



Morgan Lewis

**ADVANCED TOPICS IN
HEDGE FUND PRACTICES
CONFERENCE**

**Manager and Investor Perspectives
WEBINAR SERIES**

Track 5: Investment Strategies

Thursday, May 26, 2022

www.morganlewis.com/2022hedgefundconference

ESG Investing

Speakers



Lance C. Dial
+1.617.341.7727
[lance.dial@
morganlewis.com](mailto:lance.dial@morganlewis.com)



Kelly L. Gibson
+1.215.963.1521
+1.212.309.6287
[kelly.gibson@
morganlewis.com](mailto:kelly.gibson@morganlewis.com)



**Miranda Lindl
O'Connell**
+1.415.442.1118
[miranda.lindl-oconnell@
morganlewis.com](mailto:miranda.lindl-oconnell@morganlewis.com)

Morgan Lewis

Significant Regulatory and Enforcement Actions by the SEC



Exam priorities and risk alerts, warning against “greenwashing,” and misstating sustainability practices



Division of Enforcement’s Climate and ESG Task Force



Proposed Rules on Climate-Related Disclosure for Investors and ESG Disclosures for Investment Advisers and Investment Companies

The Enhancement and Standardization of Climate-Related Disclosures for Investors



Released on March 21, 2022



Would require info about “climate-related risks that are reasonably likely to have a material impact on [a company’s] business, results of operations, or financial condition”



Prescriptive—covers disclosure of GHG emission metrics, risk information, and climate-related targets or goals, among other information

Rule Proposal for ESG Disclosures for Investment Advisers and Investment Companies



Released yesterday, May 25, 2022

- The SEC is proposing to amend rules and reporting forms for registered investment advisers, certain advisers exempt from registration, registered investment companies, and business-development companies to provide standardized ESG disclosures to investors and the SEC.

