



Morgan Lewis

**ADVANCED TOPICS IN  
HEDGE FUND PRACTICES  
CONFERENCE**

**Manager and Investor Perspectives  
WEBINAR SERIES**

**Track 3: Regulatory and Enforcement**

Wednesday, May 18, 2022

[www.morganlewis.com/2022hedgefundconference](http://www.morganlewis.com/2022hedgefundconference)

# Regulatory and Examination Priorities for Private Fund Advisers: SEC Proposals and Proposed Rulemaking

## Speakers



**Laura E. Flores**  
+1.202.373.6101  
[laura.flores@  
morganlewis.com](mailto:laura.flores@morganlewis.com)



**Christine M. Lombardo**  
+1.215.963.5012  
+1.212.309.6629  
[christine.lombardo@  
morganlewis.com](mailto:christine.lombardo@morganlewis.com)



**Ignacio A. Sandoval**  
+1.202.739.5201  
[ignacio.sandoval@  
morganlewis.com](mailto:ignacio.sandoval@morganlewis.com)



**Steven W. Stone**  
+1.202.739.5453  
[steve.stone@  
morganlewis.com](mailto:steve.stone@morganlewis.com)

**Morgan Lewis**

# Marketing Rule Update



**November 4, 2022 =  
Compliance Date**

**No substantive  
FAQs or additional  
guidance issued  
by the SEC staff to  
date**

## **Interpretive issues:**

- Use of hypothetical performance with retail audience
- Gross vs. net
- Extracted performance

# Proposed Form PF: Current Reporting Triggering Events

- **Large Hedge Fund Advisers:**

- Extraordinary Investment Losses
- Margin Increases & Defaults
- Counterparty Defaults
- Material Changes in Prime Broker Relationships
- Changes in Unencumbered Cash
- Operational Events
- Redemptions in Excess of 50% of Fund's NAV
- Inability to Satisfy Redemptions

- **Private Equity Fund Advisers:**

- Adviser-led Secondary Transaction
- GP or LP Clawback
- Removal of Fund's GP, Termination of Investment Period, or Termination of a Fund

# Private Fund Adviser Proposal – Overview

Morgan Lewis

## 01

Proposed changes applicable to registered investment advisers:

- Quarterly investor reporting requirements
- Private fund annual audit requirement
- Fairness opinion requirement for adviser-led secondary transactions
- Annual review of compliance program

## 02

Proposed changes applicable to all investment advisers:

- Proposed prohibition on certain activities
- Proposed reforms to side letters and “preferential treatment” of certain investors

## 03

The SEC has posed questions for comment asking whether other parts of the proposed rules should also apply to exempt reporting advisers

# Proposed Quarterly Reporting Requirement



- Private fund advisers are not currently subject to investor reporting requirements under the Investment Advisers Act
- The proposed rules would require a registered private fund adviser to prepare a quarterly statement for each private fund that it advises (directly or indirectly) that has at least two full calendar quarters of operating results
- Must be distributed to investors within 45 days of the calendar quarter end

# Proposed Private Fund Audit Rule



Requires registered private fund advisers to obtain an audited financial statement for each private fund annually and upon liquidation



Must distribute to investors “promptly” after the audit’s completion



The fund’s auditor would be required to notify the SEC upon the auditor’s termination or issuance of a modified opinion

# Proposed Prohibition on Certain Activities

- Applicable to all advisers to private funds, regardless of registration status
- Proposed rule prohibits private fund advisers from, directly or indirectly, engaging in certain sales practices, conflicts of interest, and compensation arrangements
- Each of these prohibitions presents a change to existing market standard practices
- Current approach to regulation generally permits these activities, provided that the adviser discloses the activities to investors prior to its subscription



# Proposed Prohibition on Certain Activities

- The proposal prohibits all private fund advisers from:
  - Seeking reimbursement, indemnification, exculpation, or limitation of its liability by the private fund or its investors for a breach of fiduciary duty, willful misfeasance, bad faith, negligence, or recklessness in providing services to the private fund
  - Charging the following fees and expenses to a private fund or portfolio investment:
    - Accelerated fees
    - Fees or expenses associated with an examination or investigation of the adviser or its related persons by governmental or regulatory authorities
    - Regulatory or compliance expenses or fees of the adviser or its related persons
    - Fees and expenses related to a portfolio investment on a non-pro-rata basis when multiple private funds and other clients advised by the adviser or its related persons have invested (or propose to invest) in the same portfolio investment
  - Borrowing money, securities, or other fund assets, or receiving an extension of credit, from a private fund client
  - Reducing the amount of any adviser clawback by the amount of certain taxes

# Side Letters and Prohibition of Preferential Treatment

- ✓ Applicable to **all** private fund advisers
- ✓ Advisers would be prohibited from providing preferential terms to certain investors regarding redemption or portfolio holdings or exposures information
- ✓ Other preferential treatment may only be provided to investors if the adviser provides written disclosures of such preferential treatment to prospective and current investors
  - The SEC noted that terms that are considered “preferential” depend on the facts and circumstances
- ✓ Proposed rules could significantly impact side letter practice

