Morgan Lewis

TRADING AND MARKETS ENFORCEMENT UPDATE

MORGAN LEWIS HEDGE FUND UNIVERSITY™

David I. Miller

Joshua B. Sterling

Jedd H. Wider

February 13, 2017

Presentation Overview

1. **New Administration:** Potential Enforcement Priorities
2. **Insider Trading:** An Overview
3. **Spoofing:** Continued Enforcement Focus
4. **Other Significant Regulatory & Enforcement Matters**
5. **Regulatory Developments**

This presentation references several of the topics and cases in the **January 2017 Morgan Lewis Trading and Markets Enforcement Report**.[1] The purpose of that report, which is issued quarterly, is to provide updates on recent developments relating to the converging themes in trading and markets enforcement.

Available at:
https://www.morganlewis.com/~/media/files/publication/morgan%20lewis%20title/white%20paper/2017/trading-markets-enforcement-report-jan-2017.ashx?la=en

I. NEW ADMINISTRATION: POTENTIAL ENFORCEMENT PRIORITIES

New Administration: Potential Enforcement Priorities

- Traditional insider trading and misappropriation cases
  - Effect of *Newman*: (i) knowledge of personal benefit required; (ii) personal benefit requires a "potential gain of a pecuniary or similarly valuable nature."
  - But the Supreme Court weighed in: *United States v. Salman*
- Accounting Fraud
- Political intelligence
- Commodities/Futures/Swap fraud/manipulation
- Market manipulation: Spoofing/High Frequency Trading
  - Effect of *United States v. Coscia*

[1] *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988); *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

New Administration – Potential Enforcement Priorities (cont'd)

- Offering fraud
- Market manipulation, high-frequency trading, spoofing
- Ponzi schemes
- Obstruction-related investigations
- Microcap Fraud/Pump-and-Dump Schemes
- Bank Secrecy Act / AML Compliance
- Foreign Corrupt Practices Act?
- (SEC) Operations Broken Windows and Broken Gate?

II. INSIDER TRADING: AN OVERVIEW

Insider Trading: Classical Theory

- **General:** Bars "insiders" from trading based on material nonpublic information.
- **Statute:** No "insider trading" statute; case law driven.
  - Section 10(b) of Securities Exchange Act of 1934 and SEC Rule 10b-5.
  - Bars use of "deceptive device, scheme or artifice to defraud" in connection with buying or selling of security.
- **Elements:**
  1. **Corporate "insider"**—officers, directors, employees, and their family. Includes "temporary" insiders.
  2. **Material information**—Objective tests: "reasonable investor" and "total mix" tests.[1] Hindsight focus.
     - **Reasonable Investor:** Is there a substantial likelihood that a reasonable investor would consider information important in making an investment decision?
     - **Total Mix:** Would disclosure of information have been viewed by the reasonable investor as having significantly altered the total mix of available information?
     - **E.g.,** Earnings, ratings changes, buy/sell rec's, news stories, M&A activity, management/control changes, new products or discoveries, customer/supplier developments, auditor changes, events involving company's securities (*e.g.*, tender offers, private placement, default, redemption, splits)
  3. **Nonpublic information**—includes released-but-undigested and "unimpounded" information, and information distributed solely to special persons or groups, rather than broadly disseminated.
  4. **Duty**—duty of trust owed by insiders to shareholders; must disclose or abstain from trading.
  5. **Scienter**—must have knowledge of duty breached.

[1] *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988); *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

Insider Trading: Misappropriation Theory

- **General:** Sweeps beyond traditional "insiders."
  - Bars ***any*** person from misappropriating confidential information to trade securities.
- **Elements**
  1. **Material Information**—same as classical theory
  2. **Nonpublic Information**—same as classical theory
  3. **Duty of Trust and Confidence**—duty owed to source of information not to trade based on nonpublic information
     - **Examples:** Duty owed to investment bankers, lawyers, business partners, consultants, financial printers, journalists, psychiatrists, mailroom employees, broker-dealers, and family members.
     - **SEC Rule 10b5-2**—*when* (1) recipient agrees to maintain information in confidence; (2) history, pattern or practice of sharing confidences; or (3) recipient receives MNPI from family member (unless source did not expect information to be kept confidential). (Non-exhaustive list).
  4. **Use / Misappropriation:** Possessing material nonpublic information when transacting sufficient. **Practical test**—information was a factor, however small, in buy/sell decision.
     - **Control Persons**: "Culpable participants" controlling trader liable

Insider Trading: Tender Offers

- **Section 14(e):** Prohibits insider trading in connection with tender offers.
- **Rule 14e-3(a)**: Prohibits trading in connection with tender offer if person:

1.MNPI—possess material, nonpublic information.