Digital Assets

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DeFi

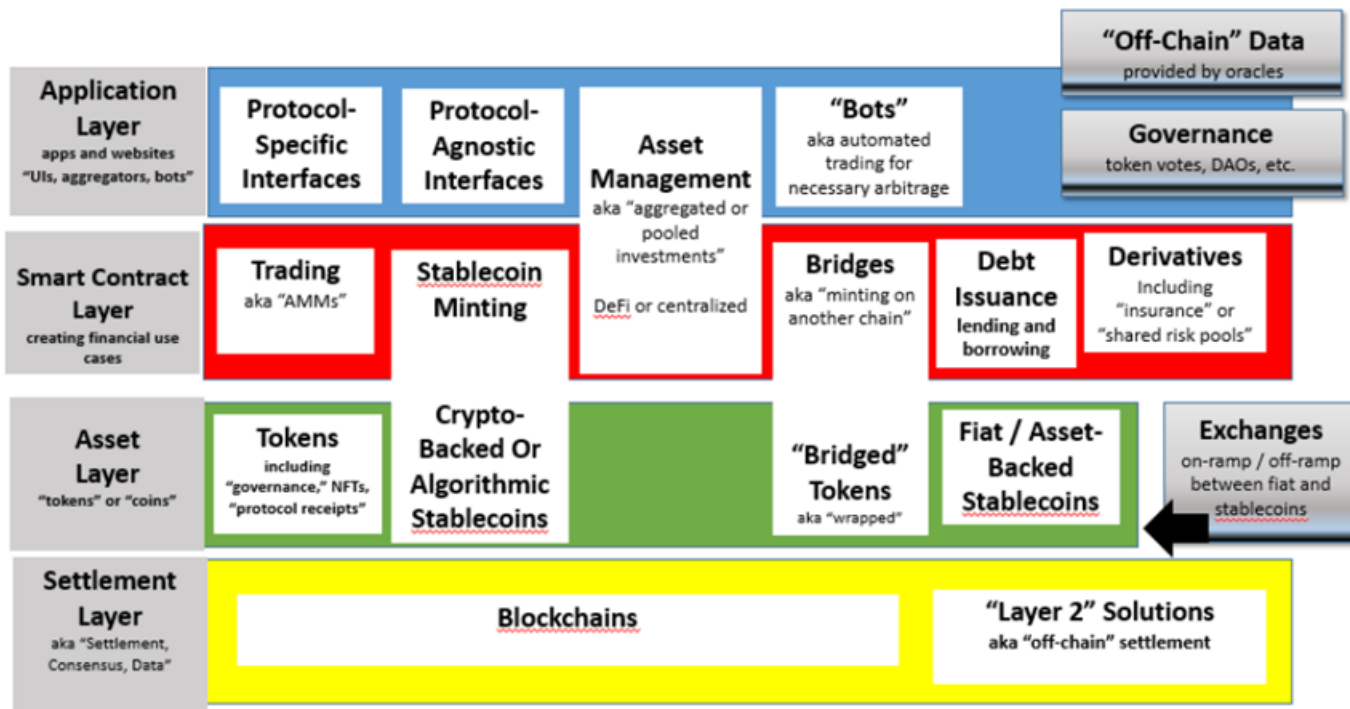
Speaker



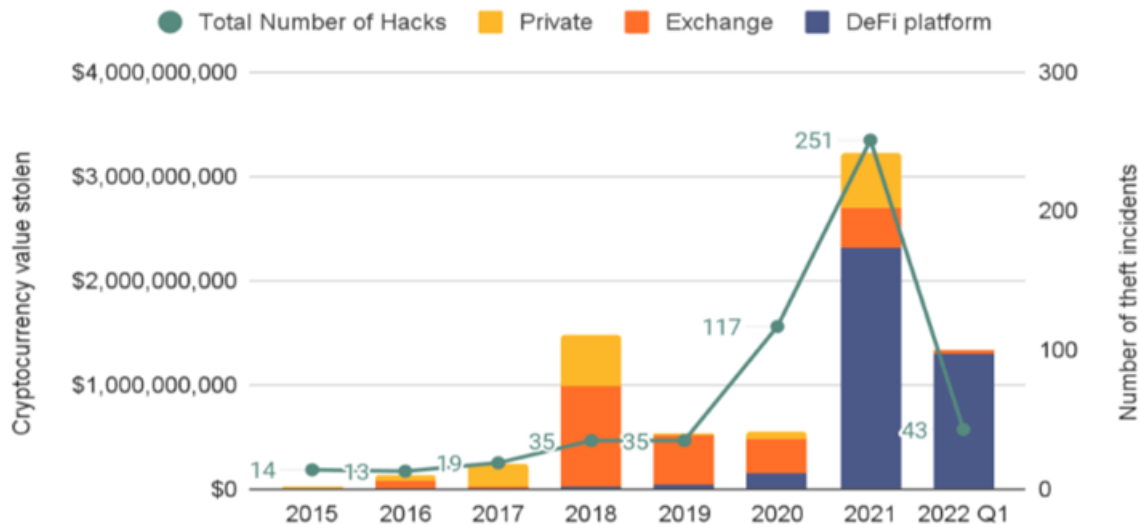
Jacob J.O. Minne
+1.650.843.7280
[jacob.minne@](mailto:jacob.minne@morganlewis.com)
morganlewis.com

Morgan Lewis

What is DeFi?



Total number of thefts and value stolen by type of victim, 2015 - 2022 Q1



**DeFi Hacks
Are
Increasing**

UCC/Lending

Speaker



Edwin E. Smith

+1.617.951.8615

+1.212.309.6825

[edwin.smith@](mailto:edwin.smith@morganlewis.com)

morganlewis.com

Morgan Lewis

Lending Against Digital Assets – Secured Transactions Issues

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Methods of Structuring a Lender's Security Interest in Digital Assets

1

Concentrate on cryptocurrencies

2

Analysis should be similar for other digital assets


But caveat of what is embodied in the other digital assets (e.g., NFT)


3


The discussion will be in order to preference for the lender in terms of perfection, priority, and enforcement


Methods of Structuring a Lender's Security Interest in Digital Assets (in Order of Lender's preference)


 United Commercial Code (UCC) Article 8 opt-in; cryptocurrency is in the lender's account at the custodian


 UCC Article 8 opt-in; cryptocurrency is in the borrower's account at the custodian

 Structured UCC Article 8 opt-in

 Perfection by filing

 Transfer of the cryptocurrency to the lender

 Trusted third party holds the private key and acts on lender's instructions

 Multi-sig or like arrangement to block transfer

UCC Article 8 Opt-in

Cryptocurrency is in the lender's account at the custodian

Description

- The lender opens an account at a cryptocurrency custodian, such as Coinbase.
- The account agreement between the custodian and the lender provides that the custodian is a securities intermediary and that the cryptocurrency in the lender's account at the custodian will be treated as a financial asset under Article 8 of the UCC credited to a securities account maintained by the custodian for the lender. (This is the so-called UCC Article 8 "opt-in.")
- The cryptocurrency is transferred by the borrower to the lender's account at the custodian.

Advantages

- The deposit of the cryptocurrency in the lender's account at the custodian is effective to perfect the security interest by "control" under Articles 8 and 9 of the UCC.
- The security interest has priority over any competing security perfected by the filing of a financing statement even if the filing was made earlier in time.
- Since the cryptocurrency is in the lender's account at the custodian, the lender should not encounter delays, following the borrower's default, in promptly liquidating the cryptocurrency to pay the loan.

Disadvantages

- If the transaction contemplates that the borrower will have access to the cryptocurrency during the term of the loan so long as sufficient margin is maintained, that access will likely not be possible absent the involvement of the lender for each withdrawal.
- The custodian will need to agree to the UCC Article 8 opt-in, but some custodians already provide for the opt-in in their forms of account agreement.
 - Protection of customer in custodian's insolvency proceeding

UCC Article 8 Opt-in

Cryptocurrency is in the borrower's account at the custodian

Description

- The cryptocurrency is held in the borrower's account at a cryptocurrency custodian, such as Coinbase.
- The account agreement between the custodian and the borrower provides that the custodian is a securities intermediary and that the cryptocurrency in the borrower's account at the custodian will be treated as a financial asset under Article 8 of the UCC credited to a securities account maintained by the custodian.
- The lender, the custodian, and the borrower enter into a control agreement by which the custodian agrees that it will at all times follow instructions from the lender as to the disposition of the cryptocurrency in the borrower's account without the further consent of the borrower.
- The lender agrees with the borrower not to give those instructions absent a default by the borrower.