# Proposal for Adviser-Led Secondaries

1

## **A registered private fund adviser would be required to provide investors with:**

- A fairness opinion from an independent opinion provider; and
- A summary of any material business relationships the adviser or any of its related persons have, or have had within the last two years, with the independent opinion provider

2

## **The proposed definition of “adviser-led secondary transaction” is:**

- Any transaction initiated by the investment adviser or any of its related persons that offers private fund investors the choice to (1) sell all or a portion of their interests in the private fund; or (2) convert or exchange all or a portion of their interests in the private fund for interests in another vehicle advised by the adviser or any of its related persons

# Annual Review of Compliance Program



- Under the proposed rules, registered investment advisers would be subject to a requirement to document, in writing, the annual review of their compliance policies and procedures
- Such documentation would allow SEC staff to determine whether the adviser has complied with the SEC's compliance rule

# SEC Examination Update on Private Funds



**In FY 2021**, the SEC conducted more than 3,000 exams and issued more than 2,100 deficiency letters



**For 2022, private funds are the SEC's No. 1 examination priority**

- Why? 5,000 investment advisers manage some \$18 trillion in private fund assets
- Here, the SEC has a mature, sophisticated program that is data-driven, has a forensic focus, and is often led by accountants



**SEC exam staffs are becoming remarkably tenacious in their exams**

# SEC Examination Update on Private Funds

## Areas of focus flagged in January 2022 risk alert and SEC's March 2022 examinations priorities report:

1

Fiduciary duty, compliance programs, fees and expenses, custody, fund audits, valuation, conflicts of interest, disclosures of investment risks, and controls around MNPI

2

Calculation and allocation of fees and expenses, including post-commitment period management fees, and the impact of valuation practices at PE funds

3

Preferential treatment of certain investors by RIAs to private funds experiencing liquidity issues (e.g., with gates or suspensions on withdrawals)

4

Advisers Act Custody Rule, including the "audit exception"

5

Disclosure and compliance with regulatory requirements for cross-trades, principal transactions and distressed sales

6

Conflicts around liquidity (e.g., such as GP-led fund restructurings, stapled secondary transactions where new investors purchase the interests of existing investors while also agreeing to invest in a new fund)

7

Conflicts and disclosures on portfolio strategies, risk management, and investment recommendations and allocations

8

SPAC investments, particularly if the private fund adviser is the SPAC sponsor

9

Practices, controls, and investor reporting around risk management, and trading for private funds with indicia of systemic importance, such as outsized counterparty exposure or gross national exposure when compared to similarly-situated firms

SEC exam teams focus on the sorts of conflicts and other issues at the heart of the pending private fund proposals

# Regulatory Issues Affecting Private Fund Distribution and Marketing

## Distribution

- Scrutiny of private funds and related alts as “complex products”
  - FINRA Regulatory Notice 22-08
- Scrutiny under Reg. BI and its focus on complex products, costs, conflicts, and compensation
  - Scrutiny of access vehicles from compensation and cost perspectives
- Scrutiny of the use of alts in managed account programs
- Scrutiny of reliance on Rule 3a4-1 exemption from broker status for persons associated with issuers

## Marketing

- Scrutiny of retail marketing, especially with content deemed projections (e.g., unrealized IRR) under FINRA rules
- Scrutiny of performance information treated as “hypothetical performance” subject to heightened standards under the SEC’s Marketing Rule (taking effect November 4, 2022)

# Securities Lending Reporting – Proposed Rule 10c-1

## Who Reports?

- Any person who loans any security as defined in Section 3(a)(10) of the Exchange Act on behalf of itself or another person (a Lender)
- Reporting requirements would apply to every Lender except where a Lender engages a lending agent, who will report for the Lender
- Lenders and lending agents to engage a “reporting agent” (i.e., a registered broker-dealer) to transmit required information to FINRA
- Fifteen-minute reporting deadline
- Information reported to and disseminated by FINRA

## What Is Reported?

- Legal name of the security issuer and the Legal Entity Identifier (LEI) of the issuer, if the issuer has an active LEI
- Ticker symbol, ISIN, CUSIP, or FIGI of the security, if assigned, or other identifier
- Date the loan was affected
- Time the loan was affected
- Name of the platform or venue where the loan was affected (if any)
- Amount of the security loaned
- For a loan not collateralized by cash, the securities lending fee or rate, or any other fee or charge
- Type of collateral used to secure the loan of securities
- For a loan collateralized by cash, the rebate rate or any other fee or charge
- Percentage of collateral to value of loaned securities required to secure such loan
- Termination date of the loan, if applicable
- Whether the borrower is a broker or dealer, a customer (if the person lending securities is a broker or dealer), a clearing agency, a bank, a custodian, or other person



# Securities Lending Reporting – Proposed Rule 10c-1

## Modifications

- Date and time of the modification
- Description of the modification
- Unique transaction identifier assigned to the original loan

