



Morgan Lewis

**ADVANCED TOPICS IN
HEDGE FUND PRACTICES
CONFERENCE**

**Manager and Investor Perspectives
WEBINAR SERIES**

Track 5: Navigating the Next

Thursday, May 20, 2021

www.morganlewis.com/2021hedgefundconference

On the Front Lines of ESG – Social Michael Pollack, Chair, US Board of Directors, Educate Girls

**To access PowerPoint slides, visit:
www.morganlewis.com/educategirls**

Biden Administration Priorities and Implications for the Hedge Funds Industry

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The Biden-Harris Administration's Priorities

➤ **COVID-19**

➤ **Economy**

➤ **Climate**

➤ **Inequity**

Special Purpose Acquisition Companies (SPACs)

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Special Purpose Acquisition Companies (SPACs)



- Morgan Lewis represents a diverse array of clients in all aspects of SPAC transactions, including formation of the SPAC and its sponsor vehicle (the Sponsor), financing of the Sponsor, the initial public offering IPO of the SPAC (issuers and underwriters), and business combinations (deSPAC transactions).
- Our representations in connection with the Sponsor formation include representing investors in the Sponsor, as well as in their investments in forward purchase agreements.
- Hedge funds are most often involved with SPAC transactions as investors in the Sponsor or as sponsors themselves, as well as by investing in the private investment in public equity (“PIPE”) transaction to fund the deSPAC transaction.

Common Ways for Funds to Invest in SPACs

"Sponsor" the SPAC directly

Invest in a Sponsor formed by someone else

Invest "alongside" a Sponsor

Invest in an entity that is effectively syndicating an indirect investment in a Sponsor

Invest in the PIPE

Buy SPAC shares in (or after) the IPO

Sponsor the SPAC Directly



Potential Pluses:

- Allows for access to as much of the upside as you desire
- Allows you to control who else is in the Sponsor
- Allows you to control the process and the Sponsor



Potential Minuses:

- Requires that you fund, or source, all of the at-risk capital
- Requires that you have the relationships to develop a board and management team, get the SPAC fully subscribed, find a target, and get the PIPE fully subscribed
- The return can be material, but getting there requires a lot of work

Invest in a Sponsor Formed by Someone Else



- Common approach for funds, as it provides access to an upside without an obligation to do the work required to create value
- Allows a fund to determine the size of its commitment (since it does not have to fund all of the at-risk capital)
- Typically does not come with any significant minority protections
- Can negotiate for the right to participate in the PIPE

Invest “Alongside” a Sponsor

Allows the fund to avoid having to negotiate how the operating agreement for the Sponsor will work.

Atypical, but possible if the fund is picking up a large portion of the at-risk capital.

Instead of being a member of the Sponsor, it will subscribe for founder shares and warrants that will be transferred from the Sponsor to the fund and where, post-transfer, the fund will hold the founder shares and warrants directly.

Documentation has to align interests with the Sponsor—e.g., lockups, changes in investment.

Invest Through an Aggregator



- In the recent past, Sponsor founders have partnered with funds that commit to fund a meaningful portion of the at-risk capital with the intention of doing so through an SPV that will act as an aggregator for several passive investors
- In this structure, there usually is a promotion payable to the fund that formed the aggregator
- Investment is typically entirely passive without any control or minority protections
- Allows for much smaller investments

PIPE Investments



- The business combination typically involves stock consideration issued to the stockholders of the target. In many deSPAC transactions, cash consideration is also provided.
- The SPAC will need many “sources” of the consideration for the many “uses.”
- While the proceeds of the IPO are held in a trust account until the business combination and constitute a source of potential cash consideration to the target’s stockholders and of cash to the target’s balance sheet, they are rarely sufficient to satisfy all of the transaction’s uses of cash.
 - The valuation of the target business is often several multiples of the size of the SPAC’s IPO. While most SPAC IPOs are between \$100-500 million, multi-billion-dollar deSPAC transactions are common.
 - IPO investors have the right to redeem their shares for a cash amount approximately equivalent to the IPO price, reducing the cash available for payments to the target’s stockholders or to the surviving company’s balance sheet.

PIPE Investments



- The SPAC usually raises additional cash to fund the cash consideration to the target's stockholders and cash to remain on the surviving company's balance sheet through a private investment in public equity ("PIPE") transaction.
- Frequent SPAC PIPE investors include financial institutions such as Fidelity and Wellington, as well as a number of hedge funds and private equity funds.
- The business combination agreement usually contains a "minimum cash condition" to closing, which is satisfied through a combination of PIPE proceeds and funds held in the trust account.
- Following execution of a letter of intent, the SPAC and target will begin soliciting PIPE investors.

PIPE Investments



- The SPAC and target will be assisted through the process by one or more investment banks serving as placement agents.
- PIPE investors are contacted by the placement agents on a no-name basis through a set of agreed-upon wall-cross procedures. Potential PIPE investors are only provided with information about the PIPE and the business combination after agreeing to maintain the confidentiality of the information provided.
- PIPE investors perform very limited diligence. The information provided to PIPE investors is contained in an investor presentation.
 - PIPE investors should insist that any material information received is subject to a “cleansing obligation” to make such information public in connection with the announcement of the transaction.

PIPE Investments



- **The PIPE terms are governed by a subscription agreement**

- Sets forth the mechanics for funding and representations and warranties of the SPAC
- Closing conditions include closing of the business combination and accuracy of representations and warranties. Most subscription agreements also contain an “MFN” provision prohibiting the SPAC and target from providing more favorable terms to other investors. Closing conditions limiting the ability of the parties to the business combination to amend the business transaction documents are highly negotiated.
- Will contain an “outside date” by which the transaction must close or the PIPE investors’ obligations terminate.
- Also contains registration rights (discussed below).