Advantages

- The control agreement is effective to perfect the security interest by "control" under Articles 8 and 9 of the UCC.
- The security interest has priority over any competing security perfected by the filing of a financing statement even if the filing was made earlier in time.
- If the transaction contemplates that the borrower will have access to the cryptocurrency during the term of the loan so long as sufficient margin is maintained, that access will be possible absent the lender giving contrary instructions to the custodian.
- Once again, the lender would agree with the borrower not to give those instructions absent a default by the borrower.

Disadvantages

- The custodian will need to agree to the UCC Article 8 opt-in, but some custodians already provide for the opt-in in their form of account agreements.
- The custodian may or may not be willing to enter into a control agreement.
- If the custodian is willing to do so, the control agreement may need to be negotiated.
- Following the borrower's default, the lender may encounter delays at the custodian in promptly liquidating the cryptocurrency to pay the loan.

Structured UCC Article 8 Opt-in

Description

- The borrower or the lender establishes a special purpose vehicle (the “SPV”) which holds the cryptocurrency.
- The interest in the SPV is structured to be a security under UCC Article 8. The security is issued to the lender.
- Alternatively, if the security is issued to the borrower, (a) the lender takes possession of any security certificate evidencing the security along with an assignment of the security certificate executed in blank by the borrower or (b) absent there being a security certificate, the SPV agrees to follow instructions from the lender as to the borrower’s rights relating to the security without further consent of the borrower.
- The lender would agree with the borrower not to exercise the borrower’s rights in respect of the security, or give those instructions, absent a default by the borrower.

Advantages

- The arrangements are effective to perfect the security interest in the security by “control” under Articles 8 and 9 of the UCC.
- The security interest has priority over any competing security perfected by the filing of a financing statement even if the filing was made earlier in time.

Disadvantages

- The structure can be complex and costly to establish and probably makes economic sense only for larger transactions.
- Since the lender has only indirect access through the security to the underlying cryptocurrency, safeguards need to be put in place for the SPV not be under the control of the borrower or, if under control of the borrower, for that control to be substituted by lender control if the borrower should default.

Perfection by Filing

- **Description**

- The lender files in the proper filing office a financing statement against the borrower covering the cryptocurrency.
- There is no use of a custodian to hold the cryptocurrency or, if there is, there is no opt-in to UCC Article 8 or execution of a control agreement.

- **Advantages**

- Absent the UCC Article 8 opt-in and unless the crypto currency is “money” as defined in the UCC, cryptocurrency is a “general intangible” under UCC Article 9.
- Since a security interest in general intangibles is perfected by the filing of a financing statement, the filing will be effective to perfect the security interest.

Perfection by Filing

- **Disadvantages**

- If a competing secured party obtains control of the cryptocurrency, the competing secured party's control security interest will be senior.
- Even if there is no competing control perfected secured party, the lender's security interest will be junior to a competing security interest of any secured party which has filed an earlier financing statement covering the cryptocurrency.
 - The earlier financing statement need not refer to the collateral as cryptocurrency as such; it may just refer to "general intangibles," "all assets," or "all personal property," or the cryptocurrency may be identifiable proceeds of other collateral covered by the earlier financing statement and in which the competing secured party's security interest was perfected by filing.
 - For the lender's security interest to achieve senior priority, before making the loan the lender will need to (a) conduct a UCC search against the borrower and (b) if the search discloses a competing earlier filed secured party, obtain a release or subordination from the earlier filed secured party.

Perfection by Filing

- **Disadvantages (Continued)**

- The lender will need to monitor the borrower for, among other things, a post-closing change of name or a move of the borrower's state of location (as determined under Section 9-307 of the UCC) to another state.
 - One or more of these post-closing events may require, for the lender's security interest to continue perfected by filing, that the lender's existing financing statement be amended or that a new financing statement be filed in a filing office in a different state.
- Perfection by filing may not be available for Bitcoin. Since El Salvador and the Central African Republic have authorized Bitcoin as a fiat currency in those countries, Bitcoin may now be "money" under the UCC rather than a "general intangible." A security interest in money as original collateral can be perfected only by the lender's possession. An intangible like Bitcoin is not susceptible to possession.
 - A country's adoption of Bitcoin as a fiat currency in that country is not an issue under the UCC Article 8 opt-in structures since, after the UCC Article 8 opt-in, the Bitcoin, or the security in the SPV, would be classified as a "investment property" rather than "money" under UCC Article 9.

