



Morgan Lewis

**ADVANCED TOPICS IN
HEDGE FUND PRACTICES
CONFERENCE**

**Manager and Investor Perspectives
WEBINAR SERIES**

Track 6: Investment Strategies and Risks

Wednesday, May 26, 2021

www.morganlewis.com/2021hedgefundconference

ESG Investing

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Executive Summary

ESG is a hot topic – for both the investment community and the regulators

The SEC wants to act – (1) mandatory disclosure (of metrics and qualitative information) for issuers, (2) TBD for ESG funds

Challenges are many, including lack of standardized terminology and practices throughout the industry

- Alphabet soup of organizations have offered guidelines and standards, but purely voluntary reporting at this point
- Conundrum of how to require disclosure across varying industries – what is material for one is not for another, one-size-fits all approach is problematic

The SEC is organizing and gaining momentum: website, request for comment on climate change disclosure, climate and ESG task force, exam priorities, commissioner statements, risk alert expected imminently

ESG Industry Participants and Issues



Investors and Clients

Asking for more information about their investments and what issuers are doing to address the risks and issues raised by ESG factors.



Issuers

Grappling with how to be responsive to client demands and report ESG data when there is (in the United States) a lack of structure and common terminology to measure and describe ESG factors and risks presented by those factors.



Funds

Taking a wide variety of approaches to ESG investing – some relying on third-party ratings, others using proprietary research to implement investments strategies – both core ESG mandates and using ESG factors as a component of their strategies.

ESG Industry Participants and Issues



Industry Groups

Working to establish a prevailing voluntary reporting regime for issuers to follow in order to provide meaningful and comparable data (e.g., [SASB](#), [TCFD](#), [CFA](#)).



Index Providers

Establishing and using independent ESG ratings and rankings for years – with a lack of precise terminology or standard methods.



Regulators

Finding footing and responding to the developments in this space. With respect to the potential adoption of independent industry group standards, this raises third-party oversight questions.

Issues Related to Mandatory-Issuer ESG Disclosures



Lack of standard ESG measures, terminology, data, etc.



Different industry types and sizes implicate different ESG metrics and to different degrees – making a one-size fits-all solution challenging



Regulators don't fully understand all the issues and are having trouble finding direction on oversight



The conversation is becoming politicized (Gary Gensler's confirmation will likely tip the scales)

Issues Related to Mandatory-Issuer ESG Disclosures

Multiple Commissioner public statements taking different views on how to proceed – reflects tension in the industry

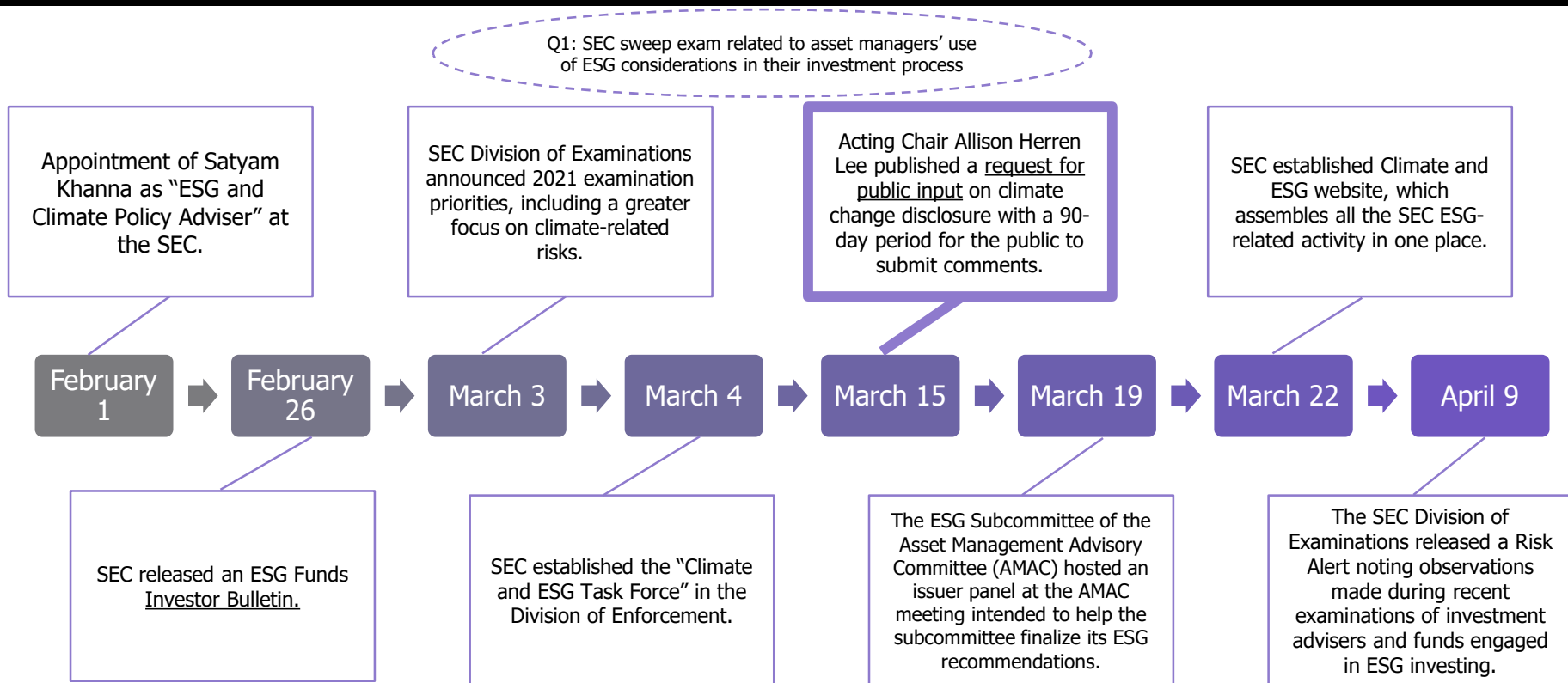
- E.g., **February 24**: Allison Herren Lee – Statement on climate disclosure
- E.g., **March 4**: Hester Peirce and Elad Roisman – joint statement on the SEC's enhanced focus on climate change efforts