PIPE Investments



- The subscription agreement and the business combination agreement are executed concurrently and announced on the business day thereof or the next business day.
- Such agreements, other ancillary transaction agreement, and the investor presentation are disclosed on a Current Report on Form 8-K.
- Funding of the PIPE does not occur until the closing of the business combination.
- After the business combination, pursuant to the registration rights in the subscription agreement, the shares issued to the PIPE investors will be registered for resale.
- As consideration for being the source of “new money,” the PIPE investors will have the ability to sell in the market in advance of other transaction participants. Other insiders, including the Sponsor and the stockholders of the target, will be subject to contractual lockup periods ranging between six months and one year, providing the PIPE investors with a “clear market” between effectiveness of the resale registration statement and the expiration of the lockup periods.

PIPE Investments



- The PIPE market was extremely active during January and February 2021.
- Average time to complete PIPE marketing was two to three weeks.
- Beginning in March, oversaturation of the PIPE market, resulting from a record volume of SPAC transactions, led to weakening of the PIPE market. Placement agents began estimating five weeks for the PIPE process.
- The SEC staff accounting pronouncement on April 12 led to a temporary slowdown in SPAC transactions as SPACs and targets evaluated the accounting for their warrants and, in many cases, restated their financial statements.
- With most restatements completed in the last few weeks, the PIPE market is likely to become active again.

Current Employment Considerations

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COVID-19 Vaccine Employment Issues

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Vaccine Eligibility (New York)



- Who is Eligible for the COVID-19 Vaccine?
 - Age 12+
 - Reside in New York State
 - Work in New York State
 - Study in New York State

No Federal Mandates . . . Yet



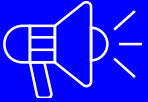
- **Currently:**
 - No federal requirement for employers to provide or offer to provide the vaccine.
 - No federal prohibition on employers mandating or recommending the vaccine.
- **Caveats:**
 - OSHA's General Duty Clause concerns (particularly in light of new guidance).
 - State laws may provide otherwise, in terms of either prohibiting or requiring mandatory vaccinations, or creating paid leave requirements as New York has done.
 - Multiple pending state law bills on whether a vaccine can be mandatory, including in New York State.

EEOC – An Employer May Mandate COVID-19 Vaccines



- **Provided that reasonable accommodations (absent undue hardship) are provided under the ADA (for disabilities) and Title VII (for sincerely held religious beliefs).**
 - Qualifying disabilities likely narrow.
 - May ask for proof of sincerely held religious beliefs, in some circumstances.
- **Caveats:**
 - Likely a mandatory subject of bargaining for unionized companies (if permitted at all by a CBA).
 - EEOC position may not be accepted by the courts.
 - State laws may provide additional exceptions or broader accommodation requirements (e.g., political objectors).
 - For example, the NYCHRL requires that employers engage in a cooperative dialogue and has a different standard for review of reasonable accommodation decisions

Supporting a Vaccine Mandate under the ADA



- **EEOC: Vaccine requirement is a permissible safety-based qualification standard under the ADA, if an unvaccinated employee poses a direct threat to the health and safety of others in the workplace.**
 - Direct threat: “A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.”
 - Must conduct individualized assessment and rely on current medical judgment.
 - “Direct threat” is unlikely to exist for remote workers.
 - **EEOC: An employer’s “conclusion that there is a direct threat would include a determination that an unvaccinated individual will expose others to the virus in the worksite.”**
 - Assessment should be ongoing and evolve, as risk factors may change over time.
 - Assessment may change as additional data regarding whether vaccinations prevent transmission becomes available.

Mandating Vaccines – Practical Considerations

Supply & Data

- Vaccine supply is catching up to demand, and eligibility categories are broadening.
 - In New York, all individuals 12 or older are now eligible.
- Before mandating vaccines, consider waiting until there is more data regarding the effectiveness of vaccines in stopping transmission of the virus that causes COVID-19 (including variants).
- Consider waiting until there is full licensing approval from the FDA, not just an EUA.

Implementation Considerations

- If vaccines are mandated, need to provide consistent accommodations to those who cannot be vaccinated due to disability or sincerely held religious beliefs.
- If vaccines are mandated, employer may need to provide pay for time spent by employee getting vaccinated.
 - Multiple states have issued guidance on this point.
- Potential requirement to reimburse for out-of-pocket costs incurred by employee.

Mandating Vaccines – Practical Considerations

Consider the impact on employee morale

- Safety concerns (particularly with respect to vaccines approved under an EUA).
- Ideological or political objections.
- Potential for increased union-organizing efforts.

Potential turnover and staffing shortages

- Some employees may feel so strongly in their convictions that they choose to quit.
- If a significant number of employees stand to quit, then what?
- Must be prepared and willing to terminate (otherwise high-performing) employees who refuse vaccination.

Mandating Vaccines for Remote Workers?

EEOC has not issued guidance.

May be risky to require fully remote employees to receive a COVID-19 vaccine, as such employees would not pose a direct threat to anyone in the workplace.

Analysis may change to the extent that remote employees occasionally visit the workplace or physically interact with co-workers, clients, or others in connection with their job duties.

“Direct-threat” analysis will evolve as data regarding vaccines and transmission becomes available.