Perfection by Filing

- **Disadvantages (Continued)**

- The borrower will have unfettered access to the cryptocurrency
- If the borrower defaults, the lender will not be able to liquidate the cryptocurrency to pay the loan without the borrower's cooperation or a court order.
 - This risk may be mitigated by requiring the use of a private key of each of the borrower and the lender (so-called a "multi-sig" arrangement) for the transfer of the cryptocurrency or by the use of a trusted third party discussed below.

Transfer of the Cryptocurrency to the Lender



Description

- The cryptocurrency is transferred to the lender's wallet or the lender's account at a custodian.
- If the latter, there is no opt-in to UCC Article 8 or execution of a control agreement.
- No financing statement is filed against the borrower covering the cryptocurrency.



Advantages

- Upon the borrower's default, the lender will be able promptly to liquidate the cryptocurrency for application to the loan.
- At some point, the relevant states will likely adopt 2022 amendments to the UCC proposed by the sponsors of the UCC, the American Law Institute and the Uniform Law Commission.
 - On or after some period following the effective date of the amendments in the relevant states, the security interest will become perfected and, after the so-called "adjustment date" in the transition rules for the amendments, have total control priority.
 - The relevant states would be (a) the forum state in which any dispute over perfection or priority might arise and (b) any state as to whose laws the forum state points on perfection or priority under the forum state's choice-of-law rules.



Disadvantages

- Until the effective date of and as provided in the amendments in the relevant states, the lender's security interest will not be perfected and will be subordinate to the interest of a lien creditor of the borrower, a competing perfected secured party, or the borrower's bankruptcy trustee.
- Between the effective date and the adjustment date, the lender's security interest will be junior to that of a lender whose financing statement covering the cryptocurrency was filed before the effective date.
- The lender's enforcement rights will likewise be junior to those senior interests.
- There is no assurance that the amendments to the UCC will be enacted in the relevant states or that the amendments will become effective in relevant part before the borrower defaults.

Trusted Third Party Holds the Private Key and Acts on Lender's Instructions

- **Description**

- The cryptocurrency is in the wallet of a trusted third party or the trusted third party's account at a custodian.
- Alternatively, the cryptocurrency is in the borrower's wallet or the borrower's account at a custodian but the trusted third party holds the sole "private key."
- If the cryptocurrency is in an account at a custodian, there is no opt-in to UCC Article 8 or execution of a control agreement.
- No financing statement is filed against the borrower covering the cryptocurrency.
- The third party agrees (a) not to transfer the cryptocurrency without the consent of the lender and (b) to transfer the cryptocurrency on the instructions of the lender.
- The lender agrees with the borrower not to give those instructions absent a default by the borrower.

Trusted Third Party Holds the Private Key and Acts on Lender's Instructions

Advantages

- The lender will have a block on the borrower's ability to transfer the cryptocurrency.
- Upon the borrower's default, the lender will be able promptly to liquidate the cryptocurrency for application to the loan.
- On or after some period following the effective date of the 2022 amendments to the UCC in the relevant states, the security interest will become perfected and, after the adjustment date, have total control priority.

Disadvantages

- Until the effective date of and as provided in the amendments in the relevant states, the lender's security interest will not be perfected and will be subordinate to the interest of a lien creditor of the borrower, a competing perfected secured party, or the borrower's bankruptcy trustee.
- Between the effective date and the adjustment date, the lender's security interest will be junior to that of a lender whose financing statement covering the cryptocurrency was filed before the effective date.
- The lender's enforcement rights will likewise be junior to those senior interests.
- There is no assurance that the amendments will be enacted in the relevant states or that the amendments will become effective in relevant part before the borrower defaults.

Multi-sig or Like Arrangements to Block Transfer

- **Description**

- The cryptocurrency is in the borrower's wallet or the borrower's account at a custodian. The lender and the borrower enter into a "multi-sig" arrangement as between them.
- Alternatively, a trusted third party holds the sole "private" key to the borrower's wallet or account, or the cryptocurrency is in the third party's wallet or the third party's account at a custodian. The third party agrees not to transfer the cryptocurrency without the consent of the lender.
- If the cryptocurrency is in an account at a custodian, there is no opt-in to UCC Article 8 or execution of a control agreement.
- No financing statement is filed against the borrower covering the cryptocurrency.

- **Advantages**

- The lender will have a block on the borrower's ability to transfer the cryptocurrency.
- Under the 2022 amendments to the UCC when effective in the relevant states, the block will constitute perfection of the security interest by "control."

Multi-sig or Like Arrangements to Block Transfer

Disadvantages

1

The lender's security interest will not be perfected and will be subordinate to the interest of a lien creditor of the borrower, a competing perfected secured party, or the borrower's bankruptcy trustee. The lender's enforcement rights will likewise be junior to those senior interests.

2

Following the effective date of the 2022 amendments to the UCC in the relevant states, the security interest will become perfected and have control priority. However, between the effective date and the adjustment date, the lender's security interest will be junior to that of a lender whose financing statement covering the cryptocurrency was filed before the effective date.

3

Although the blocking power alone constitutes control under the amendments, there is no assurance that the amendments will be enacted in the relevant states or that the amendments will become effective in relevant part before the borrower defaults.