Competing principles

- Disclosures should be limited to information that is material and useful to investors
- Regulators want a one-size-fits-all requirement that generates accurate, comparable, quantitative data across companies in all industry types and sizes
- Data should be presented with some qualitative context to account for these differences

Requirements should also be flexible enough to accommodate future developments and growth in this area

Q1+Q2 2021 SEC Activity



March 15: Acting Chair Allison Herren Lee's Request



The format of then acting Chair Allison Herren Lee's March 15 request is unique – not an RFI subject to notice and comment under the APA



Get the sense that then acting Chair Lee was attempting to push the ESG agenda forward quickly while she had the reigns.



The request is climate-focused as opposed to ESG generally; additionally, it is issuer disclosure focused (as opposed to fund disclosure).



It seems that the SEC is driving issuer disclosure as it recognizes that funds can only provide meaningful comparable disclosure about ESG investing if the information it is consuming from issuers is first comparable and standardized.

April 9 SEC Risk Alert

The Division of Examinations released a Risk Alert noting observations on deficient and effective practices of investment advisers and funds engaged in ESG investing.

Deficient Practices

- Disclosure issues
- Control issues
- Proxy voting claims vs. policies and practices
- Misleading or baseless marketing claims
- Weak compliance programs
- Compliance personnel

Effective Practices

- Clear and tailored disclosures
- Effective compliance programs
- Knowledgeable compliance personnel

Commissioner Peirce's Statements on the Risk Alert

April 12

ESG is not unique as compared to other investment strategies or approaches and noted that none of the observations included in the Risk Alert are ESG-specific.

Firms are not required to have in place ESG-specific policies and procedures, nor are firms required to designate ESG-specialized compliance personnel.

A firm's compliance personnel should be sufficiently knowledgeable in all aspects of a firm's business in order to oversee an effective compliance program.

April 14

The concept of a universal standard of ESG metrics would "constrain decision making and impede creative thinking."

Stands in opposition of Acting Director of Corporation Finance John Coate's recent statements that the SEC "can and should" lead the way in developing a standardized global framework for ESG.

EU/UK Sustainable Finance Disclosure Regulation



- Effective March 10, 2021, the EU Sustainable Finance Disclosure Regulation (SFDR) will apply directly to EU managers of private investment funds and EU portfolio managers of segregated accounts.
 - Extra-territorial application of SFDR is not wholly clear yet, but the European Commission has confirmed that financial market participants should comply with the obligations set out in the text of the SFDR.
 - Certain obligations under the SFDR apply to all asset managers whether or not they have an express ESG/sustainability focus; additional aspects will then apply to funds with such a focus.
 - The United Kingdom has decided not to onshore the SFDR, which means that the SFDR does not apply under UK law or indeed as part of the UK national private placement regime under the AIFMD.
 - The United Kingdom has announced that it is committed to matching the ambition of the European Union in ESG and sustainability as part of its own UK Green Finance Action Plan, and it is expected that the United Kingdom will however produce its own version of SFDR in the course of this year.

The DOL Weighs in...Again!

Trump administration DOL enacted a proposal determining that in making investment decisions, **a plan fiduciary must only consider pecuniary factors** (except in very limited circumstances).

In particular, the final rule interprets ERISA's fiduciary duties under Section 404(a)(1) with respect to investment decisions, with a focus on the duty of loyalty. It primarily does so by adding a requirement that investment decisions be based only on "pecuniary factors" except in very limited circumstances.

In this reframing of a fiduciary's duties, the proposal also imposes gatekeeping in the form of procedural and documentation requirements around those limited circumstances.

The rule does not presumptively consider ESG factors nonpecuniary. The DOL also clarified in announcing the rule that "ESG factors could be pecuniary in nature and that, in such cases, fiduciaries properly could consider the factors as part of their investment analysis."