Accommodating Unvaccinated Employees



- Accommodations may include providing additional protective gear, isolating or moving an employee's workstation, modifying nonessential job duties, or providing temporary reassignment.
- EEOC: It is lawful to exclude an employee who cannot get vaccinated because of a disability or sincerely held religious belief if there is no available reasonable accommodation.
 - ADA: Consider undue hardship and direct-threat analysis.
 - Title VII: Consider undue-hardship analysis (which may include safety risks).
- If no workplace accommodations are available, consider whether the employee may be able to perform the position remotely.
- If remote work is not possible, consider available leave options under federal, state, and local laws and the employer's policies.

Voluntary Vaccines – Incentives Generally

How can employers increase the number of employees who get vaccinated if it's not mandatory?

- Employers have broad discretion in encouraging employees to get vaccinated.
- Incentive efforts:
 - Paid time off
 - Financial incentives
 - Health and wellness campaign
 - Video of senior leadership getting vaccinated (if eligible)
 - Gift cards/swag

Can Employers Ask About Vaccine Status?

Yes.

- Vaccinated individuals do not need to quarantine after exposure to COVID-19 under CDC guidance that is becoming widely adopted at the state level.
- For smaller organizations/non-profits, this is helpful to avoid disruptions that might occur if one individual in the office tests positive.

But should not ask about individual's health status and/or reasons for not getting vaccinated.

- Unless it is a business necessity to know the requested information.

Treat vaccinated and unvaccinated employees the same with regard to opportunities, evaluations, promotions, etc.

Proof of Vaccination – Employees



Can an employer require its employees to show proof of vaccination?

- Yes.
- Whether a vaccine is mandatory, incentivized, or purely voluntary, employers can ask for proof of vaccination.
 - However, questions about why an employee was not vaccinated can only be asked where they are job-related and consistent with business necessity
- Vaccination documents should be treated as confidential records under the ADA.
- Employers with a mandatory vaccine requirement for new hires can refuse employment for those who have not received a vaccine.
 - But must provide accommodations to candidates for disability or religious needs.

Proof of Vaccination – Clients



Can an organization/non-profit require its clients to show proof of vaccination?

- Organizations can generally prohibit unvaccinated visitors from entering their workspaces.
- But ADA/Title III for people with disabilities who cannot get vaccinated.
- Client relations issues – how to deal with clients who are not vaccinated or simply do not want to show proof of vaccination to receive services from the organization.
- Consider how to respond if a client requests that his or her contact at the organization be vaccinated.

Safety Measures After Vaccination

Can we get rid of mask standards/social distancing for vaccinated employees?

- Not so fast; state and local guidance is still in place requiring safety measures for all in-person work.
 - Best practice is for all employees to wear masks at all times unless they are working alone and not within six feet of any other individual, and to wear masks while walking through the office, in elevators, in meetings, etc.
- One data point: new CDC guidance that in many workplaces fully vaccinated workers need not wear masks indoors
- Datasets are promising, but not definitive, regarding the risk of transmission for vaccinated workers.
- Potential liability if an employer relies only on vaccines to prevent the spread of COVID-19 and removes other workplace safety measures.
- However, fully vaccinated individuals are not required to quarantine after travel under CDC guidance.

Vaccine Wage and Hour Concerns

Do employers need to pay for the cost of vaccines?

- Not currently. All vaccines available now are paid for by the federal government, but this could change in the future as vaccine supplies/producers increase.

Do employers need to pay employees for time spent getting vaccinated?

- In New York, yes. All public and private employees are entitled to up to four hours of PTO from work per vaccine injection to obtain a COVID-19 vaccine.
- Under federal law, if getting vaccinated is mandatory or employees must report to a company location at a certain day/time, pay might be required.
- Whether employees are entitled to paid sick leave for COVID-19 vaccine side effects depends on an employer's leave policies and state and local laws.

Preparing Your Workplace for Returning to Work

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Phasing Employees Back into the Office: NY Reopening Requirements

Effective May 19, 2021, New York has adopted guidance largely following the (CDC's) [Interim Public Health Recommendations for Fully Vaccinated People](#) for most businesses and public settings.

For offices, the new guidance supersedes the previous New York re-opening guidance and requirements.

The guidance provides offices with two options: 1) require masks and six feet of social distancing for individuals within offices; OR 2) "adhere to CDC guidance" permitting fully vaccinated individuals to stop wearing masks and social distancing indoors.

New York "strongly recommends" masks and six feet of social distancing in indoor settings where the vaccination status of individuals is unknown.

Phasing Employees Back into the Office: NY Reopening Requirements

If an office adopts the CDC guidance, fully vaccinated individuals do not need to wear masks or be socially distanced, but unvaccinated individuals must continue to wear masks and be socially distanced.

- The guidance says offices “may decide to apply this guidance to the entire establishment or a separate, designated part of the establishment.”
- Additionally, offices may require proof of vaccination but may also rely upon self-reporting of vaccination status (e.g., an honor system).

For offices not following CDC guidance, all individuals must wear masks and maintain six feet social distancing, with capacity only limited by the space available for individuals to maintain the required social distance.

Phasing Employees Back into the Office: NY Reopening Requirements

Except for large events, offices now do not need to require proof of vaccination and can rely on an honor system to exempt vaccinated individuals from social distancing requirements.

Phasing Employees Back into the Office:

In reopening the office, consider focusing on Places, People, and Processes.

Places

Social Distancing

- Modifying floor plans to increase spacing and separation
- Consider installing Plexiglas or other dividers
- Close or modifying common/high-touch areas
- Post signs throughout the workplace to remind employees and third parties of social distancing, face coverings, and hygiene requirements.