## Confidential Elements?

- Party to the transaction
- Broker-Dealer transactions
- Regulation SHO closeouts

## Securities Available to Loan and on Loan

- Issuer
- Identifier
- Amount available to lend

# Short Sale Disclosure – Proposed Rule 13f-2

## Overview

- Require managers exercising investment discretion over short positions exceeding Section 929X of the Dodd-Frank Act certain thresholds to file with the SEC on new Form SHO
- Report certain information relating to month-end short positions and certain related daily activity
- SEC would publish aggregate information on large short positions related to individual equity securities and net activity during the applicable month
- Using authority under Section 929X of the Dodd-Frank Act

For reporting issuer equity securities, report each “gross short position” over which it and any person under the manager’s control has investment discretion collectively that (i) has a value of at least \$10 million at the close on any settlement date during the calendar month; or (ii) represents a monthly average gross short position as a percentage of shares outstanding in the equity security of at least 2.5%

- For nonreporting issuers, disclosure is required of each short position with a value that meets or exceeds \$500,000<sup>5</sup> at the close of any settlement date during the month

## Month-by-month determination

- the aggregate gross position as of the calendar month’s last settlement date;
- the aggregate gross short position’s dollar value;
- a summary of the managers’ reported hedging information with respect to the reported equity security;
- the aggregate gross short position’s percentage of the reported equity security that is being reported as being fully hedged, partially hedged or not hedged; and
- the “net” activity in the reported equity security for each individual settlement date during the calendar month

# Dealer Proposal – Proposed Rules 3a5-4 And 3a44-2

The SEC is proposing two rules—**Rules 3a5-4 and 3a44-2 under the Exchange Act**—to further identify certain activities that would constitute a “regular business” requiring a person engaged in those activities to register as a “dealer” or a “government securities dealer.”

**Qualitative Standards:** Persons who routinely buy and sell securities and government securities, including digital asset securities, will have to register as dealers if they meet one of the following three qualitative standards:

1. Routinely making roughly comparable purchases and sales of the same or substantially similar securities in a day;
2. Routinely expressing trading interests that are at or near the best available prices on both sides of the market and that are communicated and represented in a way that makes them accessible to other market participants; or
3. Earning revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interests.

**Quantitative Standard:** Persons engaged in buying and selling more than \$25 billion of trading volume in government securities in each of 4 out of the last 6 calendar months will have to register as a government securities dealer irrespective of whether the person meets any of the three qualitative standards above.

**Exclusions:** Persons who have or control total assets of less than \$50 million and investment companies registered under the 1940 Act would be excluded. However, some accounts under common control may have to be aggregated for purposes of the \$50 million threshold or the \$25 billion threshold.

# Dealer Proposal – Proposed Rules 3a5-4 And 3a44-2

- A person's "own account" would be defined to be any account held:
  - In the name of that person;
  - In the name of a person over whom that person exercises control or with whom that person is under common control, subject to the following exclusions:
    - An account in the name of a registered broker, dealer, or government securities dealer, or an investment company registered under the 1940 Act;
    - **An account held in the name of a client of a registered investment adviser unless the adviser controls the client as a result of the adviser's right to vote or direct the vote of voting securities of the client, the adviser's right to sell or direct the sale of voting securities of the client, or the adviser's capital contributions to or rights to amounts upon dissolution of the client;** or
    - With respect to any person, an account in the name of another person that is under common control with that person solely because both persons are clients of an investment adviser registered under the Investment Advisers Act of 1940 unless those accounts constitute a parallel account structure.
  - For the benefit of those persons identified above

# Dealer Proposal – Proposed Rules 3a5-4 And 3a44-2

- The concept of control for purposes of the aggregation provision discussed previously would cross-reference the meaning of control in Exchange Act Rule 13h-1.
- Under Rule 13h-1(a)(3), the term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of securities, by contract, or otherwise.
- Any person that directly or indirectly has the right to vote or direct the vote of 25% or more of a class of voting securities of an entity or has the power to sell or direct the sale of 25% or more of a class of voting securities of such entity, or, in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25% or more of the capital, is **presumed** to control that entity.
- The Proposed Rules would define a “**parallel account structure**” to mean a structure in which one or more private funds (each a parallel fund), accounts, or other pools of assets (each a parallel managed account) managed by the same investment adviser pursue substantially the same investment objective and strategy and invest side by side in substantially the same positions as another **parallel fund** or **parallel managed account**.
- The aggregation provisions would require clients of a registered investment adviser that are determined to be under “common control” of the registered investment adviser to aggregate their trading activities under certain circumstances.

# Regulation of Digital Assets?

## The Current State:

- The SEC's regulatory agenda for 2022 affirmatively excluded any proposed rulemaking initiatives designed to clarify the application of the federal securities laws to digital assets.



“In the last several years, this sector has grown in size, complexity, diversity, and investor interest. Rather than taking on the difficult task of formulating rules to allow investors and regulated entities to interact with digital assets, including digital asset securities, the Agenda—through its silence on crypto—signals that the market can expect continued questions around the application of our securities laws to this area of increasing investor interest.”