Biden DOL Will Issue Its View (if Congress doesn't beat it)



- In March 2021, EBSA stated that until it releases further guidance, it will not pursue enforcement actions against any plan fiduciary based on a failure to comply with the duty of loyalty and prudence requirements set out in the ESG Rule with respect to an investment
- On May 20, 2021, President Biden issued an executive order asking the DOL to study whether to suspend, revoke, or replace the Trump rule
- On the same day, Democrats introduced legislation in the Senate and the House to amend ERISA to allow retirement plans to consider ESG factors and to authorize ESG-focused funds as a 401(k) plan's default

Investing in Digital Assets

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Crypto Hedge Fund Metrics – 2020



Estimated total AUM of crypto hedge funds globally increased to nearly \$3.8 billion in 2020 from \$2 billion the previous year.



The median AUM fund launch is \$1 million.



The percentage of crypto hedge funds with AUM over \$20 million increased in 2020 from 35% to 46%.



20% of hedge funds invest in digital assets.



The average AUM for crypto hedge funds increased from \$12.8 million to \$42.8 million, while the median AUM increased from \$3.8 million to \$15 million.



25% of hedge fund managers who are not yet investing in digital assets are considering it

Crypto Hedge Fund Strategies

Most Common Strategies:

- Quantitative
- Discretionary long/short
- Discretionary long-only
- Multi-strategy (11%)

Most Common Tokens:

- Bitcoin
- Ethereum
- Litecoin
- Chainlink
- Polkadot
- Aave

2% MF/20% performance fee most common – given fund size, MFs not always significant revenue source

Use of derivatives

Short-selling

Crypto hedge funds are also involved in cryptocurrency staking, lending, and borrowing

Investor Perspective



- Who is investing in crypto hedge funds?
- What are investors' primary concerns? Market hurdles?
- Special due diligence considerations?
 - Custody
 - Technology
 - Governance
- Disclosure
 - What type of disclosure is helpful to investors?
 - Regulatory disclosure considerations for fund managers that are NFA members

Opportunities and Risks for Investments in Consumer-Servicing Businesses

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Opportunities and Risks for Investments in Consumer-Servicing Businesses



- Consumer-servicing businesses present both opportunity in the post-pandemic world and risk under the new administration.
- Consumers are willing to adopt new technologies.
- Consumer protection is a watchword for this administration.
- Better opportunities coupled with more attention to compliance and risk management
- Three examples

Issues to Consider in Structuring and Making Co-Investments

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What is a Co-Investment?

What is a co-investment?

- A minority equity investment in a portfolio company made directly by a private fund investor together with, but not through, the private equity fund
- The investment is often in addition to the investment in the private equity fund sponsor.

Why do investors like co-investment transactions?

- Reduced or eliminated fees on co-investments
- Ability to select investments
- Increased exposure to certain investments
- Higher and quicker returns on investments
- Investor access to restricted opportunities
- Better understanding of sponsor's deal process

Co-Investment Structures

Portfolio Company Direct Investment

Co-investor contributes capital directly to the portfolio company in exchange for equity of the portfolio company.

Fund Investment Vehicle

Co-investor contributes capital to, and receives equity of, the entity used by the private equity fund to acquire and hold its portfolio company equity.

Co-Investment Aggregation Vehicle

Co-investor contributes capital to, and receives equity of, an investment vehicle managed by the fund sponsor into which all co-investment funds are pooled to acquire and hold portfolio company equity.

Single-Investor SPV

Co-investor contributes capital to, and receives equity of, a fund sponsor-managed special purpose vehicle (SPV) that acquires and holds portfolio company equity. If there is more than one co-investor, each co-investor comprises its own SPV.

Structuring Tax Considerations

- Taxable US investors are likely to prefer a pass-through vehicle, such as a limited partnership or limited liability company.

- Certain tax-exempt US investors may want to block “unrelated business taxable income (UBTI)” by using a corporation or other blocker structure. Blocker structures typically insert an entity (either a corporation or a limited liability company that makes an election to be taxed as a corporation) between the investor and the investment. They are often used by funds that have foreign investors.

Key Investor Objectives in Negotiating Co-Investments: Due Diligence

Sponsor's Due Diligence

- Legal due diligence summary
- Financial due diligence summary

Transaction Documents

- Underlying Purchase Agreement
- Disclosure Schedules
- Ancillary documents (e.g., management agreement, shareholders' agreement)

Other Due Diligence

- Regulatory
- Tax
- ERISA

Key Investor Objectives in Negotiating Co-Investments: Alignment of Co-Investor and Sponsor Interests

Co-investor negotiates with fund sponsor and has limited or no contact with portfolio company

Maintain as much alignment as possible with sponsor to provide protection of the co-investors' interests such as:

- Price
- Type of security
- Terms of investment
- Simultaneous exit
- Expenses

Require sponsor to take same actions on behalf of co-investor as on behalf of sponsor

Investments in separate investment vehicles make it more difficult to ensure alignment of interests, and ensure lead sponsor will govern co-investment vehicle in lock-step with its own fund vehicles

Key Investor Objectives in Negotiating Co-Investments: Limited Minority Protections