4

Upon the borrower's default, the lender will not be able to liquidate the cryptocurrency for application to the loan without the cooperation of the borrower or a court order.

DAOs and NFTs

Speakers



E. John Park
+1.650.843.7595
[john.park@
morganlewis.com](mailto:john.park@morganlewis.com)



Jacob J.O. Minne
+1.650.843.7280
[jacob.minne@
morganlewis.com](mailto:jacob.minne@morganlewis.com)

Morgan Lewis

ERC-721 Smart Contracts – NFTs



Like an ERC-20 Smart Contract, but instead of tracking *how many* tokens someone has, you track *which token* someone has.



ERC-20 is like collecting money in a bank account, while ERC-721 is like collecting individual coins.

Token #	Address	Metadata
1	0x123	Mona Lisa
2	0xABC	https://tinyurl.com/2p8uwuer
3	0xXYZ	0x64E...

ERC-721 – NFT Risks

- IP clearance
- Maintenance of off-chain resources
- Verification of immutability
- Disconnect between on- and off-chain resources
- Scams



DAOs and “The DAO”

A **DAO** is a **D**ecentralized **A**utonomous **O**rganization

- There are many, ranging from pooled assets for purchasing NFTs between a few friends to indexed ownership of multiple blockchain token resources with regular payments to DAO token holders.
- The common aspect is some sort of blockchain-based management of shared resources.

“The DAO” was an Ethereum Smart Contract that imploded in 2017 after a hacking incident. It led to a fork (change in consensus protocol) for the Ethereum Blockchain and SEC scrutiny.

Due Diligence and Regulatory Considerations

Speakers



Michael M. Philipp
+1.312.324.1905
[michael.philipp@
morganlewis.com](mailto:michael.philipp@morganlewis.com)



Sarah V. Riddell
+1.312.324.1154
[sarah.riddell@
morganlewis.com](mailto:sarah.riddell@morganlewis.com)

Morgan Lewis

What are you investing in?

Security?

Relevant considerations include:

- *Howey* and *Reves* tests
- Division of Examinations Risk Alert (for registered investment advisers)
- Has the SEC taken enforcement action against similar offerings?
- Potential liquidity issues in the future?

Commodity?

Relevant considerations include:

- Retail commodity transaction?
- If the contract is a derivatives contract:
 - Is the fund manager registered or exempt from registration as a CPO?
 - Are NFA disclosure and reporting requirements implicated?
 - Is the platform that offers the contracts properly registered?

Other Regulatory Considerations

1

FinCEN and state law
money transmitter
registration

2

New York State
Department of
Financial Services
BitLicense

3

OFAC/Sanctions

What are you investing in?

A Private Fund?

Relevant considerations include:

- What does the fund invest in, and what diligence has the manager done on the portfolio companies or tokens?
- What are the investment restrictions?
- Do you need a wallet for distributions in kind?
- What is the valuation policy for digital asset investments?
- Where are digital assets held?

A Startup Company?

Relevant considerations include:

- What are the company's business activities?
- Do these activities implicate registration requirements?
- What jurisdictions does the company offer its products or services? Where are its customers located?
- Where are digital assets held?

Product Considerations



Do the token's characteristics change over time? If so, how does this affect the securities analysis?



Is the product a loan that pays interest based on staking digital assets? Have you applied the *Howey* and *Reves* tests to the loan and determined whether the loan could be considered a security?



Consider IP implications for Non-Fungible Tokens (NFTs). NFTs are tokens that can be used to represent ownership of unique items (e.g., art, collectible, and real estate). Generally, NFTs can be owned by only one owner at a time, and they are secured by the Ethereum blockchain.



Other regulatory considerations may arise if fractionalization is involved. Fractionalization occurs when a market participant tokenizes underlying assets and sells fractions of the token (e.g., baseball cards, comic books, and sports memorabilia). The fractionalization process generally will result in the creation of securities. Consider whether Regulation A+ applies.

Unique Digital Asset Questions



Technology

- What technology is involved?
- Does the fund manager or portfolio company have appropriate knowledge of the technology to make informed decisions?



Custody

- Self-custody?
- Third-party custodian?
- Multi-authentication?
- Cold storage?



Insurance

- Does the fund maintain any relevant insurance?
- Cybersecurity insurance?



UCC

- Have you granted another party a security interest in your digital assets? If so, have you confirmed that your agreement is consistent with the UCC?
- Are digital assets improperly commingled?
- Are digital assets bankruptcy remote?

Due Diligence – Thematic Areas

The Fund's Investments or the Company's Business Activities

Underlying Asset Risk

Custody versus Self-Custody

Technological Experience

AML/KYC

Asset Valuation

Conflicts of Interest

Regulation

Litigation / Enforcement Actions

Tax Issues

Speakers



Sarah-Jane Morin

+1.415.442.1231

[sarah-jane.morin@](mailto:sarah-jane.morin@morganlewis.com)

morganlewis.com

Morgan Lewis

What about taxes?