**Commissioners Hester Peirce and Elad Roisman**

Dec. 13, 2021

- Both the SEC and CFTC have made public statements about their respective jurisdiction over, and the need for greater authority to regulate, digital assets.

# Regulation of Digital Assets?

- Both agencies have initiated a number of investigations and enforcement actions
- Executive Order on Ensuring Responsible Development of Digital Assets
  - Contemplates extensive interagency coordination
  - Orders further study, reporting, and policy recommendations
- Multiple legislative efforts at both the federal and state level
  - Inclusion of cryptocurrency “brokers” in the infrastructure bill and requirement that they comply with certain IRS reporting requirements.
  - In 2021, Congress introduced 35 bills aimed at developing digital asset policy.
  - First bipartisan (Senators Gillibrand and Lummis) legislation that proposes a comprehensive regulatory framework (announced in March 2022)

# Regulation of Digital Assets?

## The Backdrop:

1

**Digital assets continue their meteoric rise in popularity and adoption domestically and globally despite bouts of significant volatility**

*“Digital assets have grown explosively, reaching a market cap of \$3 trillion last November [2021] from \$14 billion just five years prior.”*

- Secretary of the Treasury Janet L. Yellen

2

**Digital assets mature as a new asset class**

3

**Increased participation by institutional investors**

4

**Development of new technologies, investment products and use cases**

**Regulatory advances by other countries**

- Adoption of comprehensive regulatory framework administered by existing financial or monetary authority, e.g., United Kingdom, Singapore
- Canadian securities regulators approved cryptocurrency ETPs, adopted a registration regime for certain trading platforms and issued marketing guidance

5



# What Do We Do in the Meantime?

**Private funds are becoming the vehicle of choice/last resort for cryptocurrency strategies**

- Mutual fund and ETF exposure currently is limited to small investments in CME-listed futures that are cash settled.
- The SEC has declined to approve a '33 Act registered spot cryptocurrency ETP.

**Build flexibility into management structure to accommodate a determination that a particular digital asset is a security**

**Develop a compliance infrastructure to address existing applicable state and federal securities requirements and digital asset areas of concern, such as valuation, custody, and treatment of forks, and airdrops**

# Reflections from Time Spent at the SEC: A Conversation with Kelly Gibson and Jeff Boujoukos

## Speakers



**G. Jeffrey Boujoukos**

+1.215.963.5117

+1.202.739.5283

[jeff.boujoukos@](mailto:jeff.boujoukos@morganlewis.com)

[morganlewis.com](http://morganlewis.com)



**Kelly L. Gibson**

+1.215.963.1521

+1.212.309.6287

[kelly.gibson@](mailto:kelly.gibson@morganlewis.com)

[morganlewis.com](http://morganlewis.com)



**Christine M. Lombardo**

+1.215.963.5012

+1.212.309.6629

[christine.lombardo@](mailto:christine.lombardo@morganlewis.com)

[morganlewis.com](http://morganlewis.com)

**Morgan Lewis**

# Enforcement Trends and Issues

## Speakers



**G. Jeffrey Boujoukos**

+1.215.963.5117  
+1.202.739.5283  
[jeff.boujoukos@  
morganlewis.com](mailto:jeff.boujoukos@morganlewis.com)



**Susan D. Resley**

+1.415.442.1351  
[susan.resley@  
morganlewis.com](mailto:susan.resley@morganlewis.com)

**Morgan Lewis**

# Enforcement Overview

## Proactive enforcement

- Regulation by Enforcement
- Speeding Tickets/Broken Windows
- Direct from Enforcement Sweeps

## Cooperation

## Penalties

## Admissions

## Whistleblowers

# Private Funds Enforcement Update

As is the case with exams, private funds are once again a top priority for SEC Enforcement

- Increased scrutiny on private funds (35% of all RIAs and \$18 trillion in private fund assets)
- Singular focus on Main Street investors from 2016-2020 is over
- Harm to investors vs. conduct of institution
- Already, two significant cases filed in 2022 involving hedge fund collapses

Not just SEC watching

- CFTC and DOJ have also increased their focus on private funds and have filed parallel charges in this year's most prominent cases

	<u>Expected Areas of Scrutiny</u>
<b>Fees and Expenses</b>	<ul style="list-style-type: none"> <li>• Preferential terms (including disclosures) and different fee structures for investors in the same vehicle</li> </ul>
<b>SPACs</b>	<ul style="list-style-type: none"> <li>• Conflicts and allocation of SPAC opportunities where the fund manager is affiliated with the sponsor</li> </ul>
<b>Insider Trading</b>	<ul style="list-style-type: none"> <li>• Shadow trading and information scraping</li> </ul>
<b>ESG</b>	<ul style="list-style-type: none"> <li>• Greenwashing and other potential disclosure violations</li> </ul>
<b>Deficient Recordkeeping and Filings</b>	<ul style="list-style-type: none"> <li>• “Speeding ticket” violations such as Form PF and Section 13 filings</li> </ul>
<b>Valuation</b>	<ul style="list-style-type: none"> <li>• Continued focus on complex products, particularly swaps and other derivatives</li> </ul>
<b>Risk Management Controls</b>	<ul style="list-style-type: none"> <li>• In a time of high volatility, risk-management disclosures and practices</li> </ul>
<b>Cybersecurity</b>	<ul style="list-style-type: none"> <li>• Supervisory controls, including third-party vendors, internal reporting of incidents and self-disclosure</li> </ul>

