ADVANCED TOPICS IN HEDGE FUND PRACTICES CONFERENCE

Manager and Investor Perspectives

WEBINAR SERIES

Track 1: Operations

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Hedge Fund Terms and Operations: An Evolving Landscape

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Year in Review: Impact of the Pandemic and Market Developments

- Performance
  - Pandemic Fall-out
  - Year-end Rebound

Year in Review: Impact of the Pandemic and Market Developments

Capital Flows

- Outflows
- Inflows
- Wind-downs/Liquidations

Year in Review: Impact of the Pandemic and Market Developments

Strategies and Products

- Initial Pandemic Fall-out: Hot Products
- Fund Launches

Year in Review: Impact of the Pandemic and Market Developments

Operations – Remote vs. Live

- Work Environment
- Operational Due Diligence
- Fundraising and Allocations

Year in Review: Impact of the Pandemic and Market Developments

Operations – Technology and Security

- Internal Systems
- Third-Party Systems
  - Brokers and Trading Counterparties
  - Custodians
  - Administrators
  - Pricing Vendors/Valuation Agents
  - Other Service Providers

Year in Review: Impact of the Pandemic and Market Developments

Terms

- Fees
- Expenses

Year in Review: Impact of the Pandemic and Market Developments

Terms

- ➢ Liquidity
- ➢ Disclosure

Outlook

Performance and Capital Flows

Operations

Terms

Trading and Investment Practices Affecting Hedge Funds

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Topics

Focus: Private Offering Regulatory Tidbits

- Integration of private offerings
- Update on regulatory issues of interest for private offerings
- Broker-dealer status
  - Section 4(c) of the Securities Act of 1933 (Securities Act)
    - "I don't have to be a registered broker-dealer?"
    - SEC's Finder Proposal
- Bad-actor waiver update
- FINRA proposals for filing private offering materials

Harmonization of Exempt Offering Framework

Securities Act Release No. 10884 (November 2020)

SEC's Ongoing Efforts to Modernize and Harmonize Private Offering Framework

- Last year adopted new QIB and Accredited Investor Definitions

Release clarified when one offering will be integrated with another

- If exempt offerings with different requirements are structured separately but analyzed as one "integrated" offering, it is possible that the integrated offering will fail to meet all the applicable conditions and limitations.
- For example, whether a general solicitation in one offering affects another that prohibits general solicitation.
- Dollar limits and other offering restrictions.

Set general principles and created safe harbors

Integration Framework

SEC's framework has been evolving for many years.

- Regulation D previously provided a six-month safe harbor and five-factor analysis
- The amendments establish a new integration framework that provides a general principle that looks to the particular facts and circumstances of two or more offerings, and focuses the analysis on whether the issuer can establish that each offering either complies with the registration requirements of the Securities Act, or that an exemption from registration is available for the particular offering.

General Principles:

- For an exempt offering prohibiting general solicitation, the issuer must have a reasonable belief, based on the facts and circumstances, with respect to each purchaser in the exempt offering prohibiting general solicitation, that the issuer (or any person acting on the issuer's behalf) did not solicit such purchaser through the use of general solicitation including by establishing a substantive relationship with such purchaser prior to the commencement of the exempt offering prohibiting general solicitation; and
- For two or more concurrent exempt offerings permitting general solicitation, comply with all the requirements for, and restrictions on, offers under the exemption being relied on for such other offering, including any legend requirements and communications restrictions.

Integration Safe Harbors

The amendments provide four nonexclusive safe harbors from integration providing that:

- any offering made more than 30 calendar days before the commencement of any other offering, or more than 30 calendar days after the termination or completion of any other offering, will not be integrated with such other offering(s); provided that
  - in the case where an exempt offering for which general solicitation is prohibited, the issuer must also have a reasonable belief, based on the facts and circumstances, with respect to each purchaser in the exempt offering prohibiting general solicitation, that the issuer (or any person acting on the issuer's behalf) did not solicit such purchaser through the use of general solicitation
- offers and sales made in compliance with Rule 701, pursuant to an employee benefit plan, or in compliance with Regulation S will not be integrated with other offerings;
- an offering for which a Securities Act registration statement has been filed will not be integrated if it is made subsequent to:
  - a terminated or completed offering for which general solicitation is not permitted,
  - a terminated or completed offering for which general solicitation is permitted that was made only to qualified institutional buyers and institutional accredited investors, or
  - an offering for which general solicitation is permitted that terminated or was completed more than 30 calendar days prior to the commencement of the registered offering; and
- offers and sales made in reliance on an exemption for which general solicitation is permitted will not be integrated if made subsequent to any terminated or completed offering.

Offering and Investment Limits

- For Regulation A, the amendments:
  - raise the maximum offering amount under Tier 2 of Regulation A from $50 million to $75 million; and
  - raise the maximum offering amount for secondary sales under Tier 2 of Regulation A from $15 million to $22.5 million.