Minority protections depend on the structure of the co-investment and get increasing pushback from sponsors

Types of minority protections:

- MFN – ensure no other investor receives superior investment rights, but becoming very rare
- Preemptive rights
- Board observer/Board seat
- Information rights
- Consent rights

Side letters are common when the co-investor is a large public pension plan or investment authority and are becoming more common with other investors, especially in the context of a co-investment aggregation vehicle

Transfer/Exit Rights



- The general goal is to be tied at the hip with the Sponsor and to exit at the same time and on the same terms as the Sponsor.
- Transfer of investors equity
- Types of exit rights:
 - Drag-along right
 - Tag-along/Co-sale right
 - Registration rights

Market Trends in Co-Investment Transactions



- Fee Arrangements including broken deal expenses
- Backstopping the Equity Commitment
- Carrying Cost of Syndicated Equity
- Co-investment Fund Structuring vs. Direct Investments
- Sponsor Leverage

Investment Restrictions in the US and Europe

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Global FDI Trends

Increased scrutiny under existing FDI regimes

New FDI regimes, in particular in Europe and Asia

New regimes tend to be interpreted extremely broadly

Different approaches to protection of national security (critical infrastructure vs. sector neutral review)

Key technologies and key infrastructure are at the heart of FDI regimes

Update US



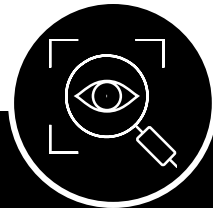
NAICS replaced by “critical technology”

- Difficulties persist in getting Department of Commerce to undertake the task
- New administration likely will continue to be slow while seeking multilateral agreements



Chinese money flows at record pace, exploiting FIRRMA loopholes

- Early stage funding at breakneck speed
- Fewer control rights for Chinese funding
- Impacting SWF funding across Asia



Congressional interest remains high but no consensus yet

- Adding ggriculture (proposed for 5 years in a row; never approved)
- Recent pullback on university contributions



- **EU FDI Screening Regulation**

- Notification
- Consultation
- Cooperation



Investors have to take a pan-European view

Key Issues for Investors

Increased
sensitivity

Type of investment

Type of transaction

Type of investor

Origin of investor

Size does not
matter

Critical jurisdictions

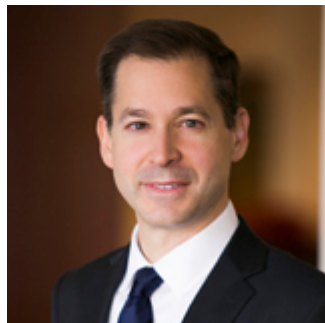
Extension of
timeline

Cross jurisdictional
approach

Lawyer Biographies

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Craig A. Bitman provides clients with a range of knowledge and skills in all aspects of employee benefits and executive compensation law, and he also practices in the firm's institutional investor and private investment funds practices. Craig leads the firm's employee benefits and executive compensation practice and has served as a member of the firm's Advisory Board.

Craig brings more than 20 years of experience to his practice, advising clients on all aspects of benefit plan design, implementation, and administration. Specifically, he counsels clients in the context of day-to-day administration, plan investments, mergers and acquisitions (M&A), and ongoing compliance. His advice extends to matters involving qualified and nonqualified deferred compensation plans, health and welfare benefit plans, equity compensation, and other types of arrangements. Craig's representations include both ongoing benefits advice and transactional matters.

His client roster includes a diverse mix of businesses, trusts, and individuals, including financial services companies, public pension plans, life insurance companies, transportation and logistics providers, entertainment companies, and multiemployer trust funds. He spends a significant percentage of his time devoted to assisting these entities and individuals in complying with the Employee Retirement Income Security Act's (ERISA) complex fiduciary duties.

A member of the National Association of Public Pension Attorneys, Craig often speaks and writes on topics affecting plan sponsors and service providers. His experience in the space has earned him recognition by *Chambers USA: America's Leading Lawyers for Business*, *Best Lawyers, PLC*, *Legal 500* and others.

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Giovanna M. Cinelli is the leader of the international trade and national security practice. As a practitioner for more than 30 years, she counsels clients in the defense and high-technology sectors on a broad range of issues affecting national security and export controls, including complex export compliance matters, audits, cross-border due diligence, and export enforcement, both classified and unclassified.

She handles complex civil and criminal export-related investigations and advises on transactional due diligence for regulatory requirements involving government contracts, export policy, and compliance, as well as settlement of export enforcement actions before the US departments of State, Commerce, Treasury, and Defense, and related agencies. Giovanna has conducted dozens of export investigations and has negotiated six consent agreements before the Department of State. She advises clients on matters before the Committee on Foreign Investment in the United States (CFIUS), and addresses mitigation requirements that may apply as part of CFIUS clearances for cross-border transactions. Giovanna is a member of the Morgan Lewis CFIUS working group.

Additionally, Giovanna has developed and assisted clients with the implementation of business-related strategies with adherence to strict requirements addressing US government national security and critical infrastructure concerns, as well as Foreign Agents Registration Act (FARA) requirements.