2.Scienter—knows, or has reason to know, information directly or indirectly obtained from offeror, issuer, or their agent.

3.Trades—buys or sells securities in connection with tender offer.

4.Not Required—any breach of duty of trust.

Insider Trading: Tipper/Tippee Liability

- **Tipper Liability: Elements**
  1. **"Tip"—**material nonpublic information given to tippee by insider or other tippee.
  2. **Breach—**tipper breaches duty of trust to shareholders or source of information.
  3. **Scienter**—tipper aware of duty owed to shareholders or source of information.
  4. **Personal Benefit**—Tipper receives personal benefit for tip.
     - *Personal Benefit*: *Newman* held that exchange must be "objective," "consequential," and "represent[ ] at least a potential gain of a pecuniary or similarly valuable nature."[1]
     - On April 3, 2015, Second Circuit denied government's petition for rehearing and rehearing en banc. Government later filed a petition with the Supreme Court for a writ of certiorari.
     - On October 5, 2015, the Supreme Court declined to grant certiorari.
  - *Seminal Case: Dirks v. SEC*, 463 U.S. 646, 647 (1983).
  - ***Newman* limited by:** *United States v. Salman*, 580 U.S. ____ (2016).
- **Tippee Liability: Elements**
  1. **Tipper**—Tipper liability requirements met (see above).
  2. **Scienter—***Newman* found that tippee must know that tipper breached fiduciary duty—*i.e.* tippee must know that: (1) tipper improperly disclosed confidential information, ***and*** (2) tipper received personal benefit for tip.
     - *Criminal Case*: "willful" conduct required. Must know tipper acted wrongfully.

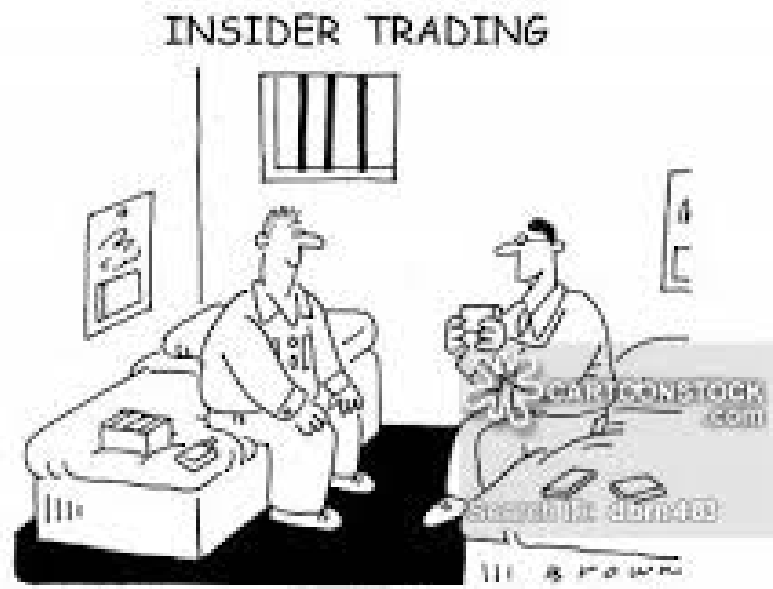
[1] *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014).