Cleaning

- Increasing cleaning protocols and schedules for disinfecting workspaces and common areas
- Provide cleaning supplies and hand sanitizer to employees and other office visitors
- Maintain records of the date, time, and scope of cleaning

People

Employee Interactions

- Encouraging employees to work remotely where possible
- Scheduling fewer in-person meetings
- Training employees and managers on social distancing policies and protocols
- Encourage employees who have any symptoms of COVID-19, or who have a sick family member at home but are still able to work, to work remotely

Processes

Workplace Protocols

- Consider staggering shifts
- Limit in-person interactions
- Implement a crowd control plan

Phasing Employees Back into the Office



- **Willingness**: Consider who wants to return and allow employees who volunteer to return first.
- **Practicality**: Are some categories of employees more reliant on the office/workplace? Are other categories of employees faring well in the telework environment such that it makes sense to continue that arrangement?
- **Staggering Schedules**: Consider assigning staggered work schedules or alternating workdays/hours to limit the number of employees in the office at any given time.
- **Gradual Intervals**: Consider having a percentage of employees return in intervals (e.g., three weeks) and gradually build towards having the entire workforce return (subject to applicable capacity and other state and local requirements).
- **Vaccination Status**: Consider opening workspaces to vaccinated individuals first (but consider accommodation issues for those who cannot be vaccinated).

Phasing Employees Back into the Office

Policy Updates



- Employers who have not already done so should consider formalizing and updating various policies, including:
 - Leave Policies
 - New York City has a new sick leave law that requires putting employee sick leave balances and usage/accrual information on paystubs or contemporaneous writings.
 - New York State requires employees be provided four hours of paid leave per injection to obtain the COVID-19 vaccination.
 - Remote Work Policy (and Expense Reimbursement Policy)
 - Accommodation Policy and Request Process
 - Travel Policy
 - Timekeeping Policy (particularly for non-exempt employees)
 - Trainings for managers on supervising remote workers and enforcing COVID-19 policies

Handling Suspected or Confirmed COVID-19 Cases in the Workplace

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Considerations for Monitoring Suspected or Confirmed Cases of COVID-19



- Be prepared
 - Develop a protocol of what to do when an employee is diagnosed with COVID-19 or there is a suspected case in the workplace.
 - Protocol should include a communication plan. *Remember, ADA prohibits employers from disclosing identity of employees who have been diagnosed with COVID-19.
 - Consider keeping contact log to assist with communication plan.
- Disinfect the workplace
- Review CDC guidelines for contact tracing
- Review New York State specific reporting requirements
 - Immediately notify New York State Department of Health
 - Immediately notify New York City Department of Health (or other local health department if outside of New York City)

Accommodations

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Accommodations for High-Risk Employees?

Yes, you can provide accommodations for employees with health condition that put them in a high-risk category. However, do not presume or attempt to determine who has preexisting or underlying health conditions.

Prohibiting older employees or employees with perceived disabilities from returning to work may be discriminatory under ADEA/ADA.

When returning to the office, consider sending a note to all employees, advising them to contact Human Resources if they are uncomfortable or unable to return to in-person work due to private and/or personal issues.

Human Resources should follow normal accommodation process.

New York City – Cooperative Dialogue



- The NYCHRL requires employers to engage in a good-faith “cooperative dialogue” within a reasonable time-frame with an employee who has requested an accommodation – “or who the employer has noticed may require such an accommodation.”
- The cooperative dialogue may take place in person, in writing, by phone, or through text or email.
- Topics that should be covered in cooperative dialogues include:
 - The employee’s accommodation needs;
 - Potential accommodations;
 - Alternatives to the accommodation requested by the employee; and
 - Any difficulties that might arise if the employer grants the requested accommodations.

New York City – “Reasonable Accommodations”



A reasonable accommodation is any accommodation that can be made without causing the employer undue hardship.



The burden is on the employer to show the unavailability of any safe and reasonable accommodation and prove that an accommodation would cause an undue hardship.

New York City – Written Final Determination



Once the employer and employee have completed the cooperative dialogue, the employer must provide the employee with a written final determination, identifying any accommodation that was granted or denied.



Even if there are no reasonable accommodations available, the request cannot be denied until after the cooperative dialogue has taken place.

Liability Issues

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Potential Liability Issues to Consider



Think about how your organization would be able to establish that it made reasonable and good faith efforts to comply with any applicable government standards and guidance in effect at any given time.



Workers' compensation likely applies to employees infected in the workplace, but negligence claims brought by employees' next of kin may not be barred.



Employee complaints regarding "unsafe workplaces" may be protected under OSHA if the employee had a reasonable, good-faith belief that a violation occurred or could occur, even if such belief is incorrect.

- Cannot discharge or discriminate against employees for engaging in protected activity.
- Complaints should be timely investigated, and organizations should not take retaliatory action against employees who make good-faith claims.

Potential Liability Issues to Consider



Liability waivers for employees implicate potential pitfalls.

- Many jurisdictions do not permit employees to waive their right to file a workers' compensation claim.
- Enforcement may be difficult
- Waivers do not replace an organization's duty to comply with laws and guidance to maintain a safe workplace.



Consider instead:

Having employees acknowledge that they have reviewed the relevant policies and understand they must comply with those policies.



Consider also:

Creating an internal complaint resolution system so employees can voice their concerns and leaders have an opportunity to resolve issues.

Practical Guidance

- **Clear communications to employees on vaccine requirements and expectations.**
 - Consider union concerns (careful drafting to avoid encouraging organization efforts).
- An Organization should avoid providing its own assessment of the efficacy or safety of COVID-19 vaccines in messages to employees; rely on official announcements from health authorities to minimize the risk of employer liability in the event of injury.
- Provide training or do's/don'ts to managers:
 - What they can say (company encourages employees to get vaccinated).
 - What they cannot say ("Why didn't you get vaccinated?").
 - Reiterate importance of protecting confidentiality of those requesting an accommodation.
 - Avoid scheduling vaccinated employees for "better" shifts or directing clients only to work with vaccinated employees.