- For Regulation Crowdfunding, the amendments:
  - raise the offering limit in Regulation Crowdfunding from $1.07 million to $5 million; and
  - amend the investment limits for investors in Regulation Crowdfunding offerings by:
    - removing investment limits for accredited investors; and
    - using the greater of their annual income or net worth when calculating the investment limits for nonaccredited investors.

- For Rule 504 of Regulation D, the amendments raise the maximum offering amount from $5 million to $10 million.

Other Changes

"Test the Waters"

- Issuer are permitted to use generic solicitation of interest materials to "test the waters" for an exempt offer of securities prior to determining which exemption they will use for the sale of the securities
- Regulation Crowdfunding: issuers to "test the waters" prior to filing an offering document with the Commission in a manner similar to current Regulation A

"Demo Day" communications will not be deemed general solicitation or general advertising.

New item added to the non-exclusive list of verification methods in Rule 506(c)

- No need to reverify existing accredited investors unless aware of contrary facts

Harmonize the bad-actor disqualification provisions in Regulation D, Regulation A, and Regulation Crowdfunding

Broker-dealer Status

General Rule: "Broker" is a person engaged in the business of effecting transactions in securities.

Section 4(c) of the Securities Act

- Exemption from broker-dealer registration requirement for persons meeting conditions in connection with Rule 506 offerings, if person:
  - Maintains a platform or mechanism for securities transactions…whether online, in person, or through other means,
  - Coinvests in the securities, or
  - Provides "ancillary services" with regard to the securities
    - Ancillary services include due diligence, providing standardized documents to issuers and investors (however, cannot require use of the documents)
- Conditions:
  - Person receives no transaction-related compensation
  - Person does not negotiate the terms of the securities issuance on behalf of third parties
  - No possession of customer funds or securities
  - Person is not subject to a statutory disqualification

SEC's Finders Proposal

- Proposed conditional exemption for finders assisting small businesses with capital raising (SEC Release 34-09112, Oct. 7, 2020)
- Part of commitment to small business community by prior SEC Chairman Clayton
- Tier 1 would allow finder to provide contact information about potential investors to one issuer in a 12-month period.
- Tier 2 would allow a finder to solicit investors but not provide advice as to the advisability or valuation of investment.

“Bad Actor” Update

- “Bad Actor” refers to those regulatory provisions that prevent participation in or reliance on Section 506 and other exemptions from registration for securities offerings by individuals or entities that are the subject of certain judicial or regulatory actions involving violations of securities or related laws and regulations.

- Waivers are needed in order to continue relying on or offering under these exemptions if an issuer or its investment manager or placement agent becomes a bad actor.

- Waivers have become increasingly difficult to obtain due to a view of the members of the Securities and Exchange Commission that the disqualifications should be viewed as punitive for certain bad actors.

Common Ownership Antitrust Issues for Hedge Funds:
The Discussion Around Noncontrolling Ownership Stakes in Competitors

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Hypothetical Question

"Suppose you owned shares of all firms in the same industry. Would you push these firms to compete extra hard with each other? Do you think real-world institutional investors do?"

Prof. Martin Schmalz

Topics for Discussion

What is “common ownership” and why do some antitrust economists think it could lessen competition?

What do antitrust enforcement agencies and policymakers think about common ownership issues?

How should investors evaluate and mitigate any real or imagined antitrust risks from common ownership?

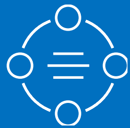
What Is "Common Ownership"?

- "Common ownership" refers to a stock investor's ownership of minority stakes in competing firms.
- Any fund that holds minority shares of competing companies is engaged in common ownership.
- Common ownership is embedded in many large mutual and index funds, which own sizable percentages of every major competitor in a market.
- Common ownership is similar to, but distinct from, "cross ownership," which occurs when one firm owns stock of its competitor or when an investor holding a majority interest in one firm also owns stock of a competing firm.

The Theory of Common Ownership Effects

Unilateral Effects: A common owner does not gain from competition (e.g., lower prices) between the firms it holds shares in, but wants to maximize joint profits.

- As a result, common ownership changes unilateral pricing incentives because competing hard on price to attract customers does not benefit the common owner.



Collusive Behavior: Through corporate governance communications, large owners impact firm strategy and intensity of competition.

- As a result, common ownership makes it easier to collude and enforce collusive agreements.

Theoretical Enforcement Mechanisms

- "The investor could provide advice and then **vote against the CEO if he does not follow**, or seek to nominate board members who agree"
- "Each CEO knows **the investor is talking to rival CEOs"**
- "The institutional investor could **design or promote incentive packages for CEOs to reduce their incentive to compete against rivals**"
- "The investor could **block bids by activist investors interested in aggressive competition**"
- "From the perspective of an investor holding all firms, **share changes must net to zero**. Schmalz reports a conversation in which a fund manager admitted that he does not tell his portfolio firms to compete harder against his other portfolio firms since market share is zero sum."

The Empirical Evidence

A few empirical studies claim to correlate anticompetitive effects with common ownership.