Insider Trading: *US v. Salman*

- **Background Facts**
  - Defendant Bassam Salman, a remote tippee, had received and traded on MNPI from his brother-in-law Michael Kara, who in turn had obtained the information from his older brother Maher, an investment banker at a major global bank.
  - Evidence showed that Salman was aware that the MNPI originated with Maher, and that from 2004 to 2007, Salman and Michael had profited from trading in securities issued by the bank's clients just before major transactions were announced. Salman was convicted at trial.
- **Appealed to 9th Circuit:**
  - Judge Rakoff (sitting by designation on the Ninth Circuit) held that *Newman's* personal benefit language must be interpreted in a narrower way than others might attempt to use it, and that to the extent *Newman* cannot be interpreted so narrowly, the Ninth Circuit would "decline to follow it."
- **Supreme Court Ruling**
  - The Court rejected Salman's argument that an insider must receive a pecuniary quid-pro-quo from a tippee for there to be a sufficient personal benefit. The Court found that *Dirks* made clear that a tipper breaches a fiduciary duty—and receives a personal benefit—by making a gift of confidential information to a "trading relative or friend."
  - In applying *Dirks*, the Court held that "Maher, a tipper, provided inside information to a close relative, his brother Michael. *Dirks* makes clear that a tipper breaches a fiduciary duty by making a gift of confidential information to 'a trading relative,' and that rule is sufficient to resolve the case at hand."
  - The Court declined to adopt the government's broader argument that "a tipper personally benefits whenever the tipper discloses confidential trading information for a noncorporate purpose."
  - Second Circuit's holding in *Newman*: "[t]o the extent the Second Circuit held that the tipper must also receive something of a 'pecuniary or similarly valuable nature' in exchange for a gift to family or friends . . . we agree with the Ninth Circuit that this requirement is inconsistent with *Dirks*."
- **Significance:** *Salman* decision turns back the clock on the personal benefit definition to its status pre-*Newman*, which had partially derailed the government's insider trading enforcement efforts.

Insider Trading: Penalties

- **Criminal Penalties**
  - Up to a $5,000,000 fine (individuals)
  - Up to a $25,000,000 fine (entities)
  - Up to 20 years in prison
- **Civil Penalties**
  - Penalties up to ***three*** times the gain or avoided loss
  - Disbarment / loss of license
  - Employer also fined up to $1,000,000 in certain circumstances (requires direct or indirect control)
- **Post Violation Oversight**
  - SEC may require fund to enforce its insider trading policy strictly
  - Company may have to report compliance



"I'll trade you two of my chocolate bars for five of your cigarettes."

Insider Trading: Significant Jail Time

- **2009-2010**: Median sentence ***triples*** to 30 months.
  - ***20% increase*** in percentage of convicted insider traders jailed versus 2000-2010 period.

- **Examples:**
  - **Raj Rajaratnam:** ***11 years***. Convicted of trading based on vast network of insiders who tipped on Intel, Goldman Sachs, IBM and others between 2003 and 2009.
  - **Zvi Goffer:** ***10 years***. Former Galleon trader convicted of tipping Galleon co-founder Raj Rajaratnam in hopes of securing position at his hedge fund.
  - **Mathew Martoma:** ***Nine years***. SAC trader convicted for trading based on tip about clinical trial of new Alzheimer's drug.

Insider Trading: Commodities Fraud—Rule 180.1 (17 C.F.R. § 180.1)

- **Rule 10b-5 Model:** CFTC anti-fraud authority patterned on Rule 10b-5; look to Rule 10b-5 jurisprudence. Post-Dodd Frank expanded authority for CFTC.
- **Rule 180.1:** Implements Section 6(c)(1) of the Commodity Exchange Act (7 U.S.C. § 9).
  - **Connection:** Must be "in connection with any swap, or contract of sale of any commodity..., or contract for future delivery on or subject to the rules of any registered entity."
    - Broader than Rule 10b-5, which is in connection with purchase/sale.
  - **Mental State:** Intentional or reckless
  - **Prohibits**
    - Using or employing, or attempt to use or employing, any manipulative device, scheme or artifice to defraud;
    - Making, or attempt to making, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading;
    - Engaging, or attempt to engaging, in any act, practice, or course of business, which operates
      or would operate as a fraud or deceit upon any person.
    - NOTE: Covers "attempts," unlike Rule 10b-5.

Insider Trading: Commodities Fraud—Rule 180.1 (17 C.F.R. § 180.1) (cont'd)

- **Rule 180.1 in insider trading context:**
  - On Dec. 2, 2015, CFTC settled with Arya Motazedi (gas trader) for misappropriating employer's confidential information in connection with his gasoline futures contracts trading on NYMEX.
  - Motazedi agreed to pay nearly $217,000 in restitution to his employer and a $100,000 penalty, and agreed to a permanent trading ban.

