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Michael S. Didiuk
Partner

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Advises a wide range of financial institutions including private and registered funds, and investment advisers, on complex regulatory and corporate matters and the application of the Securities Act of 1933, the Investment Company Act of 1940, and the Investment Advisers Act of 1940.

Mike advises asset managers on all aspects of their investment business, including the structuring, formation and private offering of onshore and offshore private investment vehicles, registration and compliance obligations under SEC and state securities laws, and SEC examinations and investigations.

He represents clients seeking regulatory relief from the SEC via exemptive relief or no-action relief and assists in SEC examination and enforcement matters.

Mike performs comprehensive mock SEC examinations for asset managers that evaluate the preparedness of their key personnel and compliance programs for an SEC examination.

He advises clients with respect to the federal securities laws and complex regulatory issues raised by fintech (i.e., robo-advisers) and blockchain technology, and in connection with the emergence of digital asset sales and digital securities.

Mike has more than 22 years of experience as an investment management regulatory lawyer, both at leading law firms and the US Securities & Exchange Commission (SEC). He spent more than seven years at the SEC, where he held various roles, including senior counsel in the Office of Chief Counsel for the Division of Investment Management (Division) and investment management counsel to two SEC commissioners. Mike also worked in the SEC's Division of Examinations, where he led examinations of investment advisers, including robo-advisers, crypto advisers and private fund advisers.

Most recently, he was co-chair of the private investment funds practice at Perkins Coie.

While in the Office of Chief Counsel at the SEC, Mike:

- Provided guidance within the Division and across the SEC on issues arising under the Investment Company Act of 1940 and the Investment Advisers Act of 1940 such as private fund structures, disclosure and status, investment company fees and expenses and performance advertising, investment adviser registration and exemptions, CCO liability, affiliated transactions, soft dollars, disclosure, valuation, cross and principal transactions, and custody.
- Evaluated requests for regulatory relief from provisions of the Investment Advisers Act of 1940 and Investment Company Act of 1940; authored a line of no-action letters granting investment advisers relief from registration based on the premise that the advisers were not advising “others”; authored a no-action letter to Goldman Sachs & Co. allowing “constructive delivery” of Form ADV; and authored guidance on board of directors’ responsibilities when reviewing affiliated transactions.
- Advised the Office of Examinations on legal issues that arose in compliance examinations such as disclosure of private fund fees and

expenses, use of soft dollars, use of testimonials, performance disclosure, use of offshore vehicles, outsourced CCOs and ability to rely on Section 3(c)(1) and 3(c)(7).

- Represented the SEC and the Division of Investment Management in various international organizations such as IOSCO's Standing Committee 5 and Task Force on Unregulated Entities and attended international meetings.
- Provided guidance and support to the Division of Enforcement on matters regarding unregistered investment companies and other Investment Company Act of 1940 violations; participated in deposition regarding unregistered investment company.
- Coordinated with other divisions within the SEC on matters related to digital currencies and marketplace lenders; represented Division on SEC's Digital Currency Working Group and SEC's Structured Products Working Group.

While investment management counsel to two SEC Commissioners, Mike:

- Advised the Commissioners on all facets of the federal securities laws and SEC policy across all divisions and offices, with principal responsibility for matters involving the Division of Investment Management and the Office of Examination and the regulation of investment companies and investment advisers.
- Drafted and reviewed SEC rules, interpretative guidance, congressional testimony, and policy statements on matters involving investment products, corporate governance and disclosure, investment advisers and private investment funds.
- Counseled the Commissioners through deliberations over all stages of enforcement actions and Commissioners adjudications concerning a wide variety of liability theories in cases including those involving scienter- and non-scienter-based fraud, insider trading, registration violations, accounting matters and financial restatements, disclosure issues and periodic reporting, structured products, trading practices, asset management and investment advisers.
- Served as the Commissioners' liaison to external constituencies including investors, the press, SEC registrants, academics, professional

services firms and trade associations.

Practices

INVESTMENT MANAGEMENT

REGULATORY AND COMPLIANCE

Bar Admissions

New York

District of Columbia

Education

The Catholic University of America, Columbus School of Law, J.D.

Fairfield University, B.S.

Publications

- “The SEC and CFTC Overhaul Form PF,” *Schulte Alert*, April 15, 2024; republished in *Harvard Law School Forum on Corporate Governance*, May 2024
- “FinCEN Once Again Proposes Anti-Money Laundering Program Requirements for Investment Advisers,” *Schulte Alert*, March 18, 2024
- “Corporate Transparency Act Update: Federal District Court Rules the Act Unconstitutional,” *Schulte Alert*, March 5, 2024
- “SEC Adopts Final Rules on SPAC IPOs and De-SPACs to More Closely Align With Traditional IPO Requirements,” *Schulte Alert*, Feb. 2, 2024; republished in *Harvard Law School Forum on Corporate Governance*, March 2024
- “Corporate Transparency Act Update: Beneficial Ownership Reporting Rule Now Effective and FinCEN Is Accepting Reports,” *Schulte Alert*, Jan. 4, 2024
- “The Corporate Transparency Act: Final Rule on Access to Beneficial Ownership Information,” *Schulte Alert*, Jan. 2, 2024
- “Compliance Priorities In 2024 Include Climate And AI,” *Law360*, Jan. 1, 2024 (quoted)
- “The Corporate Transparency Act: FinCEN Extends Filing Deadline From 30 to 90 Days For Reporting Companies Created or Registered in 2024,” *Schulte Alert*, Dec. 1, 2023
- “The Corporate Transparency Act: The Private Funds Guide to Compliance With the Beneficial Ownership Reporting Rule,” *Schulte Alert*, Nov. 2, 2023
- “The Corporate Transparency Act: Key Considerations for Compliance With the Beneficial Ownership Reporting Rule,” *Schulte Alert*, Nov. 2, 2023
- “SEC Division of Examinations Releases 2024 Examination Priorities – What Private Fund Managers Should Know,” *Schulte*

Speaking Engagements

- “Form ADV Part 1: Annual Updating Amendment and More,” Investment Adviser Association Webinar, April 2024
 - “New Form PF amendments affecting all filers and large hedge fund advisers,” AIMA Webinar, March 2024
 - “First Look,” MFA Webinar, February 2024
 - “Compliance Hot Button Issues,” 33rd Annual Schulte Private Capital Forum, January 2024
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Memberships

- Committee on Investment Management Regulation, New York City Bar Association
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Prior Experience

- Perkins Coie
- US Securities and Exchange Commission
- Willkie Farr & Gallagher
- Shearman & Sterling
- Dechert
- KPMG