Practical Guidance

Consider continuing telecommuting or work-from-home procedures.

Consider adopting a more robust work-from-home policy, if not already in place.

Consider reviewing or revising your pandemic response plan, which should address the processes and procedures to prepare for a potential virus recurrence or disaster; outline the benefits that will be available during future closures; provide for succession planning; and address public relations and how to implement workforce vaccinations.

Strategic Minority Stakes

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Private Investment Funds (PIF) Transactions – 2020 Market Overview

Investment management transactions continued at a robust overall pace in 2020 despite the pandemic and a more challenging “virtual” transaction setting:



More than 250 total investment management deals globally across all asset classes – maintaining similar volume as the preceding four years

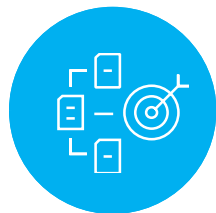


This transaction pace has accelerated relative to historical norms, and in 2020 involved almost \$3 trillion of transacted AUM



Three quarters of deals in 2020 involved US target firms, with 40 deals involving European target firms

Market Overview



While the majority of 2020 deals involved wealth manager targets, more than 100 involved traditional or alternative asset managers



Of these, more than 50 target firms were private fund managers



More than three quarters of buyers in 2020 investment management transactions were US based, with European buyers doing 37 (down a bit from 2019)



Pricing remained full for 2020 deals generally, and particularly for private fund manager targets, where >10x EBITDA multiples persisted

Types of Deals

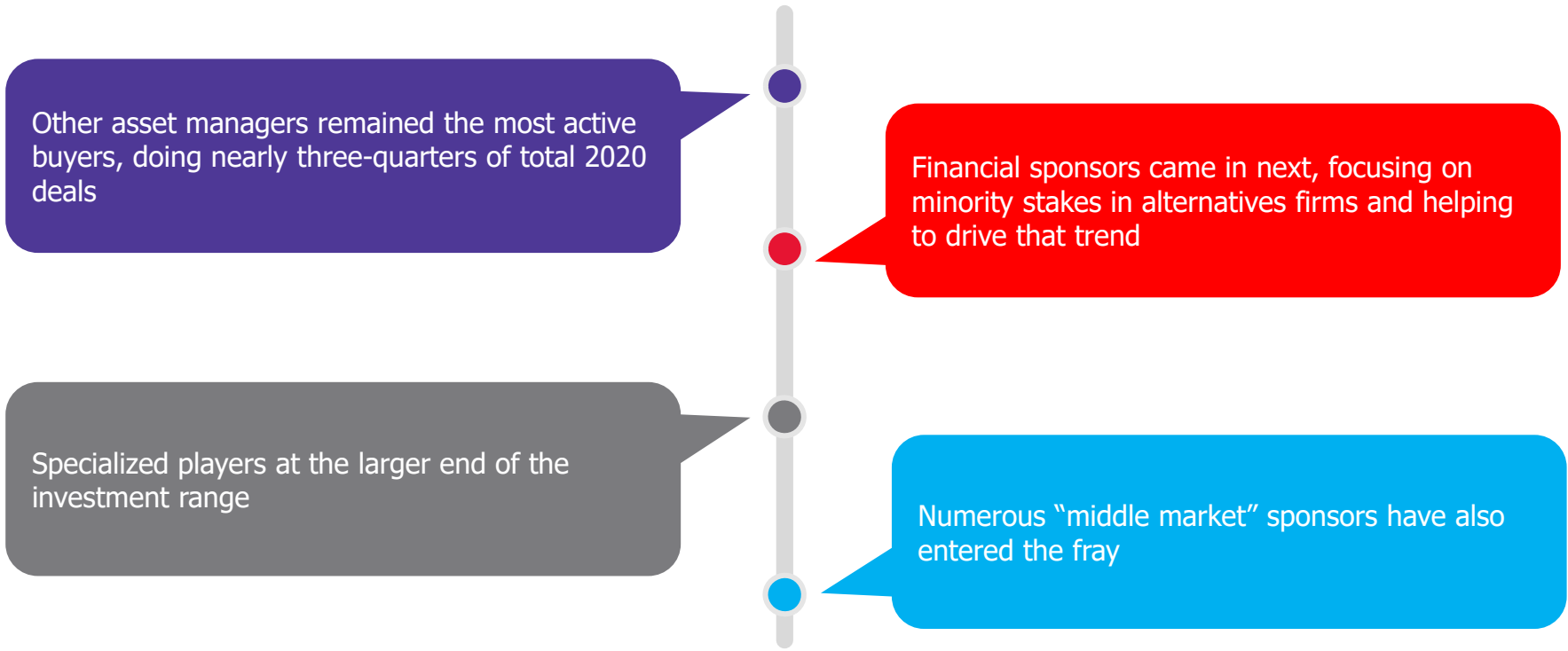


Minority stakes transactions for the first time reached almost two-thirds of total private fund manager deals:

- Private credit, real estate, and other illiquid/long-term lockup investment strategies have driven buyer appetite in recent years
- Hedge fund and other liquid strategy deals have nearly disappeared – just six in 2020, down from almost 20 such deals in 2019 (and half of these were management buyouts)
- Majority deals involving private fund managers now require the buyer to deliver a very full valuation and material strategic benefits, since target firms would often rather retain autonomy in a minority deal

Types of Buyers

A wide range of buyers participated in 2020 investment management transactions:



