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ADVANCED TOPICS IN HEDGE FUND PRACTICES CONFERENCE

Manager and Investor Perspectives

WEBINAR SERIES

Track 7: International Issues

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Accessing Non-US Institutional Capital: Co-Investment and Direct Investment Opportunities and Legal Considertions

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Recent Trends: Who Are the Key Players?

- **Categories of Non-US Institutional Investors:**
  - Sovereign wealth funds and (SWFs) strategic governmental entities
  - Asset managers and private banks
    - Proprietary capital
    - Private clients
    - Managed accounts and investment funds
  - Family offices
  - And in a number of cases: all of the above…
- **Accessing capital from these investors is governed by the local laws and regulations to which they are subject. In most cases, and outside the EU, there are very limited passposting opportunities; as such, an ad hoc marketing approach must be implemented**

Recent Trends: Who Are the Key Players?

- **SWFs and governmental entities are expanding their mandate to include, in addition to preserving and growing national wealth:**
  - Diversifying the economy (for GCC-based SWFs, away from oil and gas)
  - Transfer and licensing of technology
  - Employment considerations
  - Supporting geopolitical initiatives

SWFs: In Numbers

$7.84 trillion
SWF assets under management (AUM) as of September 2020, up 98% over the past decade

24%
Median target allocation to alternatives of SWFs in 2020. Many of the largest funds are currently substantially below target

80bps
Premium over average private equity return achieved by SWFs in vintages 2011-2017

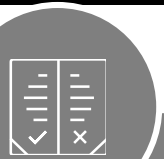
19
Number of SWFs with an ESG policy (out of 98), although these funds control 54% of SWF AUM

50%
Proportion of SWF private capital fund commitments going to funds larger than $1bn; 22% of commitments are to $5bn+ funds

1,700
Number of employees at Abu Dhabi Investment Authority, the most of any sovereign fund

Source: *Preqin Sovereign Wealth Funds in Motion* (May 2021)

Legal Issues:
Direct Investments by Non-US Institutional Investors



- Non-US institutional investors, particularly SWFs, in addition to investing through the traditional LP/GP model, are also making:
  - Direct investments, particularly into companies or sectors that complement strategic initiatives adopted by the nations they represent (for example, technology, manufacturing, and defense)
  - Bespoke investment platforms that aggregate capital from large alternative investment funds and one or more non-US institutional investors
  - Opportunistically: for example, SPACs
- Direct investments by non-US institutional investors trigger a multitude of cross-border legal issues including domicile of investment vehicles, governance, US regulations including CFIUS, sovereign immunity, tax planning, and marketing of securities considerations

Direct Investments: Overview

- Principal investment documentation is typically on the NVCA form, which allows new investors to quickly determine any unique treatment
- Companies offering direct investment opportunities are often in early seed or series stage financing, and side letters are often used strictly for special information rights or other board observer rights
- For non-US institutional investors, the side letter often plays a more expansive role, and it is important to provide the company an early preview of what will be required

Direct Investments: Side Letter Considerations

- MNPI: Does the non-US institutional investor have internal reasons to limit the inflow of MNPI from the Company?
- Regulatory Requirements:
  - What regulatory filings might the Company need to make now or in future rounds, and what level of detail will be required specific to the investor base?
  - How is the Company currently regulated, and how might that change over time?
  - What CFIUS filings might apply to this investment or further investments down the line?
  - MNTI: Can the Company commit to not providing material nonpublic technical information (MNTI) to its non-US institutional investor?
  - Did the Company make the typical AML, Sanctions, FCPA and other detailed compliance with law representations as provided in the NVCA?
- Other investor-specific policy/compliance requirements

Co-Investments: Threshold Considerations

Non-US investors have increasingly looked to co-investments to increase their exposure to private equity and similar illiquid investments beyond their LP investments in private funds

These investments come with additional legal risk and regulatory scrutiny:

- **Aggregation of interest**: Non-US investors and Sponsors need to understand how an investor's indirect and direct exposure via the fund and the co-investment vehicle will be aggregated in the eyes of the applicable regulator (CFIUS, FCC, SEC, Federal Reserve, etc.), as this impacts all parties
- **Tax planning**: Taking on additional exposure to any particular US asset must be studied and diligenced from a tax perspective
- **Substantive role**: Multiple regulators will scrutinize the nature of the influence; in some cases, percentage thresholds matter, but the substantive role (active vs. passive) also matters

Co-Investments: Techniques to Set the Table

- Private fund sponsors that open up co-investment opportunities typically know their co-investment partners well or want to strengthen relationships
- Co-investment "clubs" with pre-set terms for participation
- Aggregation structures vs. "direct" co-investments
- Precedent co-invest vehicle documentation can be utilized to reduce uncertainty as to how a co-investor will be treated
- Existing side letters can be utilized to align on the investor's policy, regulatory, and tax requirements

Co-investments: Issues Regarding Diligence, Documentation, and Negotiation

- Scope for diligence of the target or asset and reconciling different interests during the process
  - Investors: desire, need for transparency, capability, bandwidth
  - Sponsors: need for speed of execution, control over both the process and information flow
- Scope for changes in the co-investment vehicle operating agreement depends on various factors
  - Investor demand
  - Continuum of capital raising and/or closing of underlying transaction
- Side letters: benefits and burdens
- For investors, the process may entail the input of many internal stakeholders and external advisers–patience and understanding are key

Wrap-Up

- Investment opportunities (ESG, etc.)
- Capital raising requires familiarity with securities regulations
- Other panels to cover raising money from UK, EU, Asia, and MENA

Asia Funds Landscape

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Asia Funds Landscape

- Statistics show that before the COVID-19 pandemic investors had been moving away from hedge funds globally in favor of private equity, real estate, and venture capital. This trend has reversed to a certain extent and inflows to hedge funds have picked up globally in the last 12 months.
- The Eurekahedge Asian Hedge Fund Index was up 17.64% year-to-date as of December 2020. The MSCI AC Asia Pacific IMI gained only 12.23% in 2020. Eurekahedge reported that in 2019 Asian hedge funds in their index posted a 10.12% return. That index had been down sharply in the first quarter of 2020 due in part to the market disruption caused by the spread of COVID-19.
- Also according to Eurekahedge, the performance of the Eurekahedge Japan Hedge Fund Index and the Japan Long/Short Equities Index were both positive for the first quarter of 2021 although April showed a correction of just under 1.0%. A study by WoldScientific.com of Japanese hedge fund results between 2000 and 2018 showed that these hedge funds outperformed the Japanese equity and fixed income markets by a significant margin during that period.

Asia Funds Landscape

- US fund managers have shown recently to be more willing to offer alternative fee structures than have their Asian and European counterparts. The EY study showed that 61% of Asian hedge managers indicated that they are not considering alternative fee arrangements, as opposed to 22% of US hedge fund managers.
- The global hedge fund industry has witnessed a trend of declining management and performance fees over the last decade. Writers have speculated that mediocre returns over recent years along with increasing competition within the industry, tighter regulation, and lower available margin are some key factors that have contributed to this trend. Investor experience during the last 10 years since the global financial crisis has resulted in more disintermediation within the hedge fund industry in Asia and, as a partial result, many institutional investors have set up funds-of-one or SMAs with hedge fund managers directly.