- ***In the Matter of Jon P. Ruggles*** **(Sept. 29, 2016):** CFTC settled proceedings against a Delta employee alleged to have used material, nonpublic information regarding his trading on behalf of that company for a personal account in his wife's name.
  - Ruggles was ordered to disgorge his gains and pay a penalty of $1.75 million and was permanently banned from trading and registering with the CFTC.
  - The Commission based its finding of fraud under Section 4(b) upon the duties Ruggles owed to Delta to act in its best interests, keep confidential its material nonpublic information, not misappropriate such information for personal benefit, and to protect information under Delta's internal policies.

III. SPOOFING: CONTINUED ENFORCEMENT FOCUS

Commodities Fraud: Anti-Disruptive Practices, Fraud, and Manipulation (Title 7)

- **Section 6c(a)(5):** Prohibits any "trading, practice, or conduct on or subject to the rules of a registered entity that":
  - Violates bids or offers;
  - Involves an intentional or reckless disregard for the orderly execution of transactions during the closing period; or
  - Involves "spoofing"—*i.e.*, bidding or offering with the intent to cancel the bid or offer pre-execution.
- **Section 6o:** Prohibits fraud by commodity trading advisors, commodity pool operators, and associated persons.
- **Section 13(a)(2):** Price Manipulation. Prohibits manipulation of commodities and swap prices.
  - Bars attempts to corner market
  - Bars knowing transmission of misleading reports concerning crops, markets, or conditions impacting commodities prices
- **Section 13(a)(5):** Willfulness. Prohibits "willful" violations of any provision in this chapter or any rule thereunder. But imprisonment barred absent defendant's knowledge of the rule or regulation violated.

Continued Scrutiny of Spoofing, Layering, Wash Trades and Prearranged Trades

- Regulators have continued to crack down on market manipulation schemes
- CME: disciplined several traders and firms in recent months
  - In many instances, CME alleged that traders entered large two-sides or layered orders to create the appearance of liquidity imbalance to obtain favorable executions of the smaller orders entered
    - Violations of CME Rule 432.B.2 (just and equitable principles of trade); CME Rule 432.Q (detrimental to the interest or welfare of the CME); and CME Rule 432.T (dishonorable and uncommercial conduct)
- Wash trades: CME alleged that traders entered into matching buy and sell orders, for accounts with common beneficial ownership on both sides of the market, to avoid taking a bona fide market position or incurring exposure to market risk
  - Prohibited by CME Rule 534: artificially increased trading volume; gave the false impression of demand

Continued Scrutiny of Spoofing, Layering, Wash Trades and Prearranged Trades (cont'd)

- FINRA: settled a matter with an NYSE agency-based equities trading firm in September for failure to have appropriate systems in place to detect and prevent potential wash trades
  - NYSE Arca Equities rules: a firm may be liable for the actions of its traders in violation of the wash trade prohibition and for failure to adequately monitor, detect and prevent potential wash trades
- ICE Futures US: disciplined and permanently barred two traders in September who engaged in prearranged transactions for the purpose of transferring funds between accounts
  - ICE Futures US charged a violation of ICE Rule 404 (just and equitable principles of trade; detrimental to the best interests of the exchange)

Recent Spoofing Matters

- *United States v. Coscia*: (July 2016) first individual sentenced to prison for spoofing
  - Michael Coscia was accused of utilizing sophisticated computer trading algorithms to manipulate futures market prices and was found guilty of six counts of commodities fraud and six counts of spoofing in November 2015
  - April 2016: the court rejected Coscia's motion for a new trial and rejected (i) challenges to the sufficiency of the evidence; (ii) arguments that spoofing charges are unconstitutionally vague; and (iii) challenges to the jury instructions
  - Currently on appeal to 7th Circuit
- *CFTC v. Igor Oystacher and 3Red Trading, LLC*: trading firm and principal settle with CFTC
  - August 2016: a federal district court rejected constitutional challenges brought by defendants
    - Statute is not void for vagueness
    - Rejected argument that economic regulations are subject to a "less stringent" void-for-vagueness standard and that the scienter requirement narrowed the statute's scope and constrained prosecutorial discretion
    - Rejected allegation that the spoofing statute effected an unconstitutional delegation of power to the CFTC and federal courts
    - The court also rejected challenge to constitutionality of CFTC Regulation 180.1
  - December 2016: Consent Order entered, finding that defendants engaged in manipulative spoofing scheme for more than two years
    - Oystacher and 3Red Trading required to jointly and severally pay $2.5 million civil penalty
    - Independent Monitor required to assess all trading for the next three years
    - Oystacher and 3Red Trading required to employ certain trading tools for a period of 18 months
    - Permanently prohibited from spoofing and/or using manipulative devices