1

In what circumstances would you have to pay taxes on your crypto?

2

But what about NFTs?
Not the same, right?

3

How am I supposed to track this?

4

What about crypto losses?

Lawyer Biographies

Morgan Lewis

Lance C. Dial



With more than a decade of experience as senior in-house counsel with global investment managers, Lance Dial 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.

Boston

T +1.617.341.7727
lance.dial@morganlewis.com

Kelly L. Gibson



Philadelphia/New York

T +1.215.963.5121
+1.212.309.6287
kelly.gibson@morganlewis.com

Kelly Gibson is the co-leader of the firm's securities enforcement practice. She previously held numerous national and regional leadership roles at the US Securities and Exchange Commission (SEC), including serving as the acting deputy director of the Division of Enforcement, as leader of the Enforcement Division's nationwide Climate and Environmental, Social, and Governance (ESG) Task Force, and as director of the SEC's Philadelphia Regional Office. Kelly advises and defends public companies, financial services clients, and their executives in SEC, self-regulatory organization (SRO), and state enforcement matters, and in internal investigations. She is admitted in Pennsylvania and New Jersey only, and her practice is supervised by NY Bar members.

Leveraging her government and private practice experience, Kelly works in collaboration with the firm's corporate and business transactions, investment management, white collar defense, and labor and employment practices to advise clients on regulatory and litigation matters.

She also uses her broad ESG enforcement and policy experience to counsel public companies and registrants as they develop proactive ESG strategies, create investment products, consider disclosure requirements, and identify investment opportunities.

As acting deputy director of the SEC's Division of Enforcement, Kelly helped set enforcement priorities and assisted in supervising approximately 1,300 staff who investigate and litigate across a broad spectrum of nationwide securities matters, including issuer disclosure and accounting abuses; foreign bribery; investment advisory and broker-dealer violations; securities offering; market manipulation; insider trading; and crypto- and cyber-related misconduct. In this role, Kelly also oversaw the division's Office of Market Intelligence and Office of the Whistleblower.

In addition, Kelly served as leader of the Division of Enforcement's newly formed nationwide Climate and ESG Task Force, where she led task force members from across SEC headquarters, regional offices, and specialized units to evaluate tips, referrals, and whistleblower complaints on ESG-related issues, and to develop initiatives to proactively identify potential ESG-related misconduct involving public companies and registrants. Kelly also served as a resource for, and coordinated enforcement ESG efforts with, other SEC divisions and offices, and she met with other federal, state, and international officials regarding respective ESG priorities.

As director of the SEC's Philadelphia Regional Office, Kelly led a staff of approximately 160 enforcement lawyers, accountants, and industry specialists who investigate and litigate the federal securities laws nationwide, and examiners with oversight in the Mid-Atlantic region of nearly 1,200 investment advisers with more than \$13.5 trillion in assets under management, over 150 investment fund complexes, and more than 290 broker-dealers with over 14,275 branch offices.

Earlier in her tenure, Kelly served in the Division of Enforcement's Market Abuse Unit as an assistant regional director and then as associate regional director of the SEC's Philadelphia office, where she supervised enforcement efforts. Kelly began her career at the SEC in 2008 as a staff attorney and received the SEC's Analytical Methods Award in 2016. During her tenure at the SEC, Kelly supervised, investigated, and filed actions involving a wide range of securities violations, and she closely coordinated with state and federal criminal authorities on numerous parallel investigations. Before joining the SEC, Kelly was in private practice, advising clients on internal investigations and commercial litigation matters.

Jacob J.O. Minne



Silicon Valley

T +1.650.843.7280
jacob.minne@morganlewis.com

Jacob Minne advises clients on a wide range of technology and IP issues, including work with semiconductor processing, cryptoassets, fintech, blockchain, and devices. Jacob's patent and trade secret litigation experience includes helping companies develop a comprehensive strategy for US litigation. He also works on software copyright matters that touch on a range of unfair competition and antitrust concerns.

Jacob has experience with blockchain technology and has reviewed node hosting agreements for permissioned blockchains and evaluated regulatory concerns related to money transmitter registration, custody requirements, and CFTC scrutiny of certain bitcoin transactions. He presents regularly at conferences such as LendIt and through Morgan Lewis's First Cup of Coffee program and Hedge Fund Practice Conference.

Through his IP practice, Jacob has experience in analyzing copyright, patent, trademark and trade secret issues and advising clients on protecting and developing their IP portfolio. His litigation experience includes cases for clients in a diverse range of technology fields such as semiconductor chip manufacturing methods, medical devices, and mobile software. He has experience in forums including the US District Court for the Central District of California, the US Court of Appeals for the Federal Circuit, and the US International Trade Commission (USITC).

Before he joined Morgan Lewis, Jacob completed an externship with Judge Steven B. Berlin in the Office of the Administrative Law Judge for the US Department of Labor (DOL). He also worked as a patent litigation analyst for Lex Machina on a variety of quantitative analytics projects, including a comparison of average time to final judgment in US federal district courts as compared to the USITC.