Asia Funds Landscape

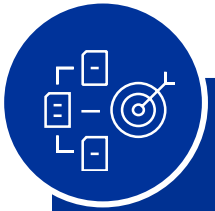
- Eurekahedge reported that currently of the 12,669 live hedge funds in its database, the five most popular locations for running a global hedge fund strategy are the United States (50.7%), the United Kingdom (22.7%), Switzerland (7%), Hong Kong (5%), France (3.2%), Luxembourg (3%), and Singapore (3%).
- Hedge fund strategies that had the most gains in the last year were long/short equity, arbitrage, and macro. Asian fund performance was very strong. AsianInvestor.Com reported that the region's performance gain in 2020 was higher than gains for hedge funds based in Europe and the US. The pandemic also resulted in liquidations. Hedge fund research and data firm *PivotalPath* indicated that 79 funds closed in 2020 as compared to 66 in 2019.
- We have noticed that a number of hedge fund strategies that lost favor in the past have regained new following. This is true in Asia as well. For example, we have seen a number of macro fund and quantitative trading fund launches this year. Cryptocurrency and other digital funds have been a strong contributor to this trend. However, according to a recent EY study, US hedge funds received a higher percentage of subscriptions for new strategies and products than have similarly focused funds in Asia and Europe. The EY study mentioned earlier indicated that only 6.0% of subscription in-flows during 2020 for Asian hedge fund managers were for new products. The study also observed that hedge fund managers in Asia tend to be smaller organizations that focus on a core strategy, so they often will offer only one flagship fund.

Japan Update: International Financial Hub Initiative

- The FSA published the "International Financial Hub Initiative" on April 8, 2021.
- Under these Japanese government initiatives, five policies are proposed for foreign asset managers as a package through cross-ministerial collaboration.

Policy	Measures
Tax Policy	Revision/clarification of corporate, inheritance, and income tax
Regulatory Policy	(i) one-stop English services for application and registration (ii) introduction of simplified market entry procedures
Residence Status	(i) special immigration measures for newly entering asset managers (ii) for highly skilled professionals, relax employment requirements for domestic helpers and improve convenience for working spouses
Company Setup and Livelihood Support	provide one-stop support services without a fee in connection with setting up a company as well as a livelihood (such as education, medical, and housing)
Dissemination of Information	Disseminate information and enhance appeal through a dedicated website and contact points of diplomatic missions

Japan Update: English Application and New Business Categories



- **From January 2021, the FSA:**
  - Established the "Financial Market Entry Office"
  - Implemented the amended regulations concerning English application and supervision
  - Started receiving applications in English for business registration
  - Initiated supervision and inspection in English
- **Facilitate overseas asset managers' entry**
  - Pre-registration entry system (temporary measures up to five years) for foreign asset managers that are licensed by foreign authorities with decent track records in specified foreign countries and that manage assets contributed by foreign investors
  - Simplified entry system for fund managers that manages assets for offshore qualified professional investors

Japan Update: Corporate Governance Code/ Guidelines for Investor and Company Engagement

- **The FSA published "Revisions of Japan's Corporate Governance Code and Guidelines for Investor and Company Engagement" on April 6, 2021.**

- **The major points of parts of the proposed revisions of the Code and the Guidelines are:**
  (1) Enhancing Board Independence
  (2) Promoting Diversity
  (3) Attention to Sustainability and ESG
  (4) Other Major Points (e.g., promote the use of electronic voting platforms and disclosure in English at Prime Market listed companies)

Japan Update: Recent Filing Practice

- **Electronic Filing**
  - Regulators accept to receive:
    - a notification without affixing a company seal
    - an affidavit by PDF first, followed by the original of the affidavit later
  - So far, no e-signature available that is accepted by regulators and easily used by foreigner
- **FEFTA Filing (Fully Implemented on June 7, 2020)**
  - Prior notification is manageable but onerous
  - Ownership ratio is not equal to voting rights ratio
  - See more cases in which SWFs enter into an MOU with the Ministry of Finance

Singapore Update: Singapore Variable Capital Company

- VCC is governed by the Variable Capital Companies Act, administered by the Accounting and Regulatory Authority of Singapore (ACRA)
  - VCC Act and related subsidiary legislation have been operationalized since January 14, 2020
- VCC structure can only be used as a fund vehicle for open-end or closed-end funds. VCCs can adopt an umbrella structure–multiple subfunds with different investment strategies and objectives, investors and segregated assets and liabilities, or created as a standalone
- Fund tax incentives under sections 13R and 13X of the Income Tax Act are available and will be granted at the VCC level to exempt qualifying investment income from tax. The conditions under the tax incentives are assessed on the umbrella VCC, regardless of the number of subfunds
- MAS launched the VCC Grant Scheme (VCCGS) under the Financial Sector Development Fund to co-fund up to 70% of qualifying expenses paid to Singapore-based service providers for work done in Singapore in relation to incorporation or registration of a VCC, capped at a maximum of S$150,000 per VCC for up to three VCCs

Singapore Update: MAS Guidelines on Environmental Risk Management (Asset Managers)

- MAS Guidelines on Environmental Risk Management (Asset Managers) were issued on December 8, 2020. Transition period of 18 months to implement the Guidelines (by June 8, 2022).
- Applies to all licensed fund managers, REIT managers, and RFMCs, but not to asset managers that do not have discretionary authority over the investments of the funds
- Sets out sound environmental risk management practices that asset managers can adopt. Implementation would be commensurate with size and nature of the asset manager's activities, including investment focus and strategy of its funds
- Board and senior management should maintain effective oversight of the environmental risk management and disclosure, and oversee integration of environmental risk into the investment risk management framework
- Different sets of responsibilities for the board (or a delegated committee) vs. senior management
- Asset managers should embed relevant environmental risk considerations in their research and portfolio construction processes if they have assessed them to be material. Asset managers should also evaluate the potential impact of relevant environmental risk on an investment's return potential. Guidelines provide examples of how to consider materiality of environmental risk with respect to different asset classes
- Asset managers should put in place appropriate processes and systems to monitor, assess, and manage the potential and actual impact of environmental risk on individual investments and portfolios on an ongoing basis
- Stewardship and disclosure

Singapore Update: MAS Guidelines on Individual Accountability and Conduct

- MAS Guidelines on Individual Accountability and Conduct were issued on September 10, 2020, with an effective date of September 10, 2021
- MAS also considered the UK's Senior Managers and Certification Regime and Conduct Rules, HK's Managers-in-Charge/Management Accountability Initiative Regime, and Australia's Banking Executive Accountability Regime.
- Applies to financial institutions, including licensed fund managers and registered fund management companies (RFMCs)
- Guidelines focus on five accountability and conduct outcomes that financial institutions should achieve:
  - Outcome 1: Senior managers responsible for managing and conducting the FI's core functions are clearly identified
  - Outcome 2: Senior managers are fit and proper for their roles, and held responsible for the actions of their employees and the conduct of the business under their purview
  - Outcome 3: The FI's governance framework supports senior managers' performance of their roles and responsibilities, with clear and transparent management structure and reporting relationships
  - Outcome 4: Material risk personnel are fit and proper for their roles, and subject to effective risk governance, and appropriate incentive structures and standards of conduct
  - Outcome 5: The FI has a framework that promotes and sustains among all employees the desired conduct
- Specific guidance and a set of frequently asked questions (FAQs) have also been provided to help FIs achieve the five outcomes
- FIs with a smaller number of employees, such as those with fewer than 50 headcount, should still achieve the five Outcomes but will not ordinarily be expected to adopt the specific guidance described in the Guidelines.