Giovanna serves as an expert witness on export issues affecting litigations and arbitrations, both in the US and abroad, involving controlled goods, technologies, data, and services. Her testimony has addressed complex licensing and compliance issues related to the conduct of trials and arbitration proceedings both in the United States and globally, and she has been called to testify as an expert witness on matters affecting compliance with the International Traffic in Arms Regulations and the Export Administration Regulations. She has addressed the challenging issues associated with the extraterritorial application of US export laws and regulations within litigations and arbitrations, and has assisted clients when navigating the conflicting requirements these laws may create.

Giovanna regularly speaks and writes on international arms trade, technology transfer, national security cross-border requirements, and export issues. She has participated in panel discussions related to CFIUS and technology transfer hosted by the Center for Strategic and International Studies and the Council on Foreign Relations. She has appeared on CNN's "Burden of Proof" and MSNBC's "Hardball with Chris Matthews" as an expert in international technology transfer, arms exports, and related national security issues. As a member of the Defense Trade Advisory Group for nearly two decades, Giovanna engages regularly with the Department of State on matters affecting defense trade. She was a member of the Regulations and Procedures Technical Advisory Committee and is in her third term as a member of the Department of Commerce's Virginia/DC District Export Council.

Concurrent with her private practice, Giovanna served as a Naval Reserve intelligence officer, where she specialized in Soviet-era submarine platforms, national security, and intelligence issues. She is fluent in French and Italian, and a violinist with the Washington Opera Society.

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Christopher J. Dlutowski represents institutional investors—including public and private pension plans, family offices, sovereign wealth plans, universities, endowments, and funds of funds—on their investments in private equity, hedge, venture capital, private debt, real estate, infrastructure, hybrid, and other private funds, funds-of-funds, managed accounts, co-investments, and direct investments, and on governance and compliance issues. Christopher also counsels private investment funds—including US domestic and offshore private equity funds, hedge funds, and funds-of-funds—and investment management firms on the formation and structuring of funds, trading and other investment activities, capital raising, registration and other regulatory issues, and ongoing operations.

Christopher has more than 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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Nicholas M. Gess serves clients by providing strategic advice which bridges the gap between law and policy, state and federal government investigative, enforcement, and regulatory actions and their impact on business. He advises clients on how to achieve results with governmental agencies and how to manage the risks of government action, particularly in the multistate, multi-agency and fraught-with-parallel proceedings environment where state enforcement authorities conduct parallel investigations with federal authorities such as the CFPB, DOJ, and the FTC.

Prior to joining the firm, Nick served as a member of Attorney General Janet Reno's senior staff and as an Associate Deputy Attorney General (ADAG) at the US Department of Justice. As an ADAG, Director of Intergovernmental Affairs, and Counsel, Nick was a senior adviser to Reno and then Deputy Attorney General Eric H. Holder, Jr., and he was the Department of Justice official responsible for building and maintaining the administration's relationships with state and local elected officials, and law enforcement, particularly the state attorneys general. He served as the Justice Department's primary liaison with the White House Domestic Policy Council, and he has also worked extensively on significant legislative and appropriations matters.

From 1987 to 1994, Nick served as an Assistant US Attorney in Portland, Maine, where he supervised many significant and complicated criminal investigations and tried many complex cases in federal court. During his time at the Department of Justice, Nick served as an instructor for the department's Office of Legal Education and spoke widely on criminal justice topics, including significant on-the-record media experience with national, elite, and local media.

Nick was the first Maine prosecutor appointed to head a joint federal-state-local task. From 1983 to 1986, Nick was an Assistant Attorney General in the Maine Office of the Attorney General where he was responsible for complex criminal cases involving homicide, fraud, and other criminal matters and served as general counsel of the Maine Criminal Justice Academy. From 1981 to 1983, Nick served as an assistant district attorney in Cumberland County (Portland), Maine, where he tried criminal cases and handled matters on appeal.

Nick is a member of the Core Group of the Columbia Law School State Attorney General program.

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Miranda Lindl O'Connell represents fund of funds, private foundations, social entrepreneurs, pension plans and other institutional investors in private investment fund transactions. Miranda counsels clients regarding the investment in and secondary sale of interests in private investment funds of 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 entrepreneurs, private foundations, and 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. Miranda currently serves as deputy office managing partner of the firm's San Francisco office.

Miranda also counsels clients in the structuring, formation, and governance of US domestic and international private investment funds. She represents clients in the formation of funds of funds, funds sponsored by 501(c)(3) entities, corporate governance funds, venture funds, real estate funds, co-investment funds, and private equity funds.

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.

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Christina Melendi's corporate and securities practice focuses on representing US and global public and private corporations and private equity sponsors and their portfolio companies in mergers and acquisitions (M&A), investments, divestitures, asset purchases, minority investments, joint ventures, private and public equity and debt financings, securities offerings, and other general corporate matters. She also advises institutional and mezzanine investors on equity rights for co-investment transactions with private equity sponsors and restructuring and workout transactions. Additionally, she currently serves as Morgan Lewis's firmwide hiring partner, co-leader of the firm's retail and eCommerce industry initiative, and deputy leader of the firm's New York corporate and business transactions practice.