# Lawyer Biographies

Morgan Lewis

# G. Jeffrey Boujoukos



## Philadelphia/ Washington, DC

T +1.215.963.5117

+1.202.739.5283

[jeff.boujoukos@morganlewis.com](mailto:jeff.boujoukos@morganlewis.com)

G. Jeffrey Boujoukos is the leader of our securities enforcement practice. The former regional director of the Philadelphia Regional Office of the US Securities and Exchange Commission (SEC), Jeff defends public companies, financial services clients, and their executives in SEC, self-regulatory organization (SRO), and state enforcement matters. Combining his government and private practice experience, Jeff advises clients in collaboration with Morgan Lewis's securities, white collar defense, and investment management practices. He is admitted in Pennsylvania and Massachusetts only, and his practice is supervised by DC Bar members.

As regional director, Jeff supervised the SEC's examination and enforcement programs in Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia. He led a staff of approximately 160 enforcement attorneys, accountants, investigators, and compliance examiners who investigated and enforced the federal securities laws and performed compliance inspections in the Philadelphia region with jurisdiction over nearly 1,200 investment advisers and investment companies with more than \$10 trillion in assets under management. Further, he closely coordinated with state and federal criminal authorities on a number of parallel investigations.

Jeff also spearheaded the SEC's outreach efforts to retail investors in the Philadelphia region, meeting with registrants, senior investors, college and high school students, and members of the military to promote financial literacy and help protect against fraud. In 2016, he was recognized by the SEC with the Arthur F. Matthews Award for his "sustained demonstrated creativity in applying federal securities laws for the benefit of investors."

Prior to being named regional director of the Philadelphia office, Jeff served as the office's associate regional director from 2014 to 2016. In that role, he supervised the region's enforcement efforts, including the investigation and litigation of matters involving insider trading, financial reporting and accounting fraud, investment advisors, broker-dealers, offering frauds, and Ponzi schemes. He began his tenure at the SEC in 2009 as regional trial counsel for the office, conducting jury trials and emergency hearings, as well as supervising the Trial Unit staff, in actions pending in federal court and administrative proceedings.

In his time as a partner at Morgan Lewis before joining the SEC, Jeff represented broker-dealers, clearing firms, investment advisers, mutual funds, and individuals regarding matters pending with the SEC in Washington, DC, and in its regional and district offices across the United States. Additionally, Jeff represented clients in connection with matters before SROs and state authorities such as the Attorney General offices of New York, New Jersey, and Ohio.

Jeff also has civil litigation experience in class action and other commercial matters. He has represented clients in shareholder and other class actions and complex litigation against corporations, directors, and officers. He has counseled clients in connection with failed transactions, closing balance sheet issues, and breaches of representations and warranties. These representations have taken him to federal and state trial courts throughout the United States.

Jeff has litigated to award a number of multimillion-dollar arbitrations before Financial Industry Regulatory Authority (FINRA) and American Arbitration Association arbitration panels, including matters involving claims against brokerage firms for breach of fiduciary duty, breach of contract, negligence, and breach of the federal securities laws.

Jeff serves as an adjunct professor at Drexel University's Thomas R. Kline School of Law.



# Laura E. Flores



## Washington, D.C.

T +1.202.373.6101  
[laura.flores@morganlewis.com](mailto:laura.flores@morganlewis.com)

Laura E. Flores' practice focuses on the regulation of investment companies and investment advisers. Laura regularly represents exchange-traded funds (ETFs), mutual funds, and variable insurance-dedicated products, as well as their sponsors and boards of directors, and investment advisers. She counsels both well-established clients and clients that are new to the industry on a variety of regulatory, transactional, compliance and operational issues, including the development of new financial products and services, federal and state registration issues, the preparation and implementation of compliance programs, business combinations involving investment companies and investment advisers, interpretive and "no-action" letter requests, requests for Securities and Exchange Commission exemptive relief, and regulatory examinations. Laura also counsels investment advisory clients on matters, including advertising and communications with the public, investment adviser registration, and separately managed account (or wrap fee) programs. Laura also has significant experience representing "liquid alt" funds, funds that invest through offshore subsidiaries, and funds that utilize QFII/RQFII quotas to invest directly in securities issued and traded in China.