Latest Developments: Chinese Communist Military Companies and Hong Kong Autonomy Act Sanctions Issues

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Executive Order 13959 Background

- Section 1237 of the National Defense Authorization Act (NDAA) of FY 1999 required the US Department of Defense (DOD) to:
  - Identify "Communist Chinese military companies" (CCMCs) operating directly or indirectly in the United States and publish a list of CCMCs
  - Make additions or deletions to the CCMC list "on an ongoing basis"
- Section 1237 authorizes the President to impose sanctions on CCMCs under the International Emergency Economic Powers Act (IEEPA)
- Designations made starting June 2020
  - Several designations, before and after EO 13959

E.O. 13959

- Issued on November 12, 2020; amended on January 14, 2021
- Bases for action
  - China's Military-Civil Fusion development strategy
  - To stem the availability of US capital to such companies
- Prohibits any transaction by "US persons" in publicly traded
  1. securities of CCMCs
  2. securities derivative of CCMC securities
  3. securities designed to provide "investment exposure" to CCMC securities
- Prohibitions begin 60 days after date of designation of an entity
- Currently more than 40 companies listed
  - Two have successfully sued to be removed

E.O. 13959 – Definitions

- ***Official list of sanctioned CCMCs published by OFAC***
  - ***Communist Chinese military company***
    - Section 1237 companies
    - Can be designated by DOD and/or Treasury
  - ***What is a "Security"?***
    - Coordinate with "security" in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10)
    - Includes currency, note, draft, bill of exchange, or banker's acceptance that has a maturity at the time of issuance not exceeding nine months, exclusive of days of grace
    - Any renewal of the maturity that is likewise limited
  - ***Transaction***
    - Initially, a "purchase for value," but now includes "purchase for value, or sale . . . ."
  - ***U.S. Person***
    - United States citizen or permanent resident alien, or any person in the U.S.
    - An entity organized under U.S. law (including foreign *branches*)

E.O. 13959 – Key Missing Definitions

Purchase for value

Designed to provide investment exposure

Derivative securities

Held by a US person

E.O. 13959

- **Authorizes sales of CCMC securities**
  - Completed within 365 days after designation
  - So long as the transactions are "solely to divest from" covered CCMC securities
- **Implementation by the Department of Treasury's Office of Foreign Assets Control (OFAC)**
  - Thus far, OFAC has issued Frequently Asked Questions (FAQs)
    - FAQs are non-binding guidance
  - Eventually OFAC will issue regulations
    - These will address exemptions and licenses

E.O. 13959

- **Prohibitions apply to securities of the designated company**
  - Also apply to a company with a name that exactly or closely matches the name of an identified CCMC
- **"Publicly traded securities" include securities denominated in any currency that trade on a securities exchange or OTC-traded securities in *any* jurisdiction**
- **Covered financial instruments include (but are not limited to):**
  - Derivatives (*e.g.*, futures, options, swaps), warrants, ADRs, GDRs, ETFs, index funds, and mutual funds

E.O. 13959

- **U.S. persons can engage in the following services (so long as they do not provide services to U.S. persons for prohibited transactions)**
  - Clearing, Execution, Settlement, Custody, Transfer agency, Back-end services, other "support" services
  - FAQs do not define most of these terms
  - Some have OFAC "history"
- **Market intermediaries and other "participants" may engage in "ancillary or intermediary activities necessary to effect *divestiture*" (emphasis added)**
  - Must occur during 365-day wind down period
  - Must be entered into before end of divestment period
    - Can conclude/settle after

Informal OFAC Guidance Provided to Industry Groups

- **OFAC verbal "guidance"**
  - U.S. persons may contribute to U.S. funds with existing holdings in CCMCs and thereby not violate the "investment exposure" prohibition
  - OFAC still considering whether a non-U.S. fund with a U.S. advisor is a U.S. person for purposes of the E.O.

Short and Long-term Expectations

Biden administration actions/inaction

- No changes to the E.O. or the list of CCMCs
  - Exception as to entities ordered removed from 1237 list by court decisions
  - Administration elected not to contest decisions
- Certain restrictions on Chinese companies' activities have bipartisan support
  - Biden administration remains unclear as to direction
  - Conflicting statements

The Hong Kong Autonomy Act

- **Passed on July 2, 2020**
- **Requires sanctions against**
  - Any person "materially contributing to" enforcement of China's National Security Law in Hong Kong
  - State Department identifies such persons in a report to Congress
    - At least once per year, but can be more often
    - Treasury has one year to implement selection of menu-based sanctions unless person is removed before the end of the one-year period

The Hong Kong Autonomy Act

- **Foreign Financial Institutions (FFIs)**
  - Between 30 and 60 days after State Report, Treasury must idenfity FFIs who have engaged in "significant transactions" with any person identified in the State Report *after* that designation
  - If FFI identified, Treasury must impose one-half of menu-based sanctions within one year
  - Remaining menu-based sanctions must be imposed in year two if FFI not removed by then

The Hong Kong Autonomy Act

- **Executive Order 13936**
  - Preceded initial timeline for HKAA
  - Parallel/similar authorizations—effectively implemented HKAA on faster schedule
- **To date, multiple persons identified under either HKAA or EO 13936**
  - Designated SDNs by Treasury
- **FFI reports filed found no FFI who conducted significant transactions after designations**
- **Key targets have been**
  - Senior Hong Kong government leaders
  - Senior CCP leaders involved in decision to apply National Security law to Hong Kong or in its implementation

The Hong Kong Autonomy Act

- **Possible implications**
  - Human rights based and thus primary concern for Biden administration
  - Use could be expanded to any entity supported government efforts under the National Security law
    - Contractors
    - Logistical support
    - Financial support
- **Precedent developing in Xinjiang region sanctions application**
  - Sanctions have been imposed on entities involved in activities in Xinjiang relating to allegations of forced labor
  - Initially by Trump administration; more added by Biden administration

The Hong Kong Autonomy Act

- Lack of clarity as to what is a "significant transaction"
- Selection of individuals to sanction not following a clear pattern
- No clear result as China ignores sanctions and moves forward with implementation of Chinese authority over Hong Kong
- US has formally withdrawn all special treatment for Hong Kong
  - Officially part of China
  - Loss of special export/import status
- Look for Biden administration to "move on"

UK and Europe Funds Landscape

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UK and Europe Funds Landscape