Christina assists companies to raise capital in the public markets, including initial public offerings and secondary offerings, and counsels clients on SEC reporting and securities law disclosure, annual meeting and proxy related issues, corporate governance matters, and stock exchange listing requirements.

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Eamonn Moran regularly handles matters in the financial services industry, including those pertaining to consumer financial services, consumer protection, fair lending, the Dodd-Frank Act, regulatory compliance, and the Consumer Financial Protection Bureau (CFPB), where he previously served as counsel in the Office of Regulations. Eamonn helps lenders, fintech and regtech companies, marketplace lending platforms, payments companies and systems, card issuers and networks, banks, investors, and other financial services providers navigate issues arising under state and federal financial services laws. He has also handled matters involving mobile banking, mobile payments, mobile wallet products and services, and bank-fintech partnerships. Eamonn serves on the firm's fintech and digital banking industry teams.

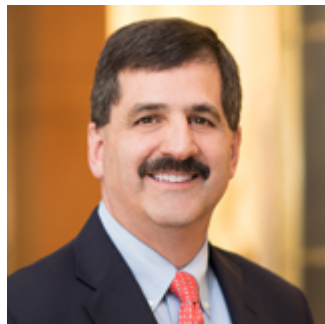
Previously, Eamonn served as counsel in the Office of Regulations at the CFPB. He served as part of a number of rulemakings affecting the consumer financial services industry including the Ability-to-Repay/Qualified Mortgage Rule under the Truth in Lending Act (TILA) (Regulation Z) and Integrated Mortgage Disclosures Rule under the Real Estate Settlement Procedures Act (RESPA) and TILA (Regulations X and Z). Eamonn also provided the public with guidance on the CFPB's regulations including RESPA, TILA Open-End (Regulation Z), Electronic Fund Transfer Act (Regulation E), and Interstate Land Sales Act. He was also a member of the Bureau's Small Dollar Lending Working Group.

Prior to joining the CFPB, Eamonn served as a senior attorney advisor at the US Department of the Treasury, where he worked in the Office of the Special Inspector General for the Troubled Asset Relief Program. During his time at the Treasury, he drafted significant sections of quarterly reports for Congress, drafted congressional testimony, and focused on the rescues of AIG, General Motors, Chrysler, and Ally Financial (formerly GMAC) among other TARP investments. Eamonn also advised his office on the implementation of the Dodd-Frank Act with respect to mortgage servicers, financial institution designations and regulation, capital requirements, and capital market activities.

Before joining the Treasury, Eamonn was a counsel for the Congressional Oversight Panel for the Troubled Asset Relief Program, an independent panel within the United States Senate which was chaired by now Senator Elizabeth Warren and charged with reviewing the state of financial markets in conjunction with the oversight of TARP pursuant to the Emergency Economic Stabilization Act of 2008. While there, he investigated all aspects of the Treasury's TARP actions including the legality of its use of funds and the impact of TARP on financial institutions and markets.

Eamonn began his career as a finance/real estate associate at a New York City law firm and as a research associate at the Center for Banking and Finance at the University of North Carolina School of Law where he conducted extensive legal research and wrote legal memoranda relating to government investment in banks.

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Ken Nunnenkamp represents clients in international trade and national security matters before United States federal courts and government agencies, including the US departments of State, Commerce, Homeland Security, Defense, and Treasury. His practice involves internal investigations and disclosures, including voluntary disclosures and responding to government demands, as well as federal court defense against government actions. He also advises on compliance counseling and training, transactional due diligence—including both domestic and cross-border transactions—and statutory submissions to US government agencies.

With more than 30 years of litigation and investigation experience, including time as a JAG Officer in the US Marine Corps, Ken routinely conducts internal investigations for clients, including investigations into actual or potential compliance issues arising under the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), Office of Foreign Assets Controls Regulations, US Customs Regulations, and Foreign Trade Regulations. Additionally, Ken works with clients to understand each business's scope and needs in establishing and improving trade and sanctions compliance programs, including the creation and auditing of company export management systems of all sizes.

Ken provides comprehensive investigation management and execution, from the preparation of an investigation plan, to the preparation, filing, and resolution of voluntary and directed disclosures of US government investigations and subpoenas related to export and import matters. His investigations work regularly involve fact gathering, witness interviews, board of directors counseling, preparation of reports for submission to US government agencies, and settlement of enforcement actions.

Ken also assists clients facing trade and national security enforcement actions from agencies including the US departments of Justice, Homeland Security, Federal Aviation Administration, and Customs, representing them in civil enforcement matters and working with criminal counsel when necessary. He has litigated such matters before the International Trade Commission, US district courts, and other US administrative agencies.