Jacob also uses his legal education to give back to the community. Serving as pro bono counsel, he assists refugees in filing asylum applications and has won restraining orders for clients in domestic violence disputes. In late 2016, Jacob submitted an application for presidential clemency for a pro bono client who was sentenced to life in prison for drug crimes committed while he was a minor; then-President Barack Obama granted the petition for clemency in January 2017. During the COVID-19 pandemic in 2020, Jacob helped three ICE detainees secure bail from facilities with active COVID-19 outbreaks.

Sarah-Jane Morin



San Francisco

T +1.415.442.1231

sarah-jane.morin@morganlewis.com

Sarah-Jane Morin's practice encompasses a variety of transactions with a focus on representation of public and private companies, private equity funds, venture capital funds, real estate funds, portfolio companies, and alternative investment vehicles in the tax aspects of complex business transactions and fund formations, including domestic and cross-border investment strategies, sponsor investment strategies, limited partner investment strategies, mergers, acquisitions, integrations, buyouts, recapitalizations, debt and equity restructurings, and ongoing operations and tax compliance issues.

Additionally, she advises on digital asset tax issues, including those relevant to cryptocurrency and NFTs, as well as international tax issues, including the tax aspects of offshore vehicles (CFC/PFIC/GILTI regimes), anti-deferral rules (Subpart F), withholding, cost sharing, and transfer pricing.

Sarah-Jane advises on the tax aspects of non-profit entity formation and operation, with an emphasis on IRC Section 501(c)(3). She has worked with a number of tax-exempt investors in their limited partner investments, as well as for clients in their applications for tax exemption.

She has lectured and published on topics ranging from the tax aspects of mergers and acquisitions to international tax planning.

Prior to joining Morgan Lewis, Sarah-Jane was a senior director in Oracle's tax planning department. Prior to joining Oracle, she was an associate at a multinational law firm.

Miranda Lindl O'Connell



San Francisco

T +1.415.442.1118
[miranda.lindl-oconnell@
morganlewis.com](mailto:miranda.lindl-oconnell@morganlewis.com)

Miranda Lindl O'Connell is a private investment fund partner, co-leader of the ESG & Sustainability working group and office managing partner of the firm's San Francisco office. Her practice focuses on fund formation and investor side representation for clients such as fund of funds, private foundations, public charities, family offices, social impact entrepreneurs, pension plans and other institutional investors in a variety of structures including private equity funds, co-investment funds, venture funds, captive funds, separate accounts and other customized private finance options. She advises social impact entrepreneurs, private foundations, and public charities on a range of social impact investments including program-related investments, mission-related investments, and innovative investment vehicles and structures including social impact funds and debt and equity investments.

The American Bar Association presented Miranda with its Outstanding Volunteer in Public Service Award for her work at the Homeless Advocacy Project.

While in law school, Miranda served as an extern for Judge John T. Noonan of the US Court of Appeals for the Ninth Circuit. Prior to law school, she worked as the race director for the San Francisco Marathon.

E. John Park



Silicon Valley

T +1.650.843.7595
john.park@morganlewis.com

E. John Park focuses his practice on debt and equity offerings, public securities offerings, recapitalizations, and mergers and acquisitions (M&A). He assists clients at every stage of the business cycle, from initial company formation, venture capital financings, and M&A, to initial public offerings (IPOs), public company reporting, and general corporate counseling. In addition, John represents acquirers and targets in public-private and private-private business combination transactions. John focuses on primarily technology companies in multiple sectors including artificial intelligence, automotive and mobility, cybersecurity, fintech, semiconductor and software, as well as biotechnology companies.

John helps venture capital and corporate venture capital clients structure and implement early and late stage investments. He also represents private and public companies providing general corporate and strategic advice on financings, partnerships, joint ventures and M&A transactions, as well as inbound, outbound, and cross-border transactions. In many of these transactions, he draws upon his experience in intellectual property protection, technology licensing, environmental law, corporate governance, executive compensation, labor and employment, and international tax law.

John is the chair of the Corporate Venture Capital Working Group at VC Taskforce, an organization that represents the venture capital community, and is a member of the mergers and acquisitions committee of the American Bar Association. He is also on the advisory board of the Harvard Business School Association of Northern California. *The Legal 500* listed John as a leading emerging growth company lawyer in Silicon Valley.

Michael M. Philipp



Chicago

T +1.312.324.1905
michael.philipp@morganlewis.com

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.

Sarah V. Riddell



Chicago

T +1.312.324.1154
sarah.riddell@morganlewis.com

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.

Edwin E. Smith



Boston/New York

T +1.617.951.8615

+1.212.309.6825

edwin.smith@morganlewis.com

Edwin Smith concentrates his practice in commercial law, debt financings, structured financings, workouts, bankruptcies, and international transactions. He is particularly knowledgeable on commercial law and insolvency matters, both domestic and cross-border. His representations have included those in major bankruptcies including Refco, Lehman, the City of Detroit, and PG&E. He often advises financial institutions on documentation and risk management issues.