Other asset managers remained the most active buyers, doing nearly three-quarters of total 2020 deals

Financial sponsors came in next, focusing on minority stakes in alternatives firms and helping to drive that trend

Specialized players at the larger end of the investment range

Numerous “middle market” sponsors have also entered the fray

Types of Buyers



Some strategic players have continued to pursue majority deals with private fund managers despite the trend toward minority stakes



A desire to deploy scale capital into a manager's underlying products accounts for some of this strategic difference for insurer buyers

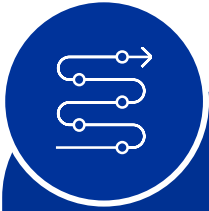


Broker-dealers and banks did significantly fewer investment management deals in 2020 than in recent prior years



Sovereign wealth funds continued to be active in making investments in private fund managers and committing to their products in 2020

Key Elements of Minority Stakes Transactions



- Up-front purchase price versus contingent or “earnout” payments
 - Time horizon for payment and conditions/metrics for achieving earn-out
 - Treatment of buyer’s contributed AUM/AUM raised through buyer distribution
 - Monetization of “in the ground” carry in some alternative transactions
- Retained autonomy with buyer receiving standard minority protections
 - Top-line versus bottom-line economic participation for buyer affects scope
 - “Managed margin” protections around partner compensation and similar items
 - Minority consent rights
- Spreading equity ownership, succession planning, and “institutionalization” of target firm’s business often play a role

Key Elements of Minority Stakes Transactions

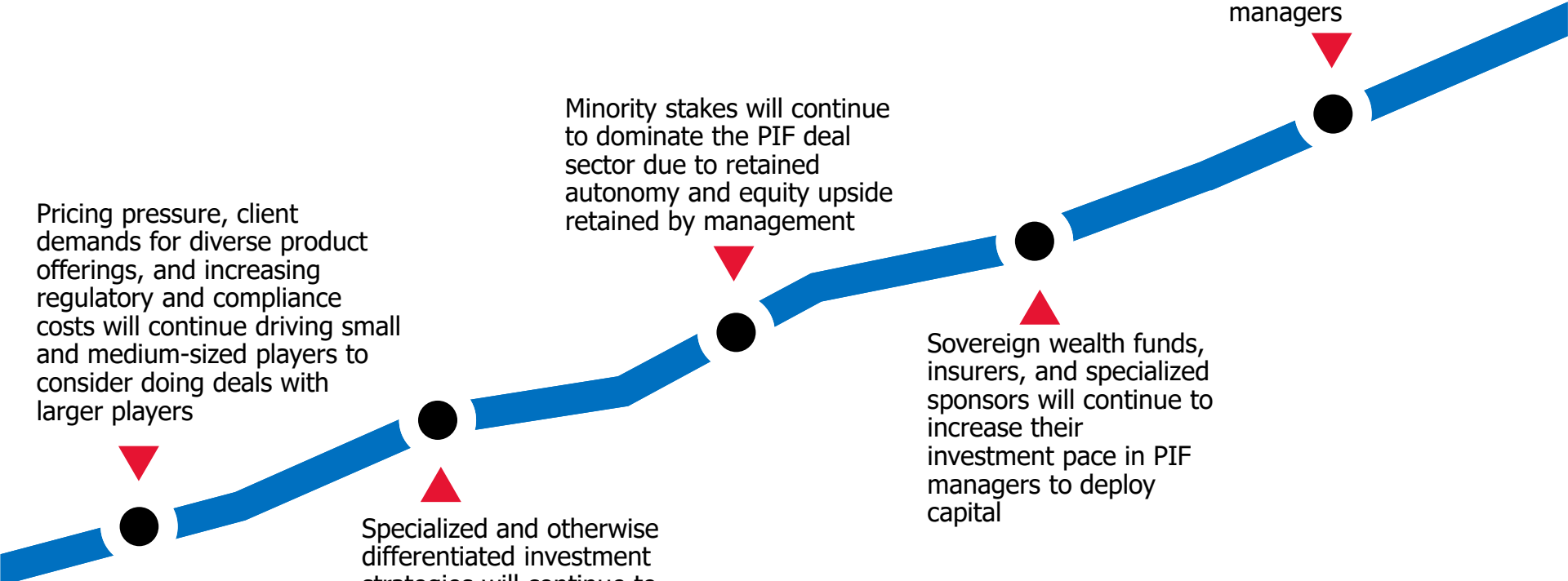
Capital committed by buyer to target firm's products and toward its GP capital commitment obligations

Distribution and other strategic resources of buyer made available to target firm on an "as-requested" basis

Liquidity provisions for majority equity retained by management owners

Buyer liquidity rights to transfer minority stake, take portfolio public, and/or put the stake back to the target firm in certain circumstances

Predictions for 2021 and Beyond



Pricing pressure, client demands for diverse product offerings, and increasing regulatory and compliance costs will continue driving small and medium-sized players to consider doing deals with larger players

Specialized and otherwise differentiated investment strategies will continue to drive buyer interest and pricing (less susceptible to passive competition)

Minority stakes will continue to dominate the PIF deal sector due to retained autonomy and equity upside retained by management

Sovereign wealth funds, insurers, and specialized sponsors will continue to increase their investment pace in PIF managers to deploy capital

Transaction pricing will remain robust for premium/differentiated managers

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A regular speaker and author on labor and employment issues, Leni D. Battaglia defends employers in courts and tribunals around the United States. Leni also develops litigation-avoidance strategies for clients across industries, including financial services, technology, retail & ecommerce, hospitality, and entertainment. Leni serves as co-leader of the firm's fashion and luxury brands initiative.