On the transactions side, Ken works with counsel in handling trade due diligence and preparing transactions for review by the Committee on Foreign Investments in the United States (CFIUS), and performing due diligence, assessment, and examination of often latent issues. He also works with both buyers and sellers on public and private transactions in the million- and billion-dollar range. Ken's experience with CFIUS includes almost every industry and transactions from more than 15 countries, including China, Germany, Japan, the United Kingdom, Canada, and Indonesia.

Ken also has aided companies with responses to various Executive and Congressional information requests and filings, including those under section 332(g) of the Tariff Act, BE-13 filings with the US Department of Commerce, or ITAR registrations and 122.4 notices with the US Department of State.

Ken has written numerous articles and chapters, and lectures regularly on CFIUS, export investigations, and export control and compliance issues. He serves as a resource for multiple publications on export, economics, and national security issues. Ken maintains an active pro bono practice, representing veterans before the Board of Veterans Appeals, the US Court of Appeals for Veterans Claims, the US Court of Appeals for the Federal Circuit, and various military discharge review boards. He previously served in the US Marine Corps as a JAG officer.

Ken is the leader of the Morgan Lewis CFIUS working group.

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The co-leader of Morgan Lewis's global private funds practice, Courtney Nowell advises global institutional investor clients on the terms of their inbound and outbound investments, including into private equity and other co-mingled open-ended and closed-ended investment funds. She has over 20 years' experience drafting and negotiating the terms of investment agreements and side letters for clients investing into leveraged buyout, venture capital, distressed debt, special opportunity, real estate, hedge, energy, infrastructure, and credit funds. She also represents investors in opportunity and sidecar funds, co-investment funds and with the drafting and negotiating of funds of one and other bespoke strategic private investment partnerships.

Courtney's clients include sovereign wealth funds and major public and private pension funds, as well as foundations, endowments and family offices.

Before joining Morgan Lewis, Courtney was a partner at another global law firm and a member of its global board. She also worked at a national accounting and professional services firm where she advised on tax rulings and tax legislative developments.

Courtney is a former member of the board of directors of a foundation that supports a legal fellowship program that awards fellowships to law students who demonstrate a commitment to public service and public policy.

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Sheryl Orr counsels clients in the structuring and negotiation of US and cross-border mergers, acquisitions, dispositions, carve-out transactions, joint ventures, complex internal reorganizations, and other strategic business transactions. Sheryl's experience representing both strategic and financial buyers and sellers in the financial services and life sciences industries enables her to help her clients successfully achieve their business goals while navigating and solving structuring issues, any regulatory approval landscape and potential customer, employee and third party consents. She is the deputy leader of the firm's mergers and acquisitions practice and is a co-leader of the firm's technology industry group and fintech initiative.

Her clients include broker-dealers, investment advisers, asset managers, trust companies, and other financial institutions, as well as both branded and generic pharmaceutical companies and private equity firms. Sheryl serves on the firm's ML Women steering committee.

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Michael M. Philipp counsels financial services clients in futures and securities transactions. He also advises them in derivatives regulation, legislation, compliance, and enforcement matters. United States and foreign exchanges and clearing organizations, banks, investment managers, proprietary trading firms, brokerage firms, and end users turn to Michael for guidance in connection with exchange-traded and over-the-counter derivative instruments. He also represents foreign exchanges and clearinghouses in their US offerings of futures and equity options products and derivatives clearing activities.

Michael has experience working with clients on issues related to the Dodd–Frank Wall Street Reform and Consumer Protection Act, as well as US Commodity Futures Trading Commission (CFTC) registration and compliance-related issues. These issues include trade practices, swap reporting and clearing, registration of swap execution facilities (SEFs), futures exchanges, clearing organizations, and swap data repositories (SDRs); retail and eligible contract participant forex (ECP FX) transactions; and futures commission merchant (FCM), swap dealer, commodity pool operator (CPO) and commodity trading advisor (CTA) registrations and compliance. Michael has experience in conducting internal compliance investigations, as well as representing clients in exchange and CFTC inquiries and proceedings, including matters involving allegations relating to disruptive trading practices, such as spoofing and market manipulation. He also provides assistance to firms that are negotiating bilateral and cleared swap documentation.

Before joining Morgan Lewis, Michael worked as an in-house attorney for the Chicago Mercantile Exchange (CME). There he served as counsel to the CME's regulatory trade practice, compliance, and arbitration committees.

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Christina Renner concentrates her practice on European Union and German merger control, competition, and antitrust law, with experience in cartels and general behavioral matters, abuse of dominance, and EU state aid laws. Christina regularly advises clients concerning mergers reviewed by the European Commission and the German Federal Cartel Office, as well as the French, Austrian, and Belgian competition authorities. She has experience handling multi-jurisdictional filings for a variety of clients and regularly advises on complex competition compliance matters.

Christina also represents diverse international clients in antitrust investigations before the European Commission and other national competition authorities, including in litigation before European courts.

Christina's work spans a variety of industries, including transportation, energy, life sciences, as well as retail and ecommerce. She has an established practice in EU regulatory matters in these areas.

Additionally, Christina is active in the German legal community in Brussels and is currently the co-chair of the Brussels regional section of the prestigious Studienvereinigung Kartellrecht (Member Association of German speaking antitrust lawyers).