Agenda

- Brexit Update
- EU Approach to ESG Regulation
- UK Approach to ESG Regulation
- Voluntary Frameworks and Standards
- EU Sustainable Finance Disclosure Regulation Explained
- Impact of EU SFDR on UK/US Managers of Funds
- EU Cross-Border Distribution of Funds
- UK Funds Review

Brexit Update

- **The Financial Services Memorandum of Understanding (27 March 2021)**
  - Aim to pursue regulatory cooperation
  - Joint EU-UK Financial Regulatory Forum
  - Dialogue, exchange of views, cooperation
  - Meetings at least half-yearly
- **Current equivalence status**
  - UK decisions 9 November 2020
  - EU decisions on UK CCP and CSD equivalence
- **UK Financial Services Act 2021 received Royal Assent on 29 April 2021, in particular**
  - Overseas funds regime to allow qualifying funds to be marketed to UK retail
  - FCA must consult soon on level of care to consumers, potentially a duty of care

EU Approach to ESG Regulation

- **Two landmark international agreements**
  - September 2015: United Nations 2030 Agenda for Sustainable Development
  - December 2015: The Paris Agreement on Climate Change

- **Private sector must participate if governments are to meet their sustainability targets thereunder**

- **European Commission 2018 Action Plan on Financing Sustainable Growth:**
  - Establish an EU taxonomy to determine whether an economic activity is environmentally sustainable
  - Establish EU labels for qualifying green products (e.g., funds)

EU Approach to ESG Regulation

- **EU Sustainable Finance Disclosure Regulation applicable March 10, 2021 ("EU SFDR")**
  - Combats "greenwashing" through mandating transparency
  - Increases comparability of disclosures for investors
  - Elaborating Regulatory Technical Standards still in draft, applicable January 2022
- **EU Taxonomy Regulation applicable re climate change from January 2022 and other environmental objectives from January 2023**
  - Introduces a taxonomy of environmentally sustainable activities to establish the "green" credentials of any investment to inform investors and mitigate "greenwashing"
- **Series of EU regulations under AIFMD, MIFID II and UCITS Directive in pipeline on how covered firms should integrate sustainability considerations into their systems and controls**
- **At issuer level, EU seeks to promote better "non-financial" reporting from an expanded cohort of issuers with the headline change in April 2021 being to replace the derogatory "non-financial information" label with "sustainability information" and a game-changing alteration to the original directive's name from "Non-Financial Reporting Directive" to "Corporate Sustainability Reporting Directive"**

UK Approach to ESG Regulation

- UK is first major economy to legislate for net zero and an early adopter in 2017 of the recommendations of the Task Force for Climate-related Financial Disclosures (TCFD) – aimed at ensuring climate related risks and opportunities are priced into financial decision-making
- Government published its Green Finance Strategy in July 2019
- In November 2020, Government announced its roadmap to make TCFD-aligned disclosures mandatory across the economy by 2025, with a significant portion of mandatory requirements in place by 2023, which will help ensure that the right information on climate-related risks and opportunities is available across the investment chain from companies in the real economy, to financial services firms, to end-investors
- In December 2020, FCA issued a new rule requiring UK premium listed commercial companies to disclose in annual financial report whether they made TCFD-aligned disclosures

UK Approach to ESG Regulation

- In March 2021, Government consulted on increasing the quantity and quality of climate disclosures by UK banks, insurers, UK quoted and AIM traded companies, other UK companies, and LLPs with >500 employees and turnover of >£500m
- UK decided not to onshore EU SFDR into UK law

Voluntary Frameworks and Standards

- Carbon Disclosure Project (CDP)
- Climate Disclosure Standards Board (CDSB)
- Climate Financial Risk Forum
- Global Reporting Initiative (GRI)
- International Integrated Reporting Council (IIRC)
- Principles for Responsible Investment
- Sustainable Accounting Standards Board (SASB)
- TCFD Recommendations on Climate-Related Disclosures

EU SFDR Explained

- Three categories of obligations applicable from 10 March 2021:
  - rules that impose manager-level obligations
  - rules that impose obligations applicable to all funds whether or not they have an ESG/sustainability focus
  - rules that impose obligations applicable only to funds with a specific E or S characteristic or sustainability objective
- An EU-based manager will be subject to all these obligations. There are good arguments that while a non-EU-based manager will not be subject to the manager-level obligations, to the extent it wishes to market a fund into an EU country and cannot rely on reverse solicitation in doing so, it will be subject to the two sets of obligations at fund level

EU SFDR Explained

Manager Level Obligations

Step 1: Managers of funds, whatever their approach to ESG, must first formulate a policy on the integration of sustainability risks in their investment decision-making process so that they can address step two

Step 2: Managers of funds must publish and maintain on their websites information about that policy

Step 3: Under Article 4, the manager must decide whether it considers principal adverse impacts of investment decisions on sustainability factors. If so, it must formulate due diligence policies with respect to those impacts and publish on its website a statement on those policies. If not, it must publish and maintain on its website clear reasons why, including whether and when it intends to consider such adverse impacts; and include in pre-sales disclosures for the fund a statement that the manager does not do so and the reasons why

EU SFDR Explained

Manager-Level Obligations

- The opt-out is not available to a manager that has (or is the parent undertaking of a group which has) an average of more than 500 employees during the financial year. Managers who exceed that threshold must comply with Article 4 by formulating such due diligence policies and publishing a statement on them on their websites by 30 June 2021

- Article 4 requires to detailed elaboration in regulatory technical standards for those managers who do not or cannot opt out, applicable January 2022

Step 4: under Article 5, managers must amend the remuneration policies they are required to establish (under the applicable directive (e.g., AIFMD)) to include information on how those policies are consistent with the integration of sustainability risks and publish the amended policies on their websites

EU SFDR Explained

Rules That Impose Obligations Applicable to All Funds

Step 5:

- Under Article 6, for each fund that it is planning to market into an EU country, the manager must decide whether sustainability risks are relevant
- If relevant, the manager must disclose at fund level in the Article 23(1) AIFMD pre-sales disclosures:
  - the extent to which sustainability risks might impact the performance of the fund either in qualitative or quantitative terms and a description of the manner in which sustainability risks are integrated into the manager's investment decisions re that specific fund
- If not relevant, manager is not required to disclose such information but must disclose a clear and concise explanation of the reasons why not relevant

EU SFDR Explained

Step 6:

- if the manager has opted out of Article 4, then for each fund it manages, it must include in the presales disclosures a statement that the manager does not consider the adverse impacts of investment decisions on sustainability factors and the reasons why

- if the manager is not eligible to opt out of Article 4 or does not wish to do so, then at the level of each fund where the manager applies such principal adverse impact considerations, it must include in the presales disclosures a clear and reasoned explanation of whether (and if so, how) the fund considers principal adverse impacts on sustainability factors

EU SFDR Explained

Rules That Impose Obligations Applicable to Certain Funds

Step 7 (Articles 8 and 9 EU SFDR):