Recent Spoofing Matters

- CFTC Settlement: (November 2016) Navinder Singh Sarao – Consent Order to settle a civil enforcement action charging market manipulation and automated spoofing
  - Sarao admitted in the Order to using a manipulative device to defraud, manipulating prices, attempting to manipulate prices, and spoofing in connection with trading E-mini S&P 500 futures near-month contracts
  - Sarao to pay $12.9 million in disgorgement and $25.7 million penalty
  - Sarao also pleaded guilty to criminal charges brought by the DOJ in connection with the scheme: one count of wire fraud and one count of spoofing
- CFTC: (January 2017) A major global bank settled charges for spoofing and failing to diligently supervise employee/agent activities in conjunction with spoofing orders
  - CFTC found that the bank engaged in spoofing more than 2,500 times in CME futures products and provided employees with insufficient spoofing training
  - The bank agreed to pay a $25 million civil penalty and comply with an undertaking

IV. OTHER SIGNIFICANT REGULATORY AND ENFORCEMENT MATTERS

Significant Regulatory and Enforcement Matters: Risk Management Programs

- Risk Management Program Failures: (September 2016) CFTC settled charges against an FCM for allegedly failing to supervise the handling of certain commodity interest accounts
  - Three exchanges raised concerns about potentially disruptive trading, risk management failures and inaccurate statements through the submission of required risk manuals and the Annual Chief Compliance Officer's Report
  - FCM, its CEO and chief risk officer required to pay $1.5 million penalty (jointly and severally) and undertake to improve risk management policies
- CFTC's first action enforcing CFTC Regulations 1.11 & 1.73 (relating to FCM risk management programs and obligations)
- Order stressed the need for registrants to attend to "red flags" and that failure to follow policies and procedures may be interpreted as a "misrepresentation" about the existence of such policies

Significant Regulatory and Enforcement Matters: NFA Examination of Foreign-Based Member Firms

- NFA Settlement – Alleged Failures in Disclosure and Handling of Client Assets (November 2016)
  - NFA issued a decision settling charges against a non-US-based commodity pool operator and commodity trading advisor member firm
  - Alleged that the firm commingled offshore pool funds, distributed statements that contained errors, failed to receive funds in the name of the pool, failed to disclose the amount of all fees charged, and failed to fully supervise all of its operations
  - Violations of NFA Compliance Rules 2-13, 2-29(b)(2), and 2-9(a)
  - Firm agreed to pay a $60,000 fine
- NFA is actively examining foreign-based member firms (including off-shore funds operating in compliance with foreign regulatory requirements)

Significant Regulatory and Enforcement Matters: Price Manipulation Standard of Proof

- *CFTC v. Wilson*: (September 2016)
  - SDNY rejected CFTC's argument that attempted manipulation under Sections 6(c) and 9(a)(2) of the CEA can be established by merely proving the "intent to affect market prices"
  - CFTC must prove **specific intent** to affect market prices that "did not reflect the legitimate forces of supply and demand"
- Holding was based on pre-Dodd-Frank language of CEA, making impact of ruling unclear
- Setback in CFTC's ongoing efforts to lower the standard to prove price manipulation

Significant Regulatory and Enforcement Matters: EFRPs

- Exchange for Related Positions ("EFRPs")
  - EFRPs are an exception from the requirement under the CEA and CFTC rules that all futures contracts be executed competitively
  - Privately negotiated futures transactions, executed subject to the rules of a futures exchange
- Barclays Fined $500,000 for recordkeeping violations: (September 2016)
  - CFTC alleged that Barclays violated regulations requiring FCM customers to create, retain and produce documentation relating to EFRP transactions
  - 1,358 confirmations relating to at least 3,717 metals and energy EFRPs
- CFTC and exchanges have placed a heightened emphasis on EFRPs
- Similar "recordkeeping" violations are common