In addition to wage and hour class and collective matters, Leni litigates harassment, discrimination, disability, retaliation, and whistleblower claims. He also represents clients in contract, noncompete, and trade secret matters.

In the realm of preventative practice, Leni counsels on COVID-19 workplace safety, racial justice in the workplace, sexual harassment and #MeToo issues, arbitration agreements, compensation plans, independent contractor and exemption classification, restrictive covenants, and employment policies. He regularly conducts internal audits and navigates employers through investigations brought by federal and state agencies. Leni also conducts trainings and works with employers to create safe, respectful, diverse, and inclusive workplaces. Leni frequently comments in the news media, and writes articles on these subjects.

Leni enjoys an active pro bono practice and is a recipient of numerous awards, including the Award for Pro Bono Service from the New York City Family Court and the Award for Outstanding Pro Bono Service from the Legal Aid Society of New York, and has repeatedly received the Empire State Counsel Honor (NY).

Before joining the firm, Leni conducted social science research in Brazil as a recipient of the Congressional David L. Boren Scholarship. He is conversant in Spanish and Portuguese.

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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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Robert D. Goldbaum serves as co-leader of Morgan Lewis's investment management transactions practice and as a consultant with Morgan Lewis Consulting. Rob regularly advises a wide variety of industry leaders in the full range of asset and wealth management transactions, including mergers and acquisitions, strategic minority investments, sales, spin-outs and lift-outs, capital markets transactions, and "seed & stake" arrangements.

Rob also provides strategic advice as a consultant to established and emerging financial services firms in connection with a range of business initiatives, including institutionalization of their businesses to enhance franchise value, governance and succession matters, product and channel diversification, and similar initiatives.

Prior to returning to private practice, Rob co-founded HighView Investment Group with Ralph Schlosstein (co-founder and former president of BlackRock), a platform targeting acquisitions of minority interests in alternative asset managers. Previously, he was senior vice president for new investments at Affiliated Managers Group, which he joined after more than 14 years in private legal practice.

Rob is a former member of the Visiting Committee of The University of Chicago Law School, a former member of the Professional and Judicial Ethics Committee of the NYC Bar, and a frequent speaker on industry panels.

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Susan Harthill represents employers in the full range of employment law and Employee Retirement Income Security Act (ERISA) matters, with a focus on counseling, compliance, litigation, and audits and investigations. Susan advises employers on statutory and regulatory compliance and conducts trainings, including harassment and discrimination training. Before joining Morgan Lewis, Susan served as deputy solicitor for national operations at the US Department of Labor (DOL), where she oversaw the legal activities performed for all DOL programs in the National Office by attorneys in all 10 program divisions.

While at the DOL, Susan worked with the National Office divisions and the solicitor of labor to provide centralized legal services for all DOL agencies, including litigation and regulatory advice, and to coordinate with the US Department of Justice (DOJ), including the solicitor general's office, on matters where the DOJ represented the DOL, including in cases before the US Supreme Court.

Prior to joining the DOL in 2014, Susan was a tenured law professor, and was formerly special counsel in the Washington, DC, headquarters of a large international law firm. As a law professor, she taught courses in employment law and employment discrimination, civil procedure, evidence, and trusts and estates.

Susan has published law review articles on ERISA, workplace bullying, and the Fair Labor Standards Act. She has frequently presented her work at national and international conferences, including a presentation on the topic of workplace bullying at the International Labor Organization. She also represented the solicitor of labor at selected speaking engagements while at the DOL.

Throughout her career Susan has been active in numerous pro bono matters and other service activities, including serving as a loaned associate from her law firm to the Legal Aid Society of Washington, DC, and serving a two-term appointment as a commissioner on the Jacksonville Human Rights Commission and a volunteer board membership for a domestic violence shelter in St. Johns County, Florida.

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Jeffrey A. Letalien represents domestic and foreign issuers, underwriters, and investors in diverse transactions, including public and private offerings. He regularly represents buyers and sellers, including special purpose acquisition companies (SPACs), in connection with disclosure, filing and other securities law aspects of large and complex business combinations. Jeff regularly counsels public companies with respect to corporate governance, reporting and disclosure obligations and compliance with complex indenture covenant requirements. He is a member of the firm's SPAC Task Force.

Jeff represents public and private companies as issuers of debt and equity securities, including initial public offerings (IPOs), private placements of high-yield, convertible, and investment-grade debt securities under Rule 144A, and public-for-private exchange offers. He represents public companies, including commodity pools and other exchange-traded funds, as well as former SPACs following their business combinations and companies in the retail and consumer products, financial services, transportation and life sciences sectors, in connection with their periodic reporting and other securities law matters, as well as funds and individuals investing in securities of public and private companies with respect to related matters, including Section 13(d) and Section 16 reporting and compliance. He also advises public companies in connection with "going dark" and going private, as well as buyers and sellers in connection with disclosure obligations relating to business combinations, including proxy statements and tender offer materials.

Prior to joining Morgan Lewis, Jeff was a corporate and securities associate with the New York office of an international law firm and with the Stamford, Connecticut, office of another international law firm.

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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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Timothy P. Lynch directs all activities, including the strategic and operational functions, of the Washington Strategic Government Relations and Counseling Practice. He monitors legislative and political trends and developments, as well as managing lobbying registration and reporting, visits to government officials, and relationships with trade associations. In addition, Morgan Lewis's clients seek his advice on government relations and public policy issues.