- for each fund that the manager is planning to market into an EU country, assess whether the fund either "promotes, among other characteristics, environmental or social characteristics, or a combination of those characteristics" (fund will be subject to additional disclosures under Article 8) or "has sustainable investment or a reduction in carbon emissions as its objective" (fund will be subject to additional disclosures under Article 9)
- many funds deploy screening policies for ESG risks: consider whether that could cause a fund to be regarded as Article 8 not Article 6?
- Article 8 and 9 funds are subject to bespoke presales and periodic disclosure regimes additional to the presales only disclosure regime for Article 6 funds

EU SFDR Explained

- Under Article 11 of EU SFDR, managers of Article 8 and 9 funds are subject to periodic sustainability-related disclosures in the Article 22 AIFMD annual report but with effect from 1 January 2022. It is generally considered that even where an Article 8 or 9 fund has been closed before 10 March 2021, its manager should still comply with these periodic disclosure requirements. Even though Article 6 funds are not subject to any periodic disclosure requirements under SFDR, there may be circumstances in which the manager decides to update its disclosures re ESG/sustainability voluntarily for investor relations reasons or possibly for reasons deriving from AIFMD

Impact of EU SFDR on UK/US Managers of Funds

EU SFDR has no legal effect in UK/US law. However, there are multiple ways in which EU SFDR could be relevant to UK/US firms:

- A UK/US fund manager markets funds into the EU under national private placement regimes (in which case it must comply as a third country with the local AIFMD/EU SFDR regime)
- A UK/US firm sponsors any funds with an EU structure or platform, and is responsible in practice for those funds' compliance with EU SFDR
- A UK/US firm acts as the delegate to an EU firm that is subject to EU SFDR, and that EU firm pushes down an obligation to comply with EU SFDR

Impact of EU SFDR on UK/US Managers of Funds

- A UK/US firm is a member of a global group that decides to implement EU SFDR as a baseline compliance standard across all its operations, including the UK/US, on a voluntary basis
- A UK/US firm comes under client pressure or investor pressure to opt in to EU SFDR on a voluntary basis
- A UK/US firm identifies a competitive advantage in choosing to comply with EU SFDR as representing a "gold standard" for ESG disclosure requirements

EU Cross-Border Distribution of Funds

- New package of measures applicable to AIFs and UCITS funds that supplement and extend the AIFMD and UCITS Directive in relation to the marketing of funds to investors in the EU
- Measures comprise a directive (Directive (EU) 2019/116) and a regulation (Regulation (EU) 2019/1156)
- Apply from 2 August 2021
- Primary concern of the legislation is with cross-border distribution within EU of EU AIFs and UCITS by or on behalf of EU managers. Sole requirement under directive expressly on non-EU managers of AIFs is the local facilities one for EU retail offerings. The regulation is expressly applicable to EU managers. However, certain changes may drive similar changes in local EU private placement regimes impacting UK, US and other non-EU managers, in particular, the pre-marketing provisions.
- Not applicable to UK, US, or other non-EU fund managers marketing to UK investors

Pre-Marketing

The Cross-Border Distribution Directive establishes the concept of pre-marketing:

"[the] provision of information or communication, direct or indirect, on investment strategies or investment ideas by an EU AIFM or on its behalf, to potential professional investors domiciled or with a registered office in the Union in order to test their interest in an AIF or a compartment which is not yet established, or which is established, but not yet notified for marketing … in that Member State where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that AIF or compartment"

Aims to establish a uniform approach in the EU as to the activities that can be undertaken with prospective professional investors before a full marketing notification needs to be made

Pre-Marketing

- EU states are required to permit pre-marketing; the only requirement for fund managers is to provide an informal notification to the applicable EU regulator within two weeks of commencing pre-marketing
- Pre-marketing does not permit the provision of final form offering documents or constitutional documents or subscription forms in draft or final form

Pre-Marketing: Impact on Reverse Solicitation

EU professional investors are not permitted to subscribe for interests in funds as a result of pre-marketing only; investors may only acquire fund interests following a full marketing notification having been made

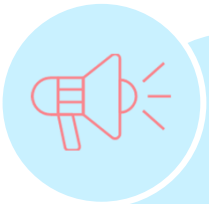
It is not clear whether this applies on a per-country basis or on a pan-EU basis

For a fund that has been pre-marketed, a subscription by EU professional investor for an interest in the fund that occurs within 18 months of the pre-marketing will be treated as having resulted from the pre-marketing and will be subject to a full marketing notification having been made

The EU Commission is required to produce a report on reverse solicitation by 2 August 2021, including on the extent of its use, its geographic distribution, and its impact on the passporting regime

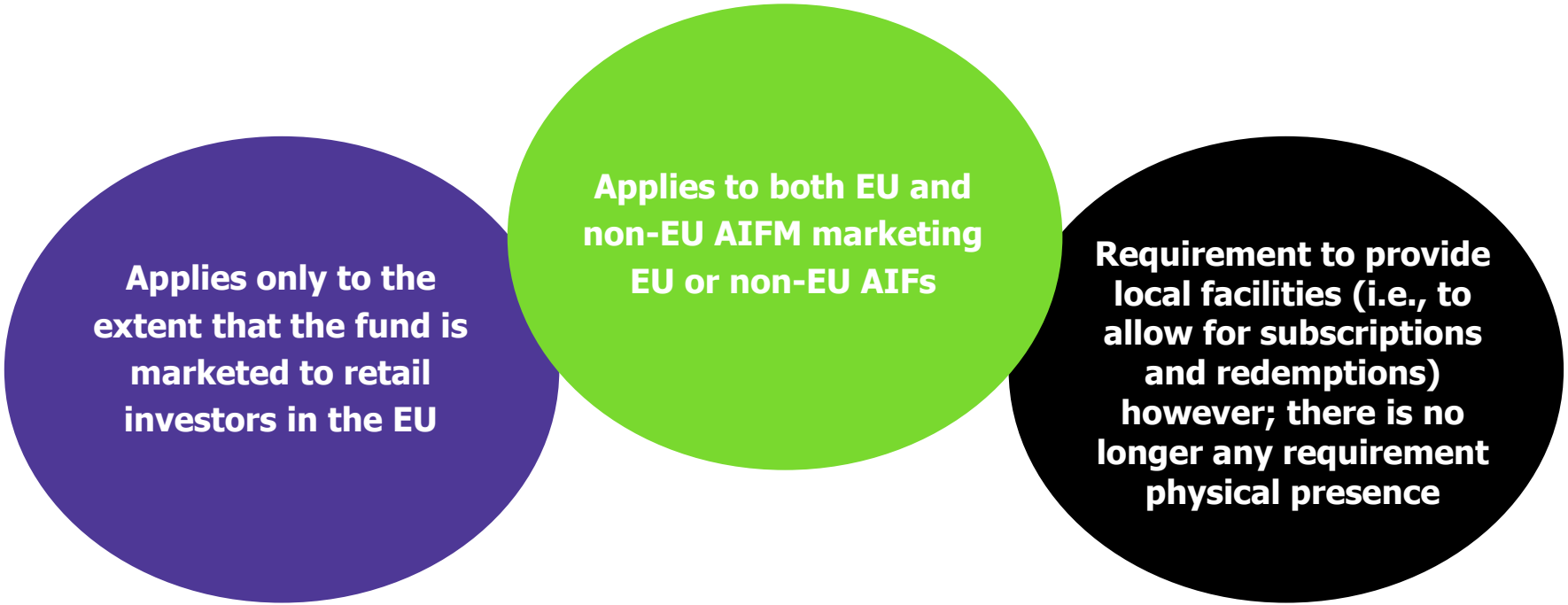
This means that conducting pre-marketing rules out the ability to rely on reverse solicitation for a period of 18 months following the cessation of the pre-marketing