- Some say there is a "likely causal link" between increased common ownership concentration and consumer prices.
- Some have argued that common ownership "correlates" with less competition between firms.
    - Correlated with flatter executive incentives
    - Correlated with lower investment

Assessing and Managing Portfolio Risk

Empirical Screens for Examining Intra-Industry Holdings

Amount of voting control over the managers of portfolio firms.

Magnitude of the intra-industry stakes investors hold and degree to which those holdings are of equal size.

Degree to which voting control is held by nonintra-industry diversified shareholders.

The collective market shares of the firms that share common ownership (when their market shares are larger, the market effect of firm managers' decisions to pull their competitive punches will be more significant).

The Law and the Enforcement Agencies

Clayton Act Section 7:

- "[n]o person engaged in commerce . . . shall acquire . . . the whole or any part of the stock . . . of another person engaged also in commerce . . . where in any line of commerce . . . the effect of such acquisition may be substantially to lessen competition."
- Solely for Investment Exemption: "[t]his section shall not apply to persons purchasing stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition."
- Supreme Court precedent: *United States v. E.I. du Pont de Nemours & Co*.: "Even when the purchase is solely for investment, the plain language of § 7 contemplates an action at any time the stock is used to bring about, or in attempting to bring about, a substantial lessening of competition." 353 U.S. 586 (1957).
- DOJ/FTC have not challenged partial equity acquisitions to date of less than 20%.

The Law and the Enforcement Agencies

Sherman Act Section 1

- Violated when (1) the defendant enters a "contract, combination in the form of trust or otherwise, or conspiracy" (i.e., an agreement); and (2) that agreement unreasonably restrains trade.
- Examples of when a violation could be established: (1) when an investor facilitates a hub-and-spoke conspiracy by helping multiple competing firms to collude; (2) when a group of investors that all own stakes in multiple competitors agree to pressure those firms to limit competition among themselves; and (3) when a single investor with sufficient managerial control in all the firms in a market causes each firm to limit competition with its rivals.
- But is the stockholder's mere purchase of noncontrolling intra-industry securities a contract in restraint of trade?

The Law and the Enforcement Agencies

The European Commission

- Multiple recent decisions have contained discussion of common ownership with no discernible principles emerging.
- Recently released a 336-page report on common ownership, calling for more research to “disentangle the various effects” that the growing phenomenon of intra-industry investing might have on competition and prices.
- Report found a correlation between the extent of common ownership and the profitability of companies—it warned that it was unable to assess whether this was a direct result of price increases. The commission also said that more research was needed on “the series of possible mechanisms of influence” that investors may use to affect a company’s “competitive outcome”.

Any Action Items?

- Consider evaluating intra-industry holdings using criteria described.
- As to extensive intra-industry holdings, consider safeguards.
- Board membership should always trigger additional review—looking not just for other board memberships, but also investments in competitors.
- Firewalls are a good idea when you have confidential info and an investment in a competitor.
- Concerns about an effect on incentives arise when an investment is large enough that management of the company is likely to be concerned about one investor in particular and is very rarely a problem when an investment is less than 15% of a company (and isn't HSR reportable).

Family Office Issues and Considerations

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Define The Problem

Federal Transfer Tax System

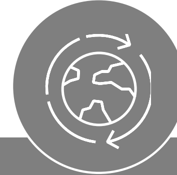
- Annual Gifts: $15,000 annually to any number of recipients
- Direct payments of tuition and healthcare expenses
- Unlimited transfers to US citizen spouse
- Highest federal estate/gift tax rate: 40%
- Current federal estate/gift tax/generation-skipping transfer (GST) tax exemption: $11,700,000 per taxpayer
- Transfers to charity are not subject to tax
- Current law scheduled to change January 1, 2026

Goals

- Manage and transfer wealth in a tax-efficient manner
- Leverage use of the current exemptions

Assets on Which to Focus

- Assets likely to appreciate
- General Partner Interest (including the carry), management company, and any LP interests



Current Environment

- Extraordinary opportunity due to historically low IRS intrafamily interest rate
- Low valuations; opportunities for long-term growth
- Possible window of opportunity

Considerations for New Investments

How to Remove Future Appreciation Outside of Estate Using Intra-Family Transfers (gifts, loans, sales) for a **New** Investment:

Irrevocable Grantor Trust	Husband is hedge fund manager starting new fund. Wife creates new irrevocable trust for benefit of husband and children with Husband as Trustee. Trust is grantor trust for federal income tax purposes (wife pays income tax, not the trust). Wife makes a cash gift to trust that is covered by gift tax exemption and allocates GST exemption to gift on a gift tax return. Trust buys interest in a new entity that could be the GP of a fund. All trust assets outside of husband's and wife's taxable estates. If structured properly, assets will be outside of children's estates and not subject to transfer tax at each future generation.
Gift and Loan	Husband is a hedge fund investor who creates irrevocable grantor trust for benefit of wife and children and makes a gift to the trust to which he allocates GST exemption on a gift tax return. Ideally, gift is subject to valuation discount if interest is nonmarketable and noncontrolling. Husband loans money to the trust; trust issues a long-term promissory note bearing **1.98%** interest. Trust buys limited partnership interest in the fund. The note receivable (which does not increase in value) and the 1.98% interest on loan will be included in husband's taxable estate but all appreciation of fund and earnings on appreciation will be estate tax-free in the trust.