Prior to joining Morgan Lewis, Laura was a partner in the financial services practice of another international law firm, where she also served on the firm's diversity committee. Before that, Laura was assistant general counsel in the asset management division of a global bank and an associate in the Washington D.C. office of Morgan Lewis

# Kelly L. Gibson



## Philadelphia/New York

T +1.215.963.5121  
+1.212.309.6287  
[kelly.gibson@morganlewis.com](mailto:kelly.gibson@morganlewis.com)

Kelly Gibson is the co-leader of the firm's securities enforcement practice. She previously held numerous national and regional leadership roles at the US Securities and Exchange Commission (SEC), including serving as the acting deputy director of the Division of Enforcement, as leader of the Enforcement Division's nationwide Climate and Environmental, Social, and Governance (ESG) Task Force, and as director of the SEC's Philadelphia Regional Office. Kelly advises and defends public companies, financial services clients, and their executives in SEC, self-regulatory organization (SRO), and state enforcement matters, and in internal investigations. She is admitted in Pennsylvania and New Jersey only, and her practice is supervised by NY Bar members.

Leveraging her government and private practice experience, Kelly works in collaboration with the firm's corporate and business transactions, investment management, white collar defense, and labor and employment practices to advise clients on regulatory and litigation matters.

She also uses her broad ESG enforcement and policy experience to counsel public companies and registrants as they develop proactive ESG strategies, create investment products, consider disclosure requirements, and identify investment opportunities.

As acting deputy director of the SEC's Division of Enforcement, Kelly helped set enforcement priorities and assisted in supervising approximately 1,300 staff who investigate and litigate across a broad spectrum of nationwide securities matters, including issuer disclosure and accounting abuses; foreign bribery; investment advisory and broker-dealer violations; securities offering; market manipulation; insider trading; and crypto- and cyber-related misconduct. In this role, Kelly also oversaw the division's Office of Market Intelligence and Office of the Whistleblower.

In addition, Kelly served as leader of the Division of Enforcement's newly formed nationwide Climate and ESG Task Force, where she led task force members from across SEC headquarters, regional offices, and specialized units to evaluate tips, referrals, and whistleblower complaints on ESG-related issues, and to develop initiatives to proactively identify potential ESG-related misconduct involving public companies and registrants. Kelly also served as a resource for, and coordinated enforcement ESG efforts with, other SEC divisions and offices, and she met with other federal, state, and international officials regarding respective ESG priorities.

As director of the SEC's Philadelphia Regional Office, Kelly led a staff of approximately 160 enforcement lawyers, accountants, and industry specialists who investigate and litigate the federal securities laws nationwide, and examiners with oversight in the Mid-Atlantic region of nearly 1,200 investment advisers with more than \$13.5 trillion in assets under management, over 150 investment fund complexes, and more than 290 broker-dealers with over 14,275 branch offices.

Earlier in her tenure, Kelly served in the Division of Enforcement's Market Abuse Unit as an assistant regional director and then as associate regional director of the SEC's Philadelphia office, where she supervised enforcement efforts. Kelly began her career at the SEC in 2008 as a staff attorney and received the SEC's Analytical Methods Award in 2016. During her tenure at the SEC, Kelly supervised, investigated, and filed actions involving a wide range of securities violations, and she closely coordinated with state and federal criminal authorities on numerous parallel investigations. Before joining the SEC, Kelly was in private practice, advising clients on internal investigations and commercial litigation matters.

# Christine M. Lombardo



## Philadelphia/New York

T +1.215.963.5012

+1.212.309.6629

[christine.lombardo@morganlewis.com](mailto:christine.lombardo@morganlewis.com)

Christine Lombardo advises investment managers and broker-dealers on financial regulatory matters. She concentrates her practice on securities regulation for a broad range of financial firms including retail asset managers, private fund managers, family offices, broker-dealers, other professional traders, and high-net-worth individuals. Christine also counsels legal, compliance, and business personnel on the structure, operation, and distribution of advisory programs, including digital advisory offerings, and investment products, including hedge funds, private equity funds, venture capital funds, real estate funds, and other alternative investment products.

Christine also counsels financial firms through examinations by industry regulators, as well as on enforcement related matters. She also serves as a co-leader of the firm's financial technology (fintech) industry team. Before joining Morgan Lewis, she was an associate at an international law firm in New York and worked for the Division of Enforcement at FINRA.

# Susan Resley



## San Francisco

T +1.415.442.1351

[susan.resley@morganlewis.com](mailto:susan.resley@morganlewis.com)

Clients rely on Susan Resley's guidance to counsel and defend them in regulatory matters concerning accounting and disclosure issues, insider trading, Foreign Corrupt Practices Act (FCPA) (including due diligence and compliance), internal controls, cybersecurity concerns, whistleblower-related issues, and Securities and Exchange Commission (SEC) or Financial Industry Regulatory Authority (FINRA) rules related to broker-dealers and investment advisors. She has represented clients in international regulatory and internal investigations, including in the United Kingdom, France, China, Japan, Korea, and India.

Susan has been recognized as one of the Top Women Lawyers in California in 2019 by the *Daily Journal* and recommended by *Chambers* for Securities Litigation and by *The Legal 500 US* in White Collar Criminal Defense, Corporate Investigations, and Securities Litigation.