Marketing: Procedure for Withdrawing Notification



- The AIFMD does not set out a procedure for withdrawing a marketing notification on cessation of marketing
- The Cross-Border Distribution Directive amends the AIFMD to include a procedure under which a passporting notification for a fund in a specific EU state can be "de-notified" if the following conditions are satisfied:
  - if the fund is open-ended, the making of a public offer (to remain open for 30 days) to redeem or repurchase the units/shares held by investors in that EU state;
  - a public announcement of the intention to terminate marketing arrangements for the fund in that EU state; and
  - contractual arrangements with intermediaries are modified or terminated to ensure no further offering/placement of the relevant fund in that EU state
- No further offering/placement of the relevant fund in that EU state is permitted and, for 36 months, no-premarketing of that fund or any similar investment strategies or investment ideas is permitted in the relevant state

Requirement to Provide Local Facilities



UK Funds Review

- In its 2020 Budget the Government announced a review of the UK funds regime to consider reforms to enhance the UK's attractiveness as a location for asset management and for funds in particular
- There are two separate but related workstreams:
  - the tax treatment of asset holding companies (AHCs) in alternative fund structures
  - a review of the VAT treatment of fund management fees
- On the main review process a Call for Input was published in January this year

  "The overarching objective of the review is to identify options which will make the UK a more attractive location to set up, manage and administer funds, and which will support a wider range of more efficient investments better suited to investors' needs…"
- Next step will be a consultation on specific proposals for reform
- Additional consultation on long-term asset funds (LTAFs)

MENA Funds Landscape

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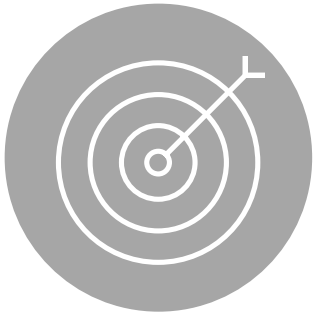
Investment Fund Trends in the Middle East



ADGM Fund Formation

- Asset Manager Licensing
- Legal forms for funds
- Economic Substance Regulations
- VAT of Management Fee

Feeder Vehicles for Foreign Funds

- ADGM feeder into Cayman hedge fund structure
- Feeder structures to attract Islamic investors

Sovereign Entity Consolidation

Investment into Regional Funds

- VC and technology
- Credit products
- Infrastructure funds

Seed and Stake Arrangements

Development of ESG Principles in the Middle East

- Historic focus on acquiring socially responsible shares, excluding companies with negative environmental or social impact or morally questionable business practices.
- Shift to focus on desirable ESG key performance indicators.
- Impetus for ESG and social investing comes from growing demand
  - for investment diversification and
  - to satisfy the increasing consciousness of ESG principles for investors.
- Moral values are influential in the Middle East.
- Overlap with Islamic investments industry which is a $2 trillion industry focused on investments into ethically and moderately-leveraged businesses and assets.

Demand for ESG

- Impact of the pandemic
- Misconception that investors must give up potential performance to invest in ESG has been debunked
- Incorporation of ESG themes into the investor's wider portfolio
- Managers and advisors are having daily conversations with clients about ESG, evidence that ESG has become part of the mainstream

Focus of ESG in the Middle East

- Investments in sustainable infrastructure
- Abu Dhabi Commits To 50% Renewable Energy By 2030, UAE By 2050
  - solar technology
  - investing heavily in solar and nuclear power
  - US $163 billion investment into renewable technologies required to reach these goals
- 2021, UAE Securities and Commodities Authority requires listed PJSCs to disclose sustainability reporting
- 2021, UAE announced first green ammonia production hub
- 2019, Dubai Financial Market issued ESG Reporting Guide for corporates looking to enhance ESG reporting
- 2018, Dubai Financial Services Authority issued Green Bond Best Practice Guidelines

Focus of ESG in the Middle East

- UAE redoubling efforts to curb carbon dioxide emissions as part of its commitments to UN Sustainability Development Goals.
- Key sustainability projects in the UAE include wind power, sustainable urban development, waste reduction, and emissions-free transportation.
- ADGM promotes ESG with the Abu Dhabi Sustainable Finance Declaration and the Abu Dhabi Sustainable Finance Forum.
- ESG-themed index to launch on Saudi Arabia's Tadawul Stock Exchange.
- Saudi Arabia’s Vision 2030 is aimed at creating a more sustainable future.

Focus of ESG in the Middle East

- Qatar Stock Exchange allows companies to report their sustainability performance to the sustainability and ESG dashboard, a regional first.
- Boursa Kuwait is a signatory of the Sustainable Stock Exchanges Initiative (SSEI) and has announced its action plan to promote sustainability internally and among its listed issuers.
- Egypt issued MENA's first sovereign green bond in late 2020.
- IFC partnering with Moroccan Capital Market Authority to help companies enhance ESG reporting.

Lawyer Biographies

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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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With a focus on Japanese financial regulatory and fund matters, Tomoko Fuminaga counsels clients on structuring investment funds and registering them in Japan. She also counsels on establishing and operating financial institutions, including corporate and labor law matters. Her clients include Japanese and international banking, securities, and asset management companies.

Additionally, Tomoko represents financial institutions and other clients on cross-border mergers and acquisitions transactions and provides legal services in connection with corporate and anti-monopoly law matters.

Tomoko began her practice as a licensed Japanese lawyer (Bengoshi) after working several years for a major Japanese bank. She is a bengoshi partner at the Morgan, Lewis & Bockius Law Offices/Morgan, Lewis & Bockius LLP (Foreign Law Joint Enterprise) in Japan.

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Ethan W. Johnson counsels clients on a variety of regulatory and transactional matters, with a focus on hedge fund and private equity fund formation, and guides investment managers through the legal intricacies of international operations. He also advises clients on establishing offices and operations outside the United States, developing and offering financial products and services sold on a global basis, and building global compliance programs.

Ethan's regulatory and transaction practice includes counseling clients on the creation of hedge funds, private equity funds, venture capital funds, real estate funds, Undertakings for Collective Investment in Transferable Securities (UCITS), and US Securities and Exchange Commission (SEC) registered funds. He also advises on the organization and operation of broker-dealers and investment advisers, and on corporate finance projects including public and private offerings of debt and equity securities.