Considerations for Existing Investments

How to Remove Future Appreciation Outside of Estate for **Existing** Investments:

Grantor Retained Annuity Trust ("GRAT")	Husband creates irrevocable trust ("zeroed-out") and retains right to receive fixed annuity payment over two or three years. At end of term, assets in trust continue in trust for wife and children. If trust assets appreciate at a rate greater than **1.0%** (April 2021), excess appreciation remains in trust gift and estate tax-free.
Caution	– Be wary of Internal Revenue Code section 2701 rules. To minimize risk, transfer "vertical slice" or a proportionate amount of all of the interests that husband owns in existing fund. Trust receives pro rata share of all same interests that husband had.
	– Consider whether GP carried interest is "vested."
	– Consider valuation risk exposure based on technique chosen.

Possible Impact of Tax Legislation

Income tax planning: impact of possible increase in capital gains tax rate

Capital gains taxation at death

Changes in the estate tax prior to 2026?

Proposal to eliminate carried interest

General Recommendations

Understand the nature of assets to best manage transfer tax opportunities and implications

Start transferring assets early when values are low and regularly to the extent cash flow allows

Work closely with a team of advisors so every member of the team is on the lookout for opportunities

Fiduciary Claims and Preparing for a Crisis

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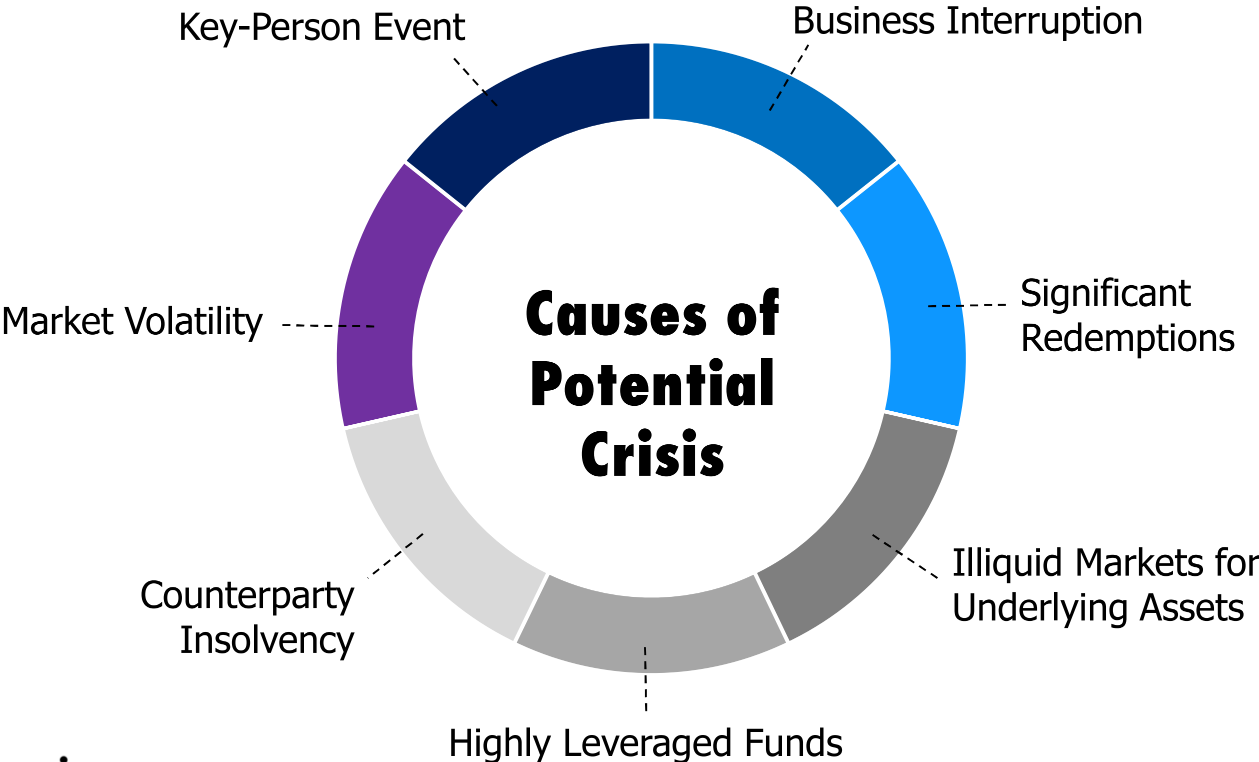
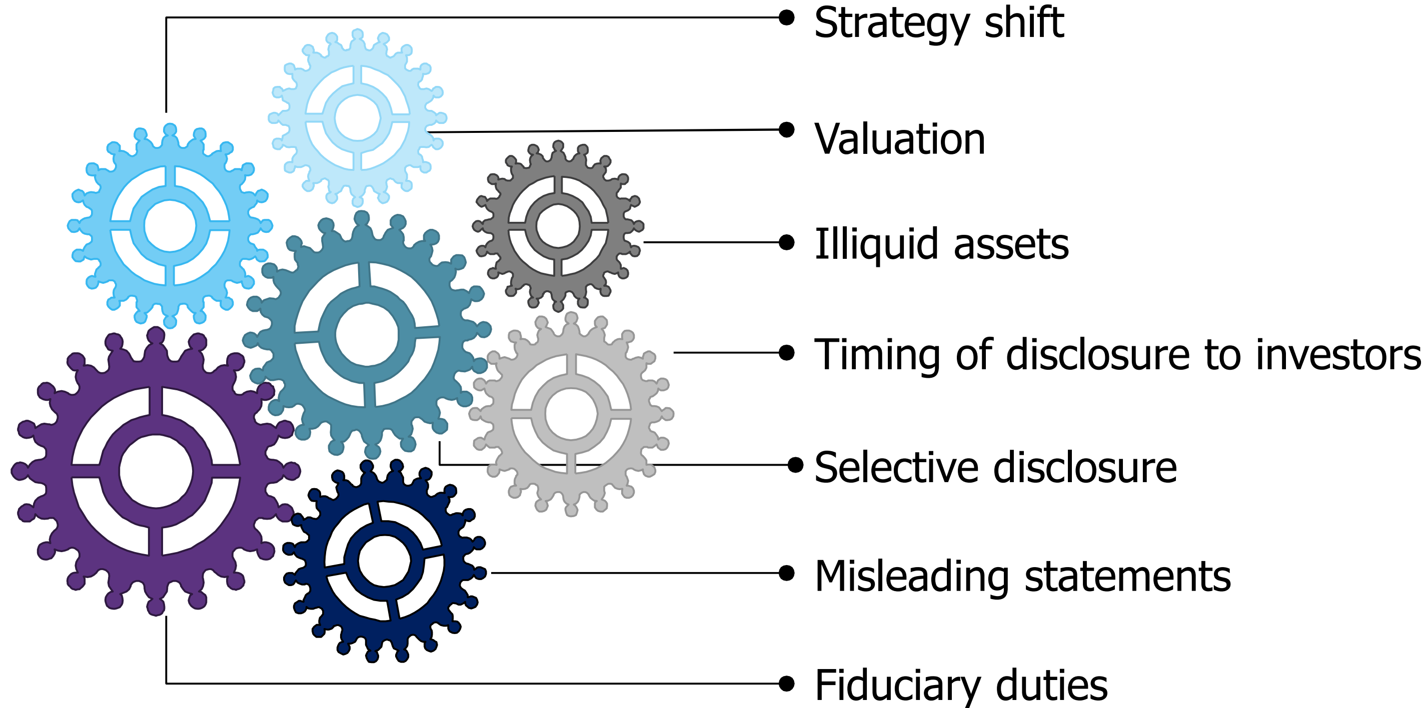
Some Causes of Potential Crisis for Hedge Funds



