

Morgan Lewis

# REGISTERED FUNDS TRENDS AND DEVELOPMENTS

Quarter in Review Series

Speakers: Roger Joseph, Jack O'Brien, Paul Raymond, Amy McDonald, Brian London  
April 30, 2020

# Overview

- Managing Processes and Portfolios in the COVID-19 Environment
  - Board processes and shareholder meetings
  - Money Market Funds
  - Liquidity, Pricing & Valuation Issues
- Proposed Valuation Rule
- Revisiting the Fund Names Rule
- Getting ready for BE-10 Filings

# COVID-19: Managing Processes and Portfolios

- SEC and staff relief
  - In-person meeting requirements for boards and shareholders
  - Filing requirements, prospectus delivery
  - Borrowing and inter-fund lending
  - Affiliated purchases of money market fund securities and debt securities
- Board meetings and communications, generally
- Negative interest rate environment
- Pricing and valuation issues
- Liquidity and stress testing
- Conducting “virtual” or “hybrid” shareholder meetings

# Proposed Valuation Rule (2a-5)

- For the first time in nearly 50 years, on April 21 the SEC proposed to substantially revise the regulation of fund valuation
- Much of the current guidance is proposed to be rescinded
- Would implement a framework of risk-based principles, similar to the approach taken by the liquidity rule and proposed derivatives rule
- No indication that existing practices would have to be completely overhauled
- If adopted as proposed, the procedures that funds implement could be substantially similar to current practices
- However, assessing current practices in the context of a new rule could still be burdensome
- Fund boards would clearly be permitted to assign responsibility to fund advisers, but may want to consider whether the proposal imposes too heavy a burden

# Revisiting the Names Rule (35d-1)

- On March 2, the SEC released a request for comments on fund names, seeking input from market participants on whether the Names Rule has been effective, and how the SEC can address challenges the industry has faced surrounding fund names
- Rule 35d-1: adopted in 2001 to prevent materially deceptive/misleading fund names
  - Requires an 80% investment policy for funds indicating an investment type or geographic region or tax-exempt status in their names
  - Does not apply to investment *strategies* (e.g., “income”) or global/international funds
- The request seeks input on many topics, including:
  - Derivatives, convertible securities, ESG funds, index funds
  - Whether the fundamental components of the rule should be retained or amended
  - Whether the rule should be extended to investment strategies or other types of funds
- Comments are due May 5, 2020

# BE-10 Filings

- Survey conducted every five years that produces statistics on US-owned business activities abroad
- Applies to any US person that had a foreign affiliate
  - New exemption for investments in private funds
- Key due dates:
  - May 29, 2020 for files of fewer than 50 Forms BE-10B, BE-10C, and/or BE-10D
  - June 30, 2020 for filers of 50 or more Forms BE-10B, BE-10C, and/or BE-10D

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# Roger Joseph



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Roger's practice encompasses both publicly offered and private investment funds, and includes representation of funds, sponsors and independent directors. He is known for advising clients on the evolving federal regulatory environment for funds and managers, including under the Dodd-Frank Act and the Volcker Rule as well as federal securities laws. Roger has participated in many innovative developments in the investment management industry, including heading up the legal team that developed the master/feeder legal structure and shepherding the first funds using that structure through the US registration process. He also led the investment management team in the legal structuring of the first principal-protected, actively managed mutual funds. Roger currently serves on the firm's Advisory Board.

Roger has led many major projects, including restructurings of major fund complexes. He was co-leader of the legal team that reorganized more than 100 open and closed-end funds governed by eight separate boards, in connection with the acquisition of a large asset management organization by another large financial services firm. He also served as co-leader of the legal team that served as an Independent Compliance Consultant under applicable regulatory orders in reviewing a major mutual fund adviser's compliance with federal and state securities laws.

Roger is a frequent guest speaker at industry panels and is regularly quoted in industry publications and the business press. His clients include registered mutual funds and closed-end funds, investment advisers, and independent directors as well as sponsors of private equity funds, hedge funds, and offshore funds.

Before joining Morgan Lewis, Roger was the co-chair of the global financial services practice of another international law firm and a member of its executive board.



# Paul Raymond



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Paul's practice focuses on the representation of mutual funds, closed-end funds, exchange-traded funds, collective investment trusts, employees' securities companies, investment advisers, and fund directors. He counsels clients on a wide variety of regulatory, transactional, fund formation, and compliance matters.

Paul assists clients with the design, formation, and registration of funds. He works closely with fund sponsors on product development efforts, including funds that pursue alternative investment strategies.

Paul also works with clients on the development and implementation of compliance policies and procedures, and has played leading roles in compliance program reviews for both major mutual fund advisers and fund complexes.

