



CALIFORNIA
INVESTMENT
MANAGEMENT
SYMPOSIA



2019

Introduction

In November 2019, Dechert hosted two Investment Management Symposia in Los Angeles and San Francisco. Investors, general counsel, compliance officers, information officers, industry insiders and Dechert attorneys explored a variety of themes that are most relevant to today's financial services and fintech professionals. These themes included the importance of blockchain to the investment management sector, alternative forms of debt, developments in regulation and the standard of conduct for broker-dealers and investment advisers, California's new Consumer Privacy Act and socially responsible investing. The panels provided practical insights into this broad range of topics and how they impact investment management and brokerage, and through open discussions and audience participation provided predictions as to what the industry should expect into 2020 and beyond.



Keynote speakers



Jane Buchan

Chief Executive Officer and Co-Chief
Investment Officer
Martlet Asset Management, LLC
(in Los Angeles)



Paul Schaeffer

Chief Curator
Alphahut.net
(in San Francisco)

Participants

- Jason Bortz, Senior Vice President and Senior Counsel, Capital Group
- Jeff Engelsman, Global Chief Compliance Officer, TCW Group, Inc.
- Kevin Farrelly, Vice President, Franklin Templeton Investments
- Christopher Gilkerson, Senior Vice President, Chief Legal Officer and General Counsel, Charles Schwab & Co.
- Glen Guymon, Vice President and Senior Counsel, Dodge & Cox
- Christopher Hall, Chief Information Security Officer, Pacific Life
- Brian Harris, Senior Director, Associate General Counsel, Affirm
- Daniel E. Ingram, Vice President, Wilshire Associates
- Ken Little, Managing Director, Investments Group, Brandes Investment Partners L.P.
- Steven McClurg, Managing Director, Galaxy Digital
- Nicole Macarchuk, Chief Operating Officer, General Counsel and Managing Director, Angel Island Capital
- Liz Michaels, Chief of Staff and Director of ESG/SRI, Aperio Group LLC
- Sara Priola, Founder, Law Office of Sara Priola
- Mark Quinn, Director of Regulatory Affairs, Cetera Financial Group
- Ayelet Rosen, Vice President of Capital Markets, Currency Capital
- Chris Setaro, Global Chief Compliance Officer, SharesPost, Inc.
- Joe Sinha, Chief Marketing Officer, Parnassus Investments
- Benjamin Tsai, President, Managing Partner, Wave Financial

Dechert moderators and panelists

- Tim Blank
- Kevin Cahill
- Brenden Carroll
- Susan Grafton
- Matt Hays
- Mark Perlow
- Kenneth Rasamny
- Robert Robertson
- Andrew Schaffer
- Tim Spangler

Digital Assets and Virtual Currencies

Blockchain is an innovative technology that was developed over 10 years ago and has applications well beyond the financial industry. It has been growing in use for supply chain logistics, provenance matters and medical records. Its potential uses for the financial industry extend well beyond Bitcoin and virtual currencies.

The panelists agreed that the future is blockchain, the technology that underlies Bitcoin, and not Bitcoin itself. They also discussed how the Bitcoin blockchain has provided the stability to withstand being hacked, which provides a sound proof of concept of the technology.

“ Daily use of blockchain is surprisingly low, but it will find its place. ”

The panel considered how Bitcoin has been viewed and used differently around the world. In the United States, Bitcoin is seen as a speculative asset that is not easy for retail customers to trade in. However, as more and more large financial institutions enter into the digital asset space, set up platforms and are willing to take custody, trading in digital assets is becoming easier and more mainstream. U.S. regulators have expressed some caution, but also a willingness to work through the issues. Many Asian countries are more involved in and welcoming of virtual assets than in the U.S. Additionally, emerging and developing countries who experience hyperinflation and whose currencies often fluctuate have been able to use Bitcoin as currency rather than as a speculative asset.

The panelists also discussed developments in Bitcoin-related products registered under the Investment Company Act of 1940. They indicated that institutional adoption of such assets relies on custody and that the regulators are providing more clarity on how to store the assets. Lastly, the panelists noted that the launch of a Bitcoin ETF is not critical for mainstream access to blockchain.



Alternative/Marketplace Lending

Alternative lending refers to any lending practice that occurs outside of the traditional banking system. Marketplace lending uses online “platforms” to connect consumers or businesses who seek to borrow money with investors willing to provide funding for such loans.

In particular, marketplace lending typically involves a prospective borrower submitting a loan application online where it is assessed and assigned an interest rate using the marketplace lending platform’s proprietary credit methodology.

The panel agreed that the marketplace lending industry has experienced significant development over the years from originally starting as “peer-to-peer” lending networks for individuals to lend to one another. It has since become common for institutional investors to partner with

platforms to provide funding for loans issued on the platform. This development has significantly expanded the availability of marketplace lending platforms to consumers and businesses across various asset classes, including real estate, auto and student debt.