Potential Issues That Could Result in Liability



Different Constituencies

General Partner/Manager

Board of Directors

Investors – Balancing Interests and Side Letters

- Redeemed and awaiting redemption proceeds
- Investors desiring to redeem
- Investors not redeeming and not permitted to redeem

Counterparties

Employees

Service Providers

What Should Managers Do First?

- Contact legal counsel
- Review fund governing documents and side letters
- Continue to focus on portfolio management and operations
- Consider objectives
  - Business objectives – Going concern or wind-up is inevitable
    - Is there a need or basis to suspend redemptions?
  - Legal objectives – Fair and equitable treatment of investors
- Consider fiduciary issues
- Contact insurance providers

Litigation and Regulatory Risks

- Breach of contract
- Fraud in an inducement in connection with any representations by a manager made to encourage investment (or encourage withdrawal of redemption request) that turn out to be materially inaccurate
- Claims that funds were mismanaged
- Regulatory risks

Insurance Considerations

Two types of potentially applicable insurance policies written on a "claims made" basis:

- **Errors & Omissions** (E&O): Responds to claims arising from the provision of financial services or advice.
- **Directors & Officers/Management Liability**: Responds to claims arising from the performance and/or management of the company.

Triggered by "claims" for a "wrongful act" made and reported to the insurer during the policy period.

- "Wrongful act": Any actual or alleged error, misstatement, misleading statement, negligent act or omission, or neglect or breach of duty

Typical exclusions:

- Intentional fraud, if established by a final, non-appealable judgment or arbitration award.
- Unjust enrichment, if established by a final, non-appealable judgment or arbitration award.
- Breach of contract, but not if liability would have existed notwithstanding the contract
- Adjustments to the price of an acquisition
- Claims potentially covered under other types of policies: ERISA, bodily injury, property damage, cyber, copyright, etc.
- Certain statutory claims (not always, however): Antitrust, False Claims, Foreign Corrupt Practices, etc.
- Company-specific exclusions

Insurance Considerations

Definition of "claim" can vary, and definitions could be different for assertions against individuals as opposed to assertions against the Company.

