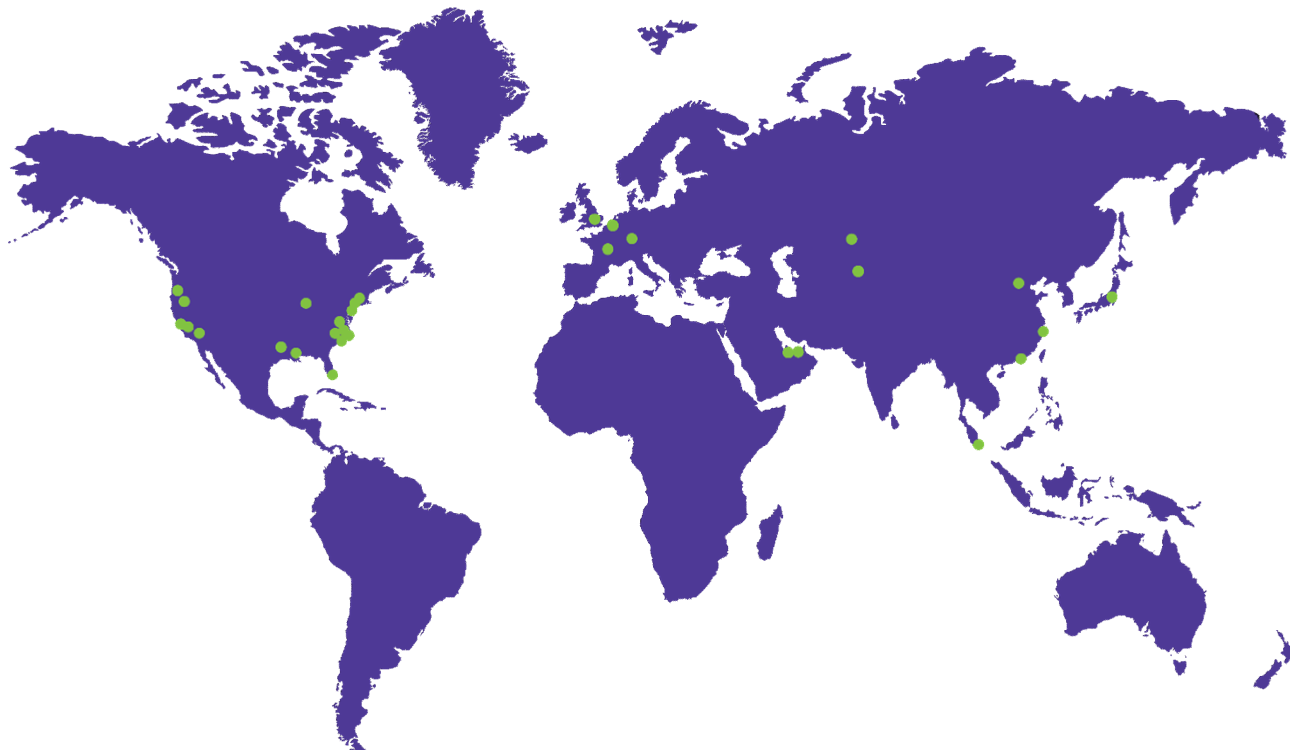

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