Ed advises creditors and counter-parties on commercial and insolvency risks in sales, leasing, financing, investment securities, and derivatives transactions and has represented parties in major insolvencies. He has been a guest speaker for bar and trade organizations including ALI-CLE, the American Bar Association, the American Bankruptcy Institute, the International Insolvency Institute, the Association of Commercial Finance Attorneys, the Boston Hedge Fund Group, the Commercial Finance Association, the National Conference of Bankruptcy Judges, the Equipment Leasing Association, the Practising Law Institute, the Risk Management Association, and various local bar associations. Having actively participated as a Uniform Law Commissioner in the drafting of a number of the recent revisions to the Uniform Commercial Code (UCC), *Chambers USA* noted he “probably knows as much about UCC as anybody in the country.”

Stephen C. Tirrell



New York

T +1.617.951.8833
stephen.tirrell@morganlewis.com

Stephen C. Tirrell's practice focuses on advising private investment funds (U.S. and non-US) and investment advisers in relation to all aspects of their businesses. Steve assists clients in the structure and organization of hedge funds, hybrid funds and private equity funds, including equity, arbitrage, distressed, global macro, funds of funds, first-loss funds, real estate funds, infrastructure funds and others. Steve counsels clients on seed capital arrangements, compensation arrangements among partners and employees, complex fund restructurings, co-investments and compliance with the Investment Advisers Act of 1940 and other relevant U.S. securities laws.

In addition to his private fund practice, Steve represents and advises a variety of entities, including banks, broker-dealers, CDOs, and hedge funds, with respect to issues involving joint venture arrangements, derivatives products and new product development.

At a previous firm, Steve was a member of both the investment management and structured products groups and split his time between structuring a variety of hedge funds and negotiating complex derivative transactions.

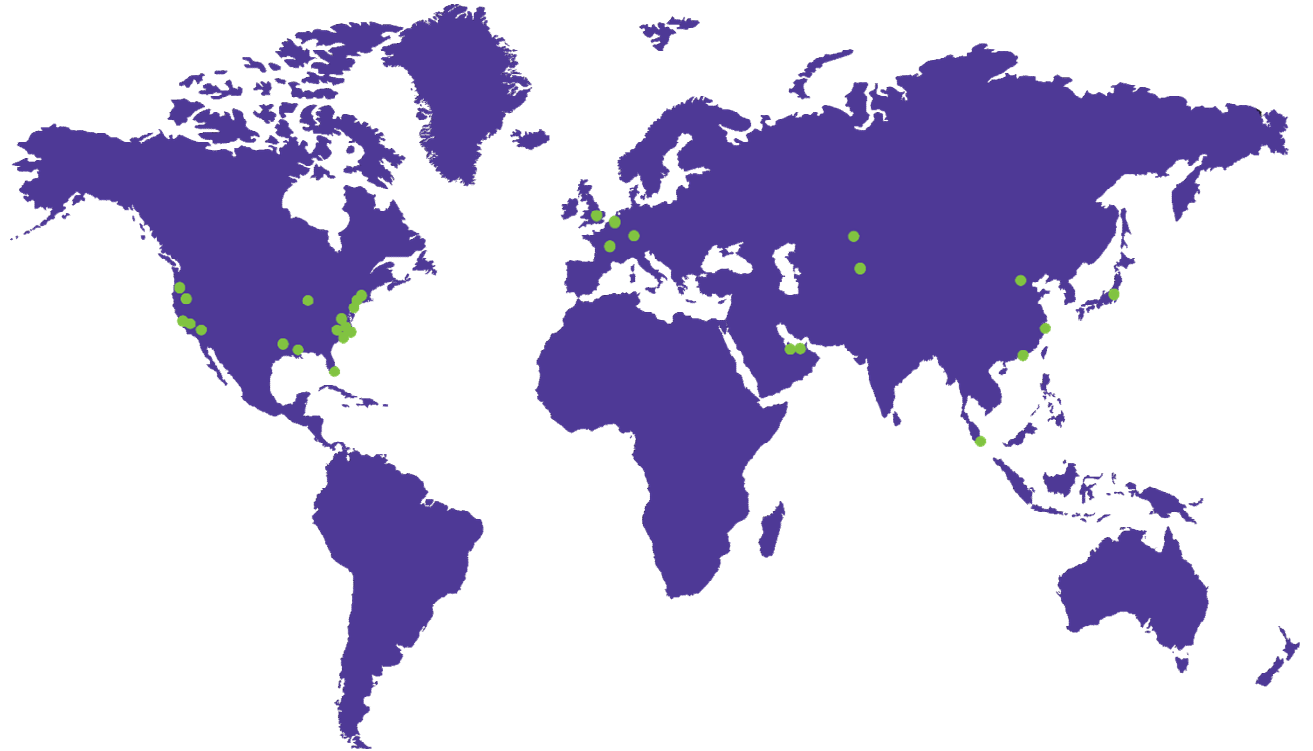
Before joining Morgan Lewis, Steve was at another international law firm, where he was a partner in their investment management practice.

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