- Always includes a lawsuit or demand for arbitration seeking a money judgement or other relief
- Often includes a written demand for money
- Often includes certain types of governmental investigations
- Occasionally includes service of a subpoena

Policies pay "loss":

- Includes damages, judgements, settlements consented to by the insurer and costs of defense (within the limits of liability)
- May include fines or penalties to the extent permissible in a particular jurisdiction

Notice to the Insurer

“Claims-made” policies are time specific. They respond to claims made and reported to the insured during the period of the policy.

Reporting is key: Notify the insurer of a “claim” as soon as practicable during the period of the policy.

If what appears to be a “claim” might not actually be a “claim” as defined by the policy:

- Provide notice to the insurer of “circumstances” or of an “occurrence” that might lead to the assertion of a claim in the future.
  - Typically, this will cause “claims” related to the notice that are asserted after the end of the policy period to be brought “back in time” to the period of the policy under which the notice was provided.

Coverage for "Unrealized Liabilities"

- At least one insurer to the fund industry covers a "situation" covered under the E&O policy arising from a "wrongful act" that, if not corrected, will "**automatically**" result in the company's legal liability to:
    - Recipients of the company's services
    - Shareholders of a covered fund
- Applies when an "error" has indisputably occurred, and liability is certain
- Encourages corrective action **in consultation with the insurer** to minimize the possibility that claims will arise
- Pays the "costs of correction":
    - Direct compensatory payments by the company to "recipients of the Company's services" or to "shareholders of a covered Fund"
    - Direct costs or expenses incurred by the company solely to calculate and deliver the amount of compensatory payments

Coverage "Mechanics" for Individuals

- Particularly in D&O coverage, the first line of financial protection for individuals is company indemnification.
- Policies "presume" company indemnification to the fullest extent permitted by law.
  - Individuals make a claim for indemnification; the company then seeks "reimbursement" for the indemnification payments from the insurer
  - Exceptions
    - The company is financially unable to indemnify for reasons set forth in the policy
    - Indemnification is legally impermissible under the circumstances
  - The policy is "back-up" coverage for individuals when the company is unable to indemnify for financial or legal reasons. Only then do individuals make claims directly under the policy.
- Additional excess coverage, above what the company carries, is available to provide enhanced protection for individuals.
- Side A/Difference-in-Conditions
- Coverage for independent directors and trustees

Coverage Purchase Considerations

- Defense costs are not supplemental, but paid as part of the limits of liability in the policies.
- The cost of litigation and defending against investigations is steadily increasing.
- Lowest level of coverage is the most expensive; the relative cost of coverage decreases as it sits higher in a "tower."
- **BUT**, the cost of financial lines coverage has been escalating over the last two years.
- Retentions are increasing for reasons of capacity and the decisions of insureds to save on premium costs.

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

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

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

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

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

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

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Christopher has more than 20 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, a member of the firm’s diversity and inclusion committee, a member of the New York office’s recruiting committee, and the head of the New York office’s LGBT lawyer network.

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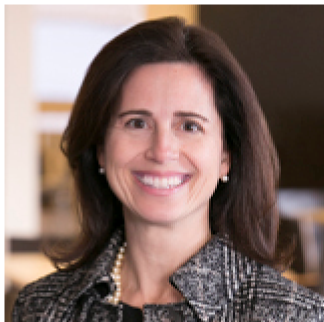

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Christina Mesires Fournaris advises clients on estate, tax, and generational wealth planning. High-net-worth individuals, multigenerational family groups, entrepreneurs, and owners of privately held businesses are among her clients. A significant portion of her time is devoted to working with women business owners, as well as women who control their family's wealth. Her practice includes advising clients on trusts, tax planning, philanthropic and charitable giving, and estate planning.

When working with families, Christina counsels family groups and family offices on the management of their holdings and management of trusts that represent family members. When she facilitates a family meeting, Christina helps the family develop a mission statement. She also educates family members on the importance of trusts, and the tax and investment considerations for various family trusts.

In her work with business owners, Christina counsels them before major liquidity events. She also structures transfer tax vehicles to shift wealth to the next generation in a tax-efficient manner.

Christina also works with individual and corporate fiduciaries on trust and estate administration matters, including counseling clients on best practices, as well as federal and state fiduciary income tax implications. She also advises clients on charitable planning techniques, including major planned gifts of various assets, charitable trusts, and private foundations.

She frequently speaks to audiences that include insurance, financial, and investment professionals and advisers.

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Amy Natterson Kroll counsels US and non-US financial institutions on US regulatory requirements and best practices related to broker and dealer activities. Clients seek Amy's advice on, among other things, issues related to implementation of new regulations; the acquisition and sale of broker-dealers; expansion of business and related regulatory requirements for financial institutions; and regulations related to the capital markets, such as research activities and research analysts, supervisory controls and internal controls, and cross-border securities activities. Amy also advises clients on the collateral consequences of enforcement, civil, and criminal actions. She has a specific interest in the issues central to regional full-service and mid-market broker-dealers.