Tim brings to his role 25 years of management experience in corporate and trade association government affairs. Prior to joining Morgan Lewis, he served as senior vice president and chief lobbyist at the American Trucking Associations (ATA), where he was responsible for ATA's advocacy efforts, strategic planning, public outreach, state affiliates, and safety promotion programs. He also directed and managed the association's legislative affairs operations. This involved developing strategies on a wide range of legislative issues—including transportation infrastructure, environment and climate change, energy supply, safety, labor and employee benefits, pensions, taxes, and national security.

Tim has served as vice president, legislative affairs for the ATA; president and CEO of Motor Freight Carriers Association; vice president, government affairs of Roadway Services, Inc.; federal affairs representative of American Natural Resources, Inc.; and as a professional staff member of the US Senate committee on Commerce, Science, and Transportation.

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Douglas T. Schwarz is a trusted advisor to and advocate for employers in all aspects of labor and employment law. He litigates in court, arbitration, and administrative proceedings; counsels employers on human resources matters; negotiates and drafts executive employment and separation agreements; advises on labor and employment aspects of corporate transactions, both domestic and cross-border; and conducts internal investigations of employee complaints. Doug also handles ADA Title III and state law matters involving access of persons with disabilities to public accommodations.

Doug's clients include financial services firms (mutual funds, hedge funds, private equity, venture capital, commercial and investment banks, wealth management); educational institutions; and media, technology, and telecommunications, pharmaceuticals, and life sciences companies.

He represents numerous non-US companies, from Japan and elsewhere in Asia, the United Kingdom, and Europe, regarding their US labor and employment matters, and US companies on international labor and employment issues.

Doug's experience includes litigating claims of discrimination, harassment, and reasonable accommodation (race, gender, age, disability, pregnancy, sexual orientation, religion), whistleblower retaliation, wage and hour violations (bonus, commission, overtime and minimum wage), non-competition, non-solicitation, and trade secret breach, defamation and privacy; counseling on reorganizations, reductions-in-force, and executive hiring and termination matters; developing and implementing litigation-avoidance strategies, diversity and affirmative action plans, and training programs on harassment prevention, diversity, and performance management; and advising on government audits (by OSHA, the Department of Labor and OFCCP) and labor-management relations.

He also serves as an arbitrator and mediator.

Doug represents clients in a range of other matters, including housing, education and public accommodations discrimination.

Doug has served in government as commissioner of the Massachusetts Commission Against Discrimination (MCAD), as an assistant attorney general in the Civil Rights Division of the Massachusetts Office of the Attorney General and as a US District Court law clerk.

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

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

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

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

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

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

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

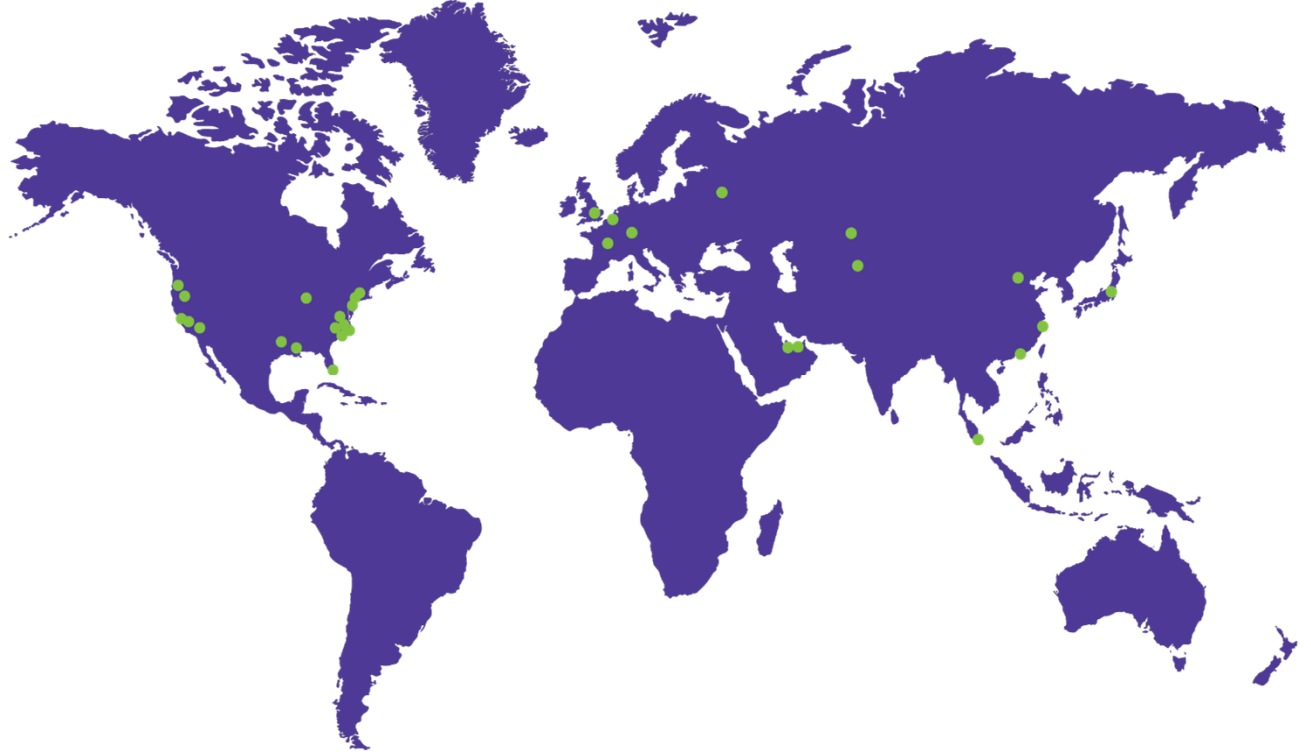
He is conversant in French.

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