Susan has obtained favorable results for her clients, including dismissals in litigation involving regulators and private plaintiffs. On numerous occasions, the SEC, US Department of Justice (DOJ), and Public Company Accounting Oversight Board (PCAOB) have declined to pursue actions against her clients, including after informing Susan of their intent to do so. Her clients include private and public companies, boards and their committees, accounting firms, brokerage and investment advisory firms, and other financial institutions. Individual directors, senior company officers, and employees also look to Susan to represent them in regulatory and private litigation where their reputations are at stake.

Before joining Morgan Lewis, Susan was a securities litigation partner with an international law firm. Prior to that, she held a partnership role at the global firm. She brings government experience to her clients, as she worked for the SEC before starting in private practice. At that agency's Division of Enforcement in its Los Angeles Regional office, Susan oversaw and took part in investigations into insider trading, broker-dealer practices, municipal bond offerings, accounting practices, and market manipulation.

She lectures frequently on such legal topics as conducting internal investigations, SEC enforcement trends, accounting and controls matters, and the FCPA. She also comments on media outlets including National Public Radio (NPR) and Fox News, and several news and legal publications often quote her.

Susan holds multiple leadership positions at Morgan Lewis. She is the leader of Morgan Lewis's San Francisco litigation practice and is the firm's securities trade clearance partner. She also serves on the firm's Audit, Sarbanes-Oxley, and Investment Committees.

# Ignacio A. Sandoval



**Washington, D.C.**

T +1.202.739.5201

[ignacio.sandoval@morganlewis.com](mailto:ignacio.sandoval@morganlewis.com)

Ignacio A. Sandoval advises broker-dealers and other securities intermediaries on matters relating to their obligations under federal securities laws and self-regulatory organization rules. Prior to joining Morgan Lewis, he was a special counsel in the Office of Chief Counsel in the SEC's Division of Trading and Markets. Ignacio's SEC experience includes matters involving domestic and foreign broker-dealer registration matters, anti-money laundering obligations, alternative trading systems, and high-frequency traders.

Ignacio's additional experience includes matters relating to the safe harbor from broker status for an issuer's personnel, statutory disqualifications, transaction confirmations, US clearing agencies and exchanges, transfer agents, clearing agreements, financial responsibility rules and margin, recordkeeping obligations, and the outsourcing of broker-dealer technology and platforms. Ignacio also has experience with issuer listing standards, alternative trading system registrations, and enforcement matters involving broker-dealers, clearing agencies, transfer agents, and derivatives.

# Steven W. Stone



Washington, D.C.

T +1.202.739.5453

[steven.stone@morganlewis.com](mailto:steven.stone@morganlewis.com)

Steven W. Stone is a securities lawyer who counsels clients on regulations governing broker-dealers, investment advisers and bank fiduciaries, and pooled investment vehicles. Head of the firm's financial institutions practice, Steve counsels most of the largest and most prominent US broker-dealers, investment banks, investment advisers, and mutual fund organizations. He regularly represents clients before the US Securities and Exchange Commission (SEC) and Financial Industry Regulatory Authority (FINRA), both in seeking regulatory relief and assisting clients in enforcement or examination matters.

Steve advises major US broker-dealers in the private wealth and private client businesses that offer investment advice and brokerage services to high-net-worth and retail clients as well as broker-dealers serving self-directed clients. In this connection, Steve has counseled numerous broker-dealers and investment advisers on the SEC's new retail advice regulations, including Regulation Best Interest and Form CRS. He also advises broker-dealers and investment advisers in the managed account or wrap fee area, and serves as counsel to the Money Management Institute, the principal trade association focused on managed accounts. Steve also counsels various institutional investment advisers and banks on investment management issues, including conflicts, trading, disclosure, advertising, distribution, and other ongoing regulatory compliance matters. He also works as counsel on various matters to the Securities Industry and Financial Markets Association's (SIFMA) and the Investment Company Institute (ICI).

Steve's practice includes counseling clients on varied regulatory and transactional matters including the development of innovative products and services; regulation and operation of managed account (or wrap fee) programs and hedge funds; trading issues affecting broker-dealers and investment advisers; soft dollar arrangements; special regulatory issues for advice provided to retail investors (including under SEC Reg. BI); interpretive and no-action letter requests; insider trading issues; and related matters. He guides clients through SEC, FINRA, and state investigations and enforcement actions. Additionally, he counsels clients on mergers, acquisitions, and joint ventures involving broker-dealers and investment advisers.