Amy worked at the Securities and Exchange Commission twice. From 1997–1998 she was assistant general counsel (legislative and financial services) at the SEC, to which she had returned after five years in private practice counseling broker-dealers and other financial institutions. From 1984–1991, during her first tour of SEC service, she served in positions of increasing responsibility, first as an attorney-adviser in the division of Market Regulation (now the division of Trading & Markets), and subsequently as counsel to Commissioner Edward H. Fleischman and as senior special counsel in the division of Corporation Finance, Office of International Corporate Finance.

From 1998–2003, Amy was an independent consultant, focusing on issues confronted by non-US financial entities seeking to engage in broker-dealer activities in the United States. During that time, she also taught at the Washington College of Law, American University.

Amy serves as the Washington office practice group leader for the firm's investment management practice. She previously served as a member of the NASDAQ Market Operations Committee. Prior to joining Morgan Lewis, Amy was a partner in the financial institutions regulatory, enforcement, and litigation practice at another international law firm.

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Jeffrey S. Raskin advises clients in litigation, mediation, and arbitration around insurance coverage matters, and intellectual property, commercial, real estate, and environmental disputes. Head of Morgan Lewis’s Insurance Recovery Practice in the San Francisco office, Jeffrey counsels clients seeking recovery for catastrophic losses in securities, environmental, asbestos, silica, toxic tort, product liability, intellectual property, and employment practices cases. Jeffrey has handled first-party claims for loss covered by policies for physical damage and business interruption, title, and fidelity and crime.

Corporate insureds also regularly seek Jeffrey’s counsel with procuring insurance. On behalf of clients, he audits insurance assets, structures commercial insurance programs, identifies potential legal issues, and helps clients negotiate more favorable policy terms.

He advises companies in the energy, chemical, entertainment, manufacturing, retail, banking, and financial services sectors.

Jeffrey has written on a variety of topics about insurance, as well as discovery of email in civil litigation. His most recent writings discuss the emerging fields of “cyber” insurance, with a particular focus on the types of first- and third-party coverages available to companies to protect themselves against the financial consequences resulting from various types of data breaches.

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Jonathan M. Rich represents clients before antitrust enforcement agencies, with a focus on mergers and acquisitions (M&A). Jonathan has represented clients in a host of industries, including paper, chemicals, metals, soft drinks, food additives, music, television programming, software, semiconductors, and financial services. Jonathan previously served as the assistant chief in the Communications and Finance Section of the Antitrust Division of the US Department of Justice (DOJ).

Jonathan has represented clients involved in mergers and acquisitions before antitrust enforcement agencies throughout the world. He has been involved in many major government antitrust investigations into the financial markets, both at Morgan Lewis and the DOJ. These included inquiries into fixed-income joint ventures, the equity options markets, NASDAQ market makers, and US Treasury auctions.

While at the DOJ, Jonathan supervised the Division's enforcement efforts in financial markets and the bank merger program. He also had substantial responsibility for technology matters. Jonathan was one of the principal attorneys in the ground-breaking investigation of the US Treasury securities market, which resulted in settlements of more than $350 million in fines and penalties. He had a principal role on the winning trial team in *United States v. United Tote* and was also involved in a number of other high-profile transactions.

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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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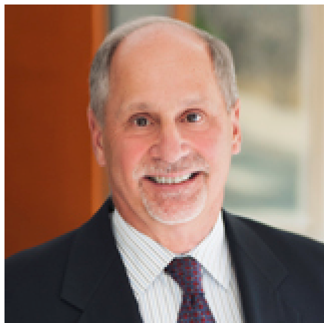

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Before joining Morgan Lewis, David was associate director for international corporate finance in the Division of Corporation Finance at the SEC. In that position, he developed SEC policy on cross-border offerings, acquisitions, and listings, which included offshore Internet offerings, international disclosure and accounting standards, and international corporate governance guidelines. David also advised the SEC and its Division of Enforcement on financial fraud cases and cross-border offering abuses. Earlier, he served as senior legal advisor to the SEC's director of the Division of Corporation Finance, and as staff director of the Advisory Committee on Capital Formation and Regulatory Processes. He also served for seven years as chief of the division's Office of Tender Offers, administering rules on M&A, going private transactions, and proxy contests.

David is a former vice-chair of the ABA Federal Regulation of Securities Committee and a former chair of the ABA Subcommittee on Corporate Disclosure. He also served as a member of the FINRA Corporate Financing Committee. He speaks frequently at conferences and continuing legal education programs on public and private financings, corporate reporting and governance, M&A, and private fund regulation.

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Jedd H. Wider focuses on global private investment funds and managed accounts, particularly global hedge, private equity, secondary, and venture capital funds. As co-leader of the global private funds practice, he represents leading financial institutions, fund managers, and institutional investors in their roles as fund sponsors, placement agents, and investment entities. He assists clients through all stages of product development and capital raising as well as customized arrangements, seed and lead investor arrangements, and joint ventures. He specializes in all aspects of secondary transactions, and complex financial structurings.

Jedd concentrates on all aspects of bespoke fund products and arrangements including funds of one and managed accounts and regularly advises clients on all aspects of regulatory compliance.