Significant Regulatory and Enforcement Matters: Block Trading

- September 2016: CFTC entered into a settlement with JSC VTB Bank ("VTB", a Russian banking institution) and VTB Capital PLC ("VTB Capital," an American subsidiary) for fictitious and noncompetitive block trades in Russian Ruble/US Dollar futures contracts
- VTB and VTB Capital allegedly executed more than 100 block trades (notional value of $36 billion)
  - Trades were alleged structured to enable VTB to hedge its cross-currency risk at more favorable prices than were available to it
- VTB and VTB Capital consented to an order instituting proceedings under Section 6(c) and (d) of the CEA and imposing a $5 million civil penalty

Significant Regulatory and Enforcement Matters: Precious Metals Fraud

- August 2016: CFTC prevailed in fraud suit against Robert Escobio and his two companies (Southern Trust Metals, Inc. & Loreley Overseas Corporation)
- Federal court found that the companies perpetrated an "egregious" scheme to lure retail investors to purchase physical precious metals allegedly held in overseas depositories
  - Funds were actually channeled into offshore trading accounts, where they were used for margined derivatives trading
  - 78 customers, with losses totaling more than $1.5 million
- Court rejected claim that customer losses were attributed to falling market prices
- Escobio, Southern Trust & Loreley required to pay a combined restitution of $2.1 million and civil penalties of $880,000
  - All defendants permanently banned from commodity trading

V. REGULATORY DEVELOPMENTS

Regulatory Developments: Recent Directives

- **Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs** (January 30, 2016)
  - Regulatory Cap for Fiscal Year 2017.
    - "Unless prohibited by law, whenever an executive department or agency (agency) publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed."
    - " . . . the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero . . ."
  - Would not appear to bind independent agencies subject to Congressional oversight, but those agencies may nonetheless take cues from the new administration.

Regulatory Developments: Current Commission Composition

- Key federal regulators are acting under interim chairs.
- The regulators also do not have a full slate of commissioners.
- In addition, several high-ranking staff below the commission level have also left
  - Hiring of replacements has yet to begin
- These and other changes will likely bear on pace and volume of action by the agencies until they are more fully-staffed and aligned with the broader priorities of the new Administration and Congress.
- Effect on examinations and investigations currently "in the pipeline" less clear; will depend on specific facts and circumstances.

Questions?

David I. Miller
Partner, White Collar Investigations and Securities Enforcement
+1.212.309.6985
david.miller@morganlewis.com

Joshua B. Sterling
Partner, Investment Management
+1.202.739.5126
joshua.sterling@morganlewis.com

Jedd H. Wider
Partner, Investment Management
+1.212.309.6605
jedd.wider@morganlewis.com

David I. Miller

New York
T +1.212.309.6985
david.miller@morganlewis.com

David I. Miller practices in the areas of white collar, government and internal investigations, securities enforcement, and related complex civil litigation. He is a former federal prosecutor, senior national security litigator, and large-firm securities and complex commercial litigator. Previously, David served for five years as an Assistant US Attorney in the Southern District of New York (SDNY), over half that time as a member of the Securities and Commodities Fraud Task Force. He also served as a terrorism prosecutor with the Department of Justice in Washington, DC, as a Special Assistant US Attorney in the Eastern District of Virginia, as an Assistant General Counsel for the Central Intelligence Agency, and as a securities and commercial litigation attorney in private practice.