Before joining Morgan Lewis, Christina was a partner in and head of the Brussels office of a French boutique law firm. She is fluent in German, English, French, Spanish, and Italian, with a working knowledge of Dutch.

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Celia A. Soehner focuses her practice on counseling public companies and their boards with respect to corporate governance, federal securities, stock exchange, shareholder engagement, and executive compensation matters. Drawing on her previous tenure as an attorney-advisor with the US Securities and Exchange Commission (SEC) in the Division of Corporation Finance, Celia has experience with securities disclosure issues that impact public companies' ongoing reporting obligations and proxy-related matters that impact public companies and their officers and directors. She also advises companies in connection with public capital raising transactions, including through IPOs, secondary offerings, and debt offerings. Celia currently serves as the deputy leader of the firm's capital markets and public companies practice.

In keeping with Morgan Lewis's commitment to serving the public good, Celia serves as chair of the Pittsburgh office pro bono committee. Celia also is actively involved in the local arts community, including through her service on the board of directors of the Pittsburgh Opera.

A central tenet of Celia's practice is ensuring that companies and their boards are abreast of the latest disclosure, governance, and regulatory issues and trends. To this end, Celia often presents at events and webinars on topics relating to SEC initiatives and corporate governance and executive compensation hot topics, and helps to lead the Morgan Lewis Public Company Academy.

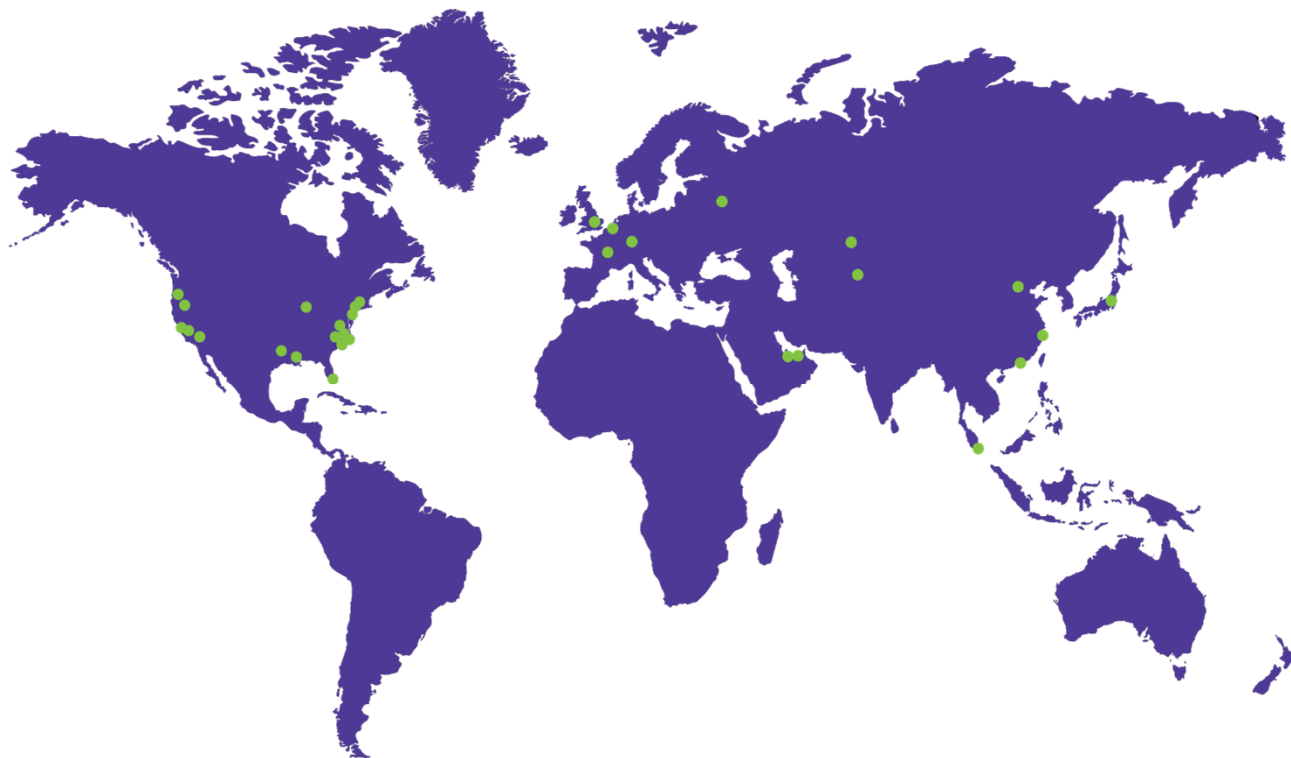
While at the SEC, Celia received the 2011 Chairman's Award for Excellence, and was a member of the Rule 14a-8 Shareholder Proposal Taskforce.

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Abu Dhabi
Almaty
Beijing
Boston
Brussels
Century City
Chicago
Dallas
Dubai
Frankfurt
Hartford
Hong Kong
Houston
London
Los Angeles
Miami
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