Members of the international media often seek out Jedd for his views on the hedge fund and private equity fund industries and capital markets. His analysis can be found in US and international publications, including *The Wall Street Journal, The Economist*, and *Financial Times,* as well as on television networks such as Bloomberg and CNN.

Jedd lectures and serves as a panelist on private investment fund topics for trade programs and organizations around the world. He has delivered speeches and presentations to numerous private fund conferences such as the Hedge Fund Institutional Forum, Dow Jones Private Equity Analyst Limited Partners Summit, Endowments & Foundations Roundtable, Association of Life Insurance Counsel, National Association of Public Pension Fund Attorneys (NAPPA), West Legalworks, InfoVest21 Hedge Fund Conference, the Annual Euromoney Summit of European Hedge Funds in London, Capital Roundtable Fund Conferences, the Annual International Conference on Private Investment Funds in London, the Wharton Private Equity and Venture Capital Conference, the On Point Investors and Hedge Fund Risk Summit, and the Lazard Capital Markets Hedge Fund Conference.

Jedd is listed in *The US Legal 500*, *Chambers Global: The World's Leading Lawyers*, and *Chambers USA: America's Leading Lawyers for Business*.

He serves as an editorial board member of *The Journal of Investment Compliance* and as an editor of the *Morgan Lewis Hedge Fund Deskbook: Legal and Practical Guide for a New Era* published by Thomson Reuters/West. He regularly publishes articles on current hedge fund and private equity fund topics. He co-chairs the Annual Morgan Lewis Advanced Topics in Hedge Fund Practices Conference and chairs Morgan Lewis's Hedge Fund University Web Series.

Jedd clerked for Judge Nicholas Politan of the US District Court for the District of New Jersey and for US Attorney Rudolph Giuliani of the Southern District of New York.

He is conversant in French.

Our Global Reach

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Latin America
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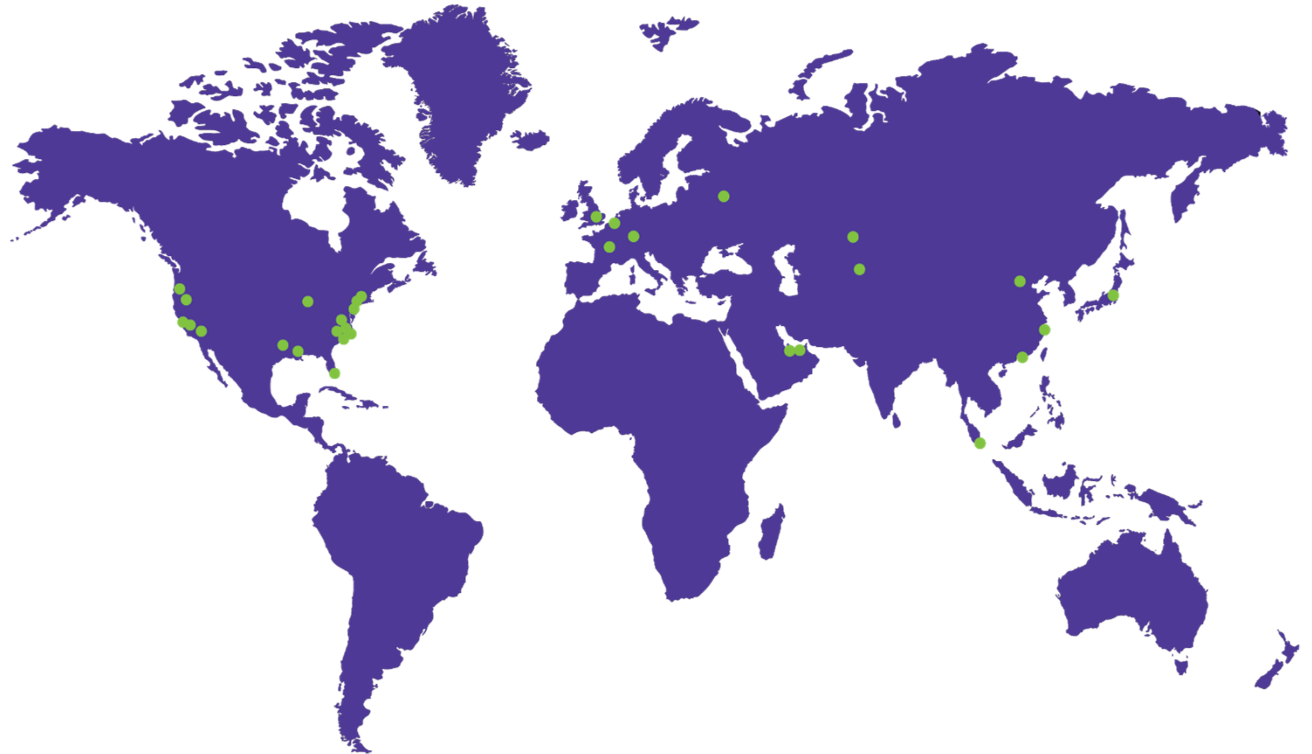

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