David I. Miller

- David has experience in white collar criminal defense; securities litigation and enforcement proceedings; corporate internal investigations; complex commercial litigation; compliance counseling; forfeiture litigation; and national security matters. David has conducted 10 jury and bench trials, several of which were multi-defendant trials, including securities and accounting fraud trials, with guilty verdicts secured for nearly all defendants on all counts. As an appellate advocate, David has briefed and argued several appeals before the US Court of Appeals for the Second Circuit.
- As an Assistant US Attorney in SDNY's Securities and Commodities Fraud Task Force, David was responsible for investigating and prosecuting a wide range of securities and commodities fraud offenses, including insider trading, investment adviser fraud, offering fraud, accounting fraud, options backdating, market manipulation, reverse mergers, credit default swap schemes, hedge fund improprieties, and Ponzi schemes. David handled multiple insider trading matters and was part of a team of prosecutors leading the government's investigation and prosecution of Operation Perfect Hedge, which has resulted in the conviction of more than 80 individuals for insider trading offenses since 2009. As part of his duties, he worked closely with, and coordinated parallel civil enforcement proceedings with, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, and other regulatory agencies. While David was an Assistant US Attorney, he also prosecuted numerous other criminal offenses, including bank, mail, wire, and tax fraud; credit card fraud and identity theft; money laundering; obstruction of justice and false statements; terrorism offenses; export control violations; and narcotics, firearms, and robbery offenses. Additionally, he has experience with asset forfeiture issues, having litigated several criminal and civil forfeiture proceedings.
- David previously served as a terrorism prosecutor with the US Department of Justice's Counterterrorism Section in Washington, DC, where he investigated and prosecuted complex terrorism-related cases through trial. He also served as a Special Assistant US Attorney in the Eastern District of Virginia, where he investigated and prosecuted white collar, firearms, narcotics, and gang-related offenses through trial.

David I. Miller

- David's career includes his time as an Assistant General Counsel for the Central Intelligence Agency, where he litigated and prosecuted cases on the CIA's behalf (including classified and state secrets matters); was the assigned CIA representative to the prosecution team in *United States v. I. Lewis ("Scooter") Libby* (D.D.C.); regularly advised senior CIA officials; and represented the CIA at high-level, interagency meetings implicating sensitive national security issues.
- Before joining government service in 2005, David spent six-and-a-half years as a securities, complex commercial and bet-the-company litigator with two large law firms in New York.
- David's experience in securities and commodities fraud, including his role as a securities litigator in private practice, greatly supplements our financial institution litigation and securities enforcement practices. His background is invaluable for clients—including broker-dealers, hedge funds, private equity funds, investment companies and advisers, banks, and public companies—facing risks of government investigation, regulatory enforcement, and related civil litigation, as well as other matters that require internal investigations, including Foreign Corrupt Practices Act compliance. To this end, David represents clients before DOJ, various U.S. Attorney's Offices, SEC, CFTC, FINRA and other self-regulatory organizations, as well as state regulators and enforcement authorities. He is also an asset for clients facing issues implicating national security, international clients doing significant business in the United States, and clients with privacy and cybersecurity issues

Joshua B. Sterling

Washington, DC
T +1.202.739.5126
joshua.sterling@morganlewis.com

Josh Sterling represents managers of private and public funds globally, including the sponsors of hedge funds, registered investment companies, and other pooled investment vehicles. He helps these clients develop and offer their products and services in the United States. Josh also assists managers of alternative investment strategies in structuring their derivatives activities in compliance with the Dodd-Frank Act and related US Securities and Exchange Commission (SEC) and US Commodity Futures Trading Commission (CFTC) requirements.

Joshua B. Sterling

- Josh counsels financial services clients on how their investment and trading activities may trigger requirements to register with the CFTC as commodity pool operators, commodity trading advisors, swap dealers, and introducing brokers. In addition, Josh regularly advises managers on regulatory, registration, and transactional matters affected by the Commodity Exchange Act, the Investment Advisers Act, and the Investment Company Act. He also represents clients in responding to examinations and inquiries by the SEC, the CFTC, and the National Futures Association.
- *The Legal 500 US* (2014) recognized Josh as an "excellent attorney…able to provide highly customized advice" in his practice areas.
- Before joining Morgan Lewis, Josh was a partner at another international law firm, where he was a co-leader of the derivatives group and a member of its investment management practice.