Through Morgan Lewis's US, European, and Asian offices, he advises on the laws of more than 100 non-US jurisdictions, including all major financial centers, most emerging markets, and less-developed nations. He has experience counseling many US-based firms on US and non-US securities and regulatory matters—including joint ventures and investment projects—in Latin America, Europe, and Asia. In cross-border business matters, he helps clients comply with local marketing restrictions, and advises them on local authorizations and exemptive relief. He also works to ensure concurrent compliance with US and local laws.

A frequent author and lecturer, Ethan addresses topics including the regulation of broker-dealers and investment advisers; global distribution of investment funds; private equity real estate funds; investment in emerging markets; and corporate governance. He is an editor of the *Morgan Lewis Hedge Fund Deskbook,* published by Thomson Reuters/West.

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Ayman A. Khaleq, co-leader of the firm's Middle East practice, advises global and regional institutional clients and asset managers on cross-border investment management, capital markets, and structured finance transactions. In particular, Ayman advises on the structuring and documentation of private investment funds and alternative investment platforms; global investments by regional institutional investors, including sovereign wealth funds; and conventional and Shari'a-compliant privately placed debt capital markets, structured finance and restructuring matters. He is admitted to practice in New York, is registered as a Foreign Legal Consultant with the California Bar, and is a Registered Foreign Lawyer with the Law Society of England & Wales.

In addition, Ayman provides regulatory and legal advice to global asset managers and foreign direct investors in relation to the marketing of securities (to conventional and Islamic investors) and doing business in the broader Middle East and North Africa (MENA) region, and in such sectors as healthcare, technology, infrastructure, telecommunications, energy, and education. He also advises on policy reform initiatives in the MENA region and other emerging markets.

Ayman, who is fluent in Arabic and English, is a frequent speaker at international conferences on topics relating to foreign direct investment, investment management, and structured transactions (including Islamic finance). In addition, Ayman taught on transactional Islamic law and international investment law at George Washington University Law School (Washington, DC); Bocconi University (Milan, Italy), and Sorbonne University (Abu Dhabi, UAE). He is also serving on the firm's Advisory Board, is the chair of the International Bar Association's Arab Regional Forum, and is a member of the Young Presidents Organization (YPO).

Ayman Khaleq was recently invited by the Dubai Islamic Economy Development Centre (DIEDC), Dubai International Financial Centre (DIFC) and Dubai Financial Market (DFM) to join a new focus group that these three entities are forming, with support from the Climate Bonds Initiative (CBI). The focus group will be comprised of relevant experts in capital markets and environmental protection and will be responsible for developing "Sustainable Sukuk Standards".

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Timothy W. Levin, leader of the firm's investment management practice, counsels investment advisers and other financial services firms on the design, development, and management of pooled investment vehicles and investment advisory programs. He also advises fund managers in connection with organization, registration, and ongoing regulatory compliance. Additionally, he represents managers and sponsors of unregistered pooled investment vehicles.

Timothy's clients include many types of registered investment companies, such as mutual funds and registered funds of hedge funds, and funds focused on alternative investment strategies, including business development companies (BDCs). His unregistered pooled investment vehicle clients include private funds, bank collective investment trusts (CITs), and companies seeking exemption from investment company status.

Since 2008, *Chambers USA*: *America's Leading Lawyers for Business* has recognized Timothy for his work.

He speaks frequently at conferences and moderates panels. He also co-chairs the annual Hedge Fund Conference. Timothy is the editor of *Morgan Lewis Hedge Fund Deskbook: Legal and Practical Guide for a New Era* and the *Mutual Fund Regulation and Compliance Handbook*.

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Bill Nash, the managing partner of the Abu Dhabi office and member of the firm's International Leadership Team, has been resident in Abu Dhabi since 2008 and previously lived in Riyadh, Saudi Arabia. He advises regional and global clients on a variety of corporate and business law matters, focusing on private investment funds, international transactions and joint ventures, and general corporate counseling. He also advises Middle East financial institutions on the application of US anti-money, laundering sanctions, and know-your-customer laws and regulations. He is admitted to practice in the District of Columbia and New York.

Bill represents institutional investors, including sovereign wealth funds, corporate groups, and family offices, in connection with their global investment activities, including establishing and maintaining customized investment platforms, reviewing and negotiating investments in private investment funds, and drafting and negotiating investment management and other commercial agreements. He works with clients throughout the Middle East, including banks, other financial institutions, and private companies on a variety of company formation, compliance, and regulatory matters.

Bill teaches international investment law and acts as a thesis advisor as part of the International Business Law Master's Degree Program at the Paris-Sorbonne University in Abu Dhabi and is a regular speaker on investing in the Middle East and in the United States. He is a founding member of UNHCR's Middle East and North Africa (MENA) Sustainability Board and an active member of the US-UAE Business Council and the American Chamber of Commerce in Abu Dhabi.

Before joining Morgan Lewis, Bill was the coordinator of the MENA practice and the managing partner of the Abu Dhabi office of another global law firm. He previously practiced law in the asset management group of another global law firm, focusing on advising private investment fund sponsors on the structuring and offering of US and offshore investment funds and fund regulatory, trading, and operational matters.

Before practicing law, Bill served as an emergency management specialist with a US consulting firm, where he was responsible for designing and facilitating training exercises to prepare federal and state emergency responders for natural disasters and other crisis situations.

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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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Joel Seow advises sponsors throughout Asia on the establishment of private investment funds across various asset classes and jurisdictions, with a focus on private equity, venture capital, real estate, infrastructure, and hedge funds. He also counsels on myriad nontraditional private investment fund setups, including fund platform structures, hybrid funds, club deals, and open-ended illiquid funds, among others. Joel is keenly aware of Singapore's regulatory requirements for fund management and the offer of fund interests, and regularly advises international and local fund managers on their licensing and regulatory obligations, as well as assisting with the submission of fund management license applications to the Monetary Authority of Singapore.

Joel also works with both institutional and non-institutional limited partners (LPs) from Asia, Europe, and the United States, including financial institutions, pension funds, corporations, family offices, and fund of funds, advising on their investments into private funds. In these matters, he has served as LP counsel and across the table as general partner (GP) counsel.

Joel has been recognized in the Investment Funds (Singapore) category in *Chambers Asia-Pacific* since 2017, and is described by a client in the publication as "very practical and mindful of the end objective. He isn't task-oriented; he is goal-oriented, helping clients find their goal and the best route to it. He is a straight shooter and always upfront and clear with his opinions."

He is also recognized by *The Legal 500 Asia Pacific 2020* as a next generation lawyer. *Who's Who Legal* also recognizes Joel as a leading lawyer in Private Funds (Formation) from 2017 to 2020. He was quoted by clients in the publication as a lawyer who is "brilliant in the hedge funds space". In 2017, Joel was also named by *Private Funds Management* to its "30 under 40" global list of top private fund lawyers under age 40.

Before joining Morgan Lewis, Joel was a legal consultant for several Singapore private fund managers and served as counsel in the investment funds practice of another global law firm, resident in Singapore.