As part of his practice, Steve regularly assists brokers and investment advisers seeking relief from the SEC and its staff. In this connection, Steve has obtained SEC relief for a broad range of clients, including on payments by brokers to internet portals (Schwab) and to research providers (Goldman Sachs & Co. & Schwab), bank network arrangements (Retirement System Distributors), broker confirmation delivery requirements (Goldman Sachs & Co., William Blair & Company), receipt by brokers of payments for research from clients CCAs (SIFMA) and hard dollar payments from investment advisers subject to MIFID II (SIFMA), operation of alternative trading systems (Interinvest, State Street), broker status of companies facilitating issuer-sponsored affinity investing and dividend reinvestment programs (StockPower) and related Securities Act issues (StockPower), effecting principal trades by advisers (Edward Jones, Wells Fargo, UBS), custody arrangements involving advisers (Investment Advisers Association), exercise of discretion by brokers incidental to provision of investment advice (Morgan Lewis), satisfaction by brokers of mutual fund prospectus delivery requirements to managed account clients (Money Management Institute), and investment sub-adviser delivery of Form ADV firm brochures (Goldman Sachs & Co.). Steve has also participated in various SEC forums, including the SEC's 2001 Portals Roundtable: Relationships Between Broker-Dealers and Internet Web Sites.

Steve serves as co-leader of the firm's investment funds industry team, and previously served on the firm's Advisory Board and was managing partner of the Washington, DC, office.

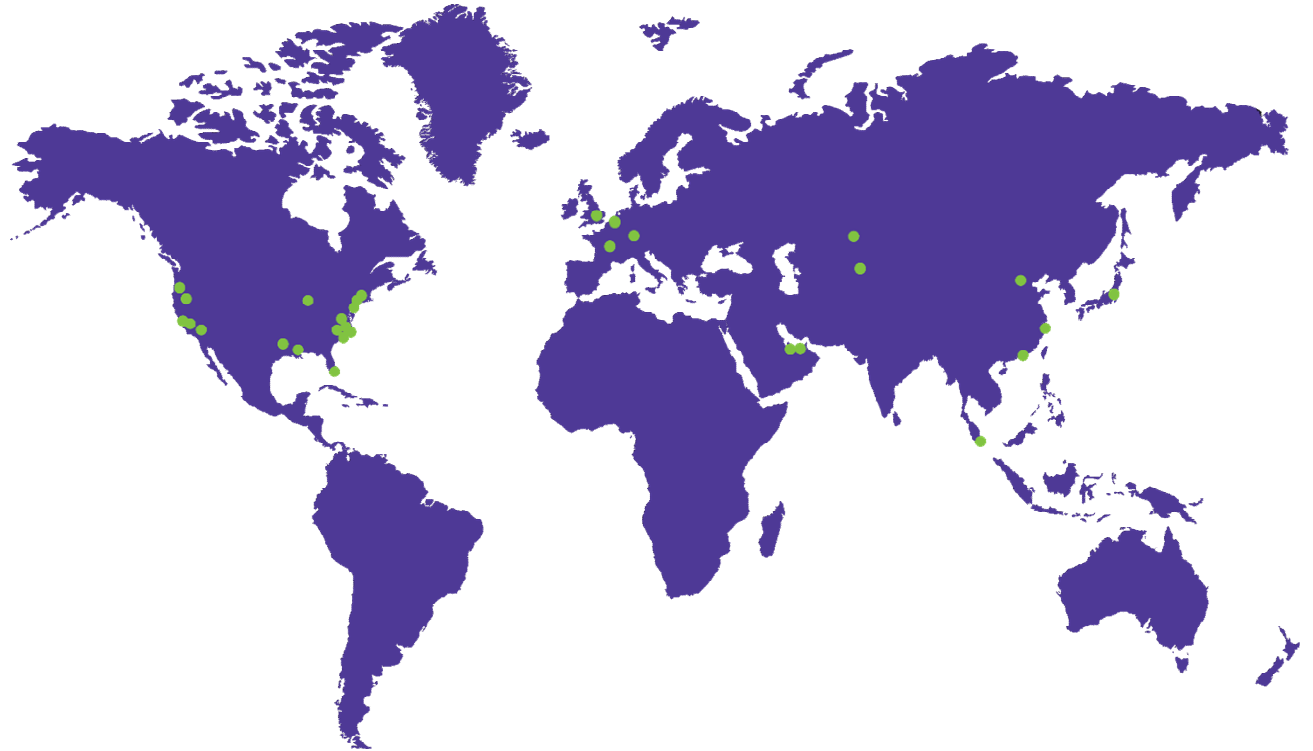
Since 2005, *Chambers USA: America's Leading Lawyers for Business* has recognized Steve as one of the leading US lawyers for investment management and broker-dealer law, calling him "one of the best in the field" and noting that he has "tremendous expertise and experience and a great ability to apply things with a business sense." Since 2009, *The US Legal 500* has listed him for his work with mutual fund formation and management.

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



# Morgan Lewis

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong. Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

# THANK YOU

© 2022 Morgan, Lewis & Bockius LLP  
© 2022 Morgan Lewis Stamford LLC  
© 2022 Morgan, Lewis & Bockius UK LLP

Morgan, Lewis & Bockius UK LLP is a limited liability partnership registered in England and Wales under number OC378797 and is a law firm authorised and regulated by the Solicitors Regulation Authority. The SRA authorisation number is 615176.

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong. Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship. Prior results do not guarantee similar outcomes. Attorney Advertising.