Jedd H. Wider

New York
T +1.212.309.6605
jedd.wider@morganlewis.com

Jedd H. Wider focuses on global private investment funds and managed accounts, particularly global hedge, private equity, secondary, and venture capital funds. As co-head of the global hedge 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 H. Wider

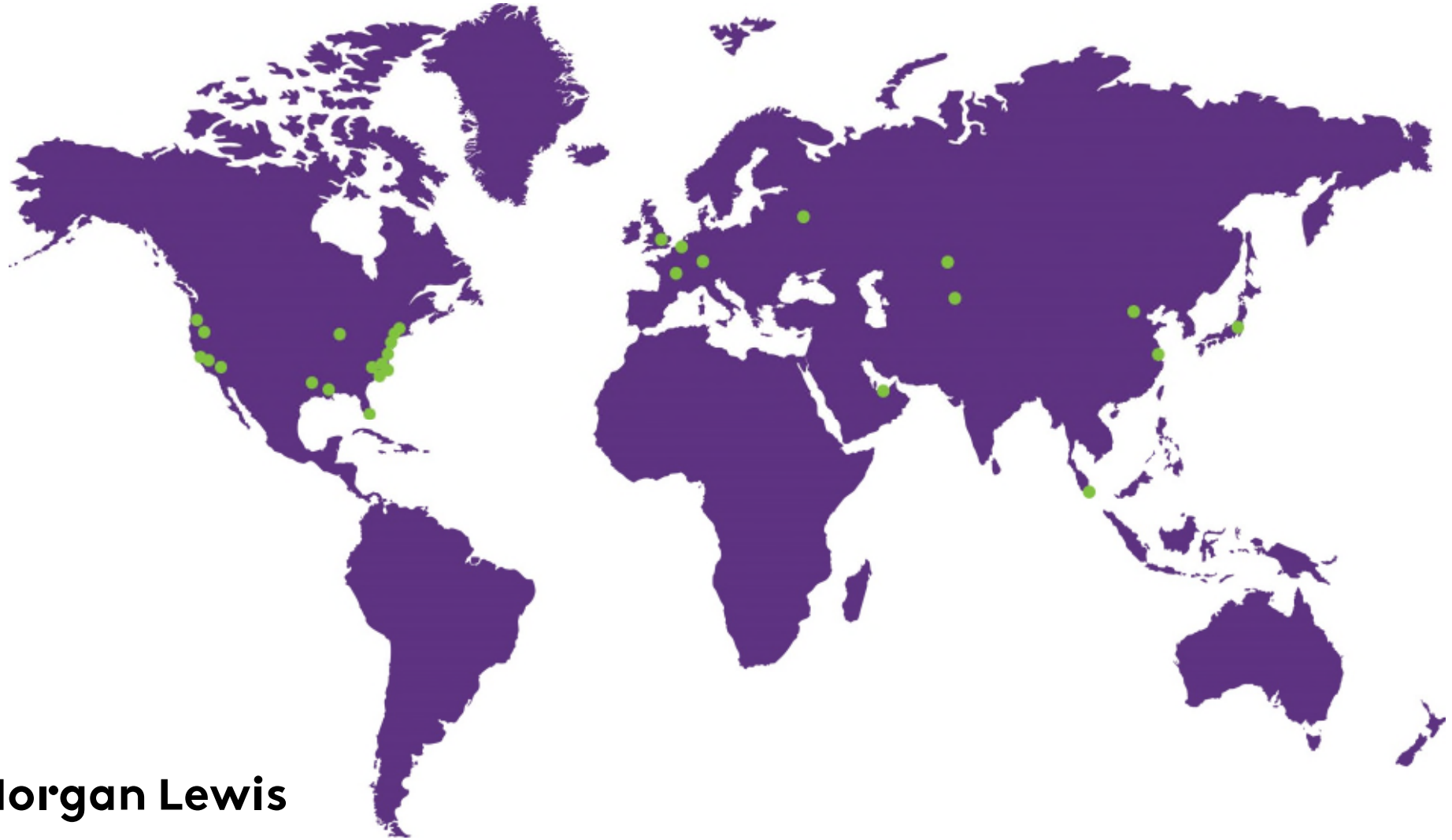
- Jedd concentrates on all aspects of bespoke fund products and arrangements including funds of one and managed accounts and regularly advises clients on all aspects of regulatory compliance.
- Members of the international media often seek out Jedd for his views on the hedge fund and private equity fund 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

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Almaty
Astana
Beijing
Boston
Brussels
Chicago
Dallas
Dubai
Frankfurt
Hartford
Houston
London
Los Angeles
Miami
Moscow
New York
Orange County
Paris
Philadelphia
Pittsburgh
Princeton
San Francisco
Santa Monica
Shanghai
Silicon Valley
Singapore
Tokyo
Washington, DC
Wilmington



Morgan Lewis

THANK YOU