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Aaron D. Suh serves as a trusted adviser to public companies, private equity sponsors, private firms, and sovereign wealth funds in the structuring and negotiating of their domestic and cross-border mergers, acquisitions, majority and minority investments, corporate venture investments, divestitures, spin-offs, joint ventures, and corporate governance matters. His clients come from a broad array of industries, including high tech, security, telecommunications, retail, SaaS, artificial intelligence, public safety, life sciences, pharmaceutical, healthcare providers, financial services, specialty lending, food and beverage/spirits, and energy.

Aaron is listed as a recommended lawyer by *The Legal 500 US* 2020 for his work in M&A in the United States. He has served as a board fellow for the Leadership Council on Legal Diversity and maintains an active pro bono practice focused on strengthening corporate governance for small non-profit organizations in the greater Philadelphia area.

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Alishia K. Sullivan advises institutional investors with respect to their global investment activities, focusing primarily on investments in private funds, including leveraged buyout, hedge, infrastructure and real estate funds, and direct investments and co-investments. She assists clients in drafting, reviewing, and negotiating investment documentation, including subscription agreements, limited partnership agreements, side letters, managed account agreements, and other commercial agreements. She also has extensive experience with advising clients on structuring and maintaining their investment subsidiary platforms and negotiating bespoke investment advisory arrangements and operational agreements necessary to support investment activities. Alishia is admitted to practice in the District of Columbia.

Alishia is a former member of the board of directors of two non-profit organizations whose missions focus on the care, empowerment, and education of women and children.

Prior to joining Morgan Lewis, Alishia was a partner at another global law firm. She previously worked as in-house counsel for a state-owned petroleum company in the Middle East and was a member of the global projects group of the Washington, DC, office of an international law firm.

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William Yonge has more than 20 years' experience advising global clients on regulation and related commercial issues arising in the financial services, investment management, securities, and derivatives sectors. Clients include asset managers across a wide range of asset classes and their funds, broker-dealers, corporate financiers, fintech and payment services firms, institutional investors, and market associations. Prior to entering private practice, he served as an in-house lawyer at the Securities and Investment Board (now the Financial Conduct Authority) and the Investment Management Regulatory Organisation.

William frequently helps clients to navigate UK and European regulatory issues that arise during fund formations, mergers and acquisitions, establishment of regulated investment management firms in the United Kingdom, and advises on customer and service provider documentation. He also counsels managers from the United States, Europe, Middle East, and Asia on structuring their private placements of funds to UK and European investors and establishing themselves in the United Kingdom.

William advises clients on regulatory developments arising in the context of the United Kingdom's exit from the European Union (Brexit) and counsels firms on restructuring in light of Brexit-related regulatory change.

William's work includes advising on operational, regulatory, and compliance matters regarding the UK Financial Services and Markets Act 2000, the rules of the UK Financial Conduct Authority (FCA), and the UK Prudential Regulatory Authority (PRA) such as the perimeter of regulated activities, obtaining authorisation, conduct of business, changes of control, financial promotion, remuneration requirements, product development, anti-money laundering, trading issues, payment for research, market abuse, cross-border business, and EU passporting.

William provides clients with insight into the impact of current and proposed financial services legislation at European level, including the Alternative Investment Fund Managers Directive (AIFMD), Markets in Financial Instruments Directives (MiFID II), European Market Infrastructure Regulation (EMIR), the Investment Firms Prudential Review, and UK/EU Initiatives in ESG and Sustainability.

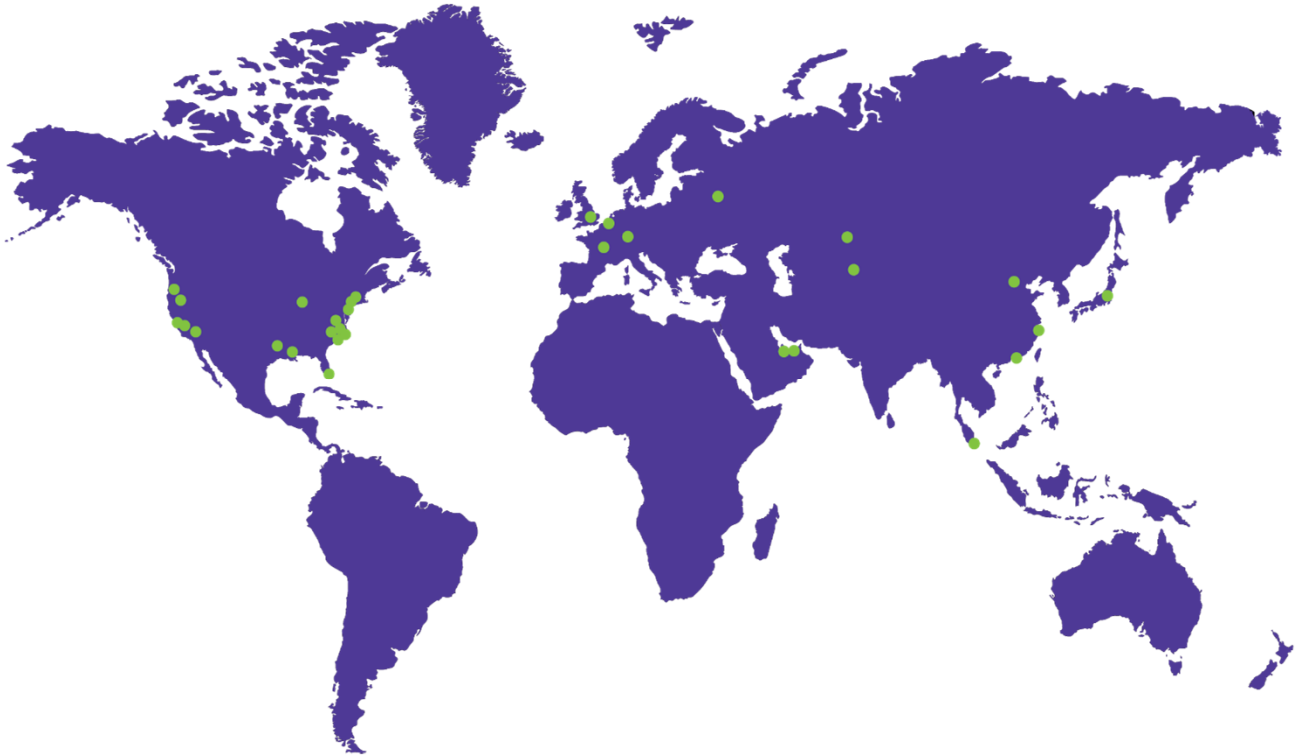
Addressing topical regulatory issues, William frequently writes articles for key publications including *Complinet*, *Hedge Fund Journal*, *FX-MM*, *Funds Europe*, *Global Risk Regulator*, *Global Funds Europe*, *EuroWatch*, *Lexology*, *Alternative Intelligence Quotient*, and *Private Debt Investor*. He also speaks regularly at hedge fund and private equity conferences and events.

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
Moscow
New York
Nur-Sultan
Orange County
Paris
Philadelphia
Pittsburgh
Princeton
San Francisco
Shanghai
Silicon Valley
Singapore
Tokyo
Washington, DC
Wilmington



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THANK YOU

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