Paul has led a number of major projects, including restructurings of major fund complexes. He counsels clients regarding reorganizations of funds and in connection with mergers, acquisitions, and initial public offerings of investment advisers.

Before joining Morgan Lewis, Paul was a partner in the investment management practice of another international law firm. Previously, Paul served as a law clerk to Judge Norman K. Moon, US District Court for the Western District of Virginia.

# Jack O'Brien



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

# Brian London



## Philadelphia

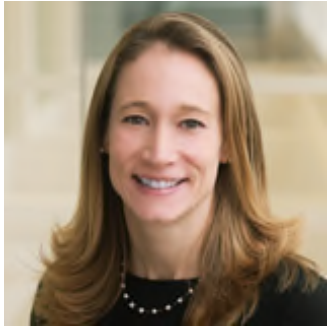
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Brian focuses his practice on representing mutual funds, exchange-traded funds (ETFs), closed-end funds, private funds, and their investment advisers in US and international legal, regulatory, and transactional matters. His experience extends to work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

# Amy McDonald



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Amy represents registered funds and investment advisers in a number of areas, including US Securities and Exchange Commission (SEC) filings, regulatory and compliance issues, and corporate matters.

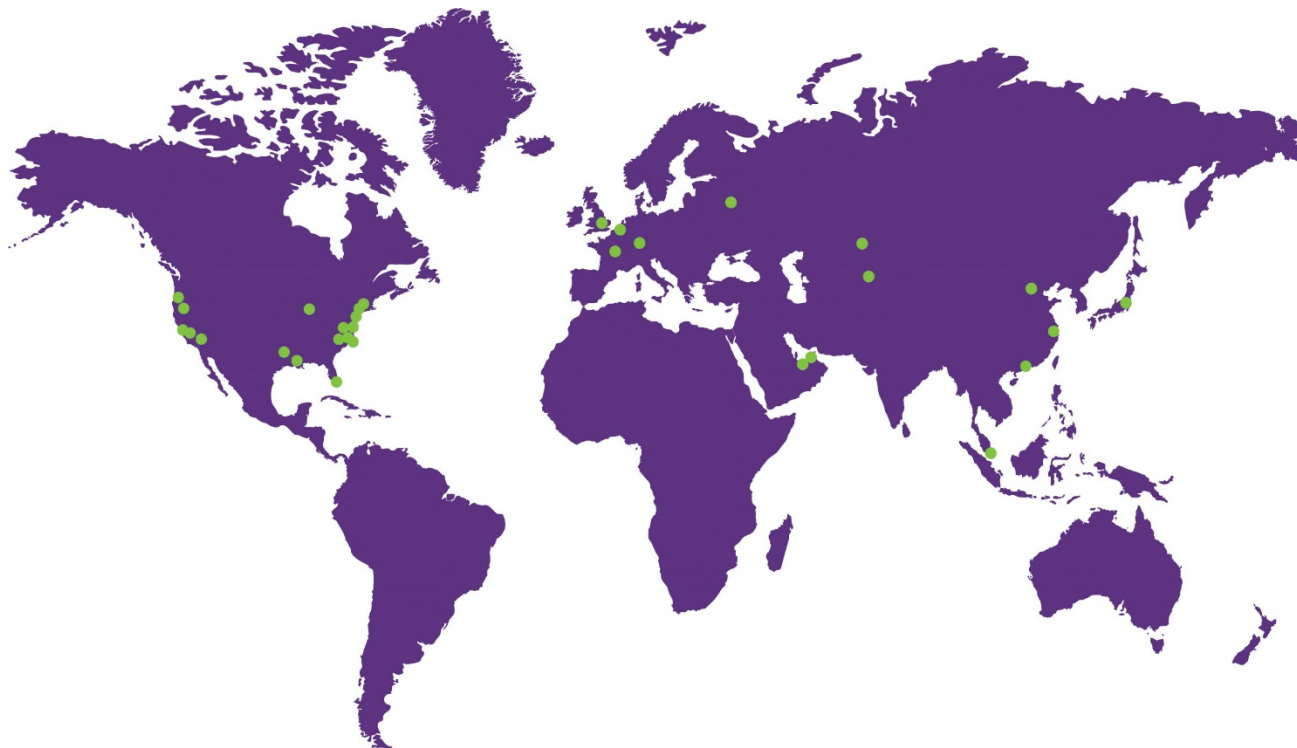
Before joining Morgan Lewis, Amy served as legal counsel to the exchange-traded funds of a New York-based asset manager. Prior to this, Amy served in various legal, regulatory and compliance roles for a Boston-based investment adviser/fund complex. Amy began her legal career as an associate in the financial services group of an international law firm, resident in Boston.

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