The panel also discussed the importance of investors completing appropriate due diligence before investing in a given platform, including with respect to the platform’s loan underwriting process and the future likelihood of the platform continuing to operate as a profitable business. Lastly, the panel discussed potential regulatory risks or market headwinds that marketplace lending platforms may face in the future.



SEC and State Standard of Conduct Initiatives

Regulation BI

Regulation Best Interest (Reg BI) requires broker-dealers to act in their retail customers' best interest when making recommendations with respect to securities transactions and investment strategies involving securities. The June 30, 2020 compliance date is fast approaching and firms are waiting for the SEC to provide additional guidance on a myriad of interpretative questions relating to the disclosure, care, conflicts of interest and compliance obligations.

Form CRS

The panelists also discussed the Customer (or Client) Relationship Summary, or Form CRS and the practical implications of the SEC's page limits. The panelists compared and contrasted the disclosure obligations of Regulation Best Interest, the Advisers Act and Form CRS and the ability to use "layered disclosure" and electronic delivery to comply with the different obligations.

SEC Interpretation of Investment Advisers' Fiduciary Duty

The panelists discussed the SEC's recent standard of conduct interpretation for investment advisers, which clarified the SEC's view that investment advisers owe their clients a fiduciary duty under the Advisers Act, and that this fiduciary duty comprises a duty of care and a duty of loyalty. The panelists noted, however, that this fiduciary duty should be viewed in the context of the agreed-upon scope of the relationship between the adviser and its clients.

The panelists discussed how the SEC acknowledged that duties owed to a client are not one size fits all. For example, the duty of care owed to an institutional client may differ in certain ways from the duty of care owed to a retail client. Moreover, the adviser and its client may shape their relationship by agreement, provided that there is full and fair disclosure and informed consent.

The panelists discussed ways in which investment advisers may want to review their relevant advisory agreements and disclosure documents to determine whether they have fully and fairly disclosed all material facts, including conflicts of interest, and obtained

the informed consent of their clients across various types of investment product offerings.

State Fiduciary Rulemaking

Lastly, the panelists discussed multiple state initiatives to adopt a fiduciary duty for broker-dealers providing recommendations to retail customers and, in the case of Nevada, institutional customers. There was universal agreement that a patchwork of state regulations would have significant impact on the industry and limit the services available to retail customers.



“ The prospect of a patchwork of state fiduciary obligations on top of Regulation Best Interest would fundamentally change the brokerage industry. ”

Privacy and Cybersecurity

The recent passage of California's Consumer Privacy Act (CCPA) is forcing firms to think carefully about how they collect and use personal information. The CCPA is an attempt to shift the ownership of personal information away from companies and back to consumers. It provides consumers and employees with new rights with respect to their personal information, which is broadly defined under the law.

The panel also discussed regulatory issues related to web scraping, the purchasing of data sets and the use of alternative data generally. There was discussion regarding insider trading risks related to the use of data sets, risks arising from different types of data in the data pool (such as personal information), and risks related to third party vendor use of data sets. The use of "web scrapers," which can extract content from various websites in a variety of ways, was also discussed, including the application of the Computer Fraud and Abuse Act to web scraping.

Lastly, the panel discussed five important action items with regards to the CCPA. First, companies need to conduct a thorough data inventory. Until such an inventory is complete, companies will not fully understand the risks associated with the data they have. Second, companies should look to see if any exemptions from the CCPA apply to them. Third, companies need to determine if their use of data could be viewed as a "sale." Fourth, companies with California employees should ensure they are in a position to provide CCPA compliant notices to such employees. Fifth and finally, the panel discussed how imperative it is for companies to watch for future developments, as the California Attorney General will be promulgating future regulations pursuant to the CCPA and other states may implement similar laws.



“ A game changer, waiting to see if other states follow California. ”

ESG (Environmental, Social and Governance)

Environmental, social and governance (ESG) investing is an approach that both has a long history and recently has gained considerable popularity. ESG, socially responsible investing (SRI), values-based investing and impact investing are related forms of investing, but each has its own meaning, history and nuances. For example, ESG investing typically involves the analysis of a company's environmental, social and governance criteria alongside more traditional financial measures, whereas SRI investing typically involves the specific screening of investments from a portfolio according to specific ethical guidelines.

Regardless of the particular investment philosophy at hand, the panel agreed that there is much greater demand for ESG-type investing approaches and that investors and investment firms are increasingly incorporating ESG factors into their investment process. In addition, the panel stated that implementing ESG

investing does not necessarily equate to reduced financial performance. On the contrary, considering ESG issues may result in a more comprehensive investment analysis of a given company and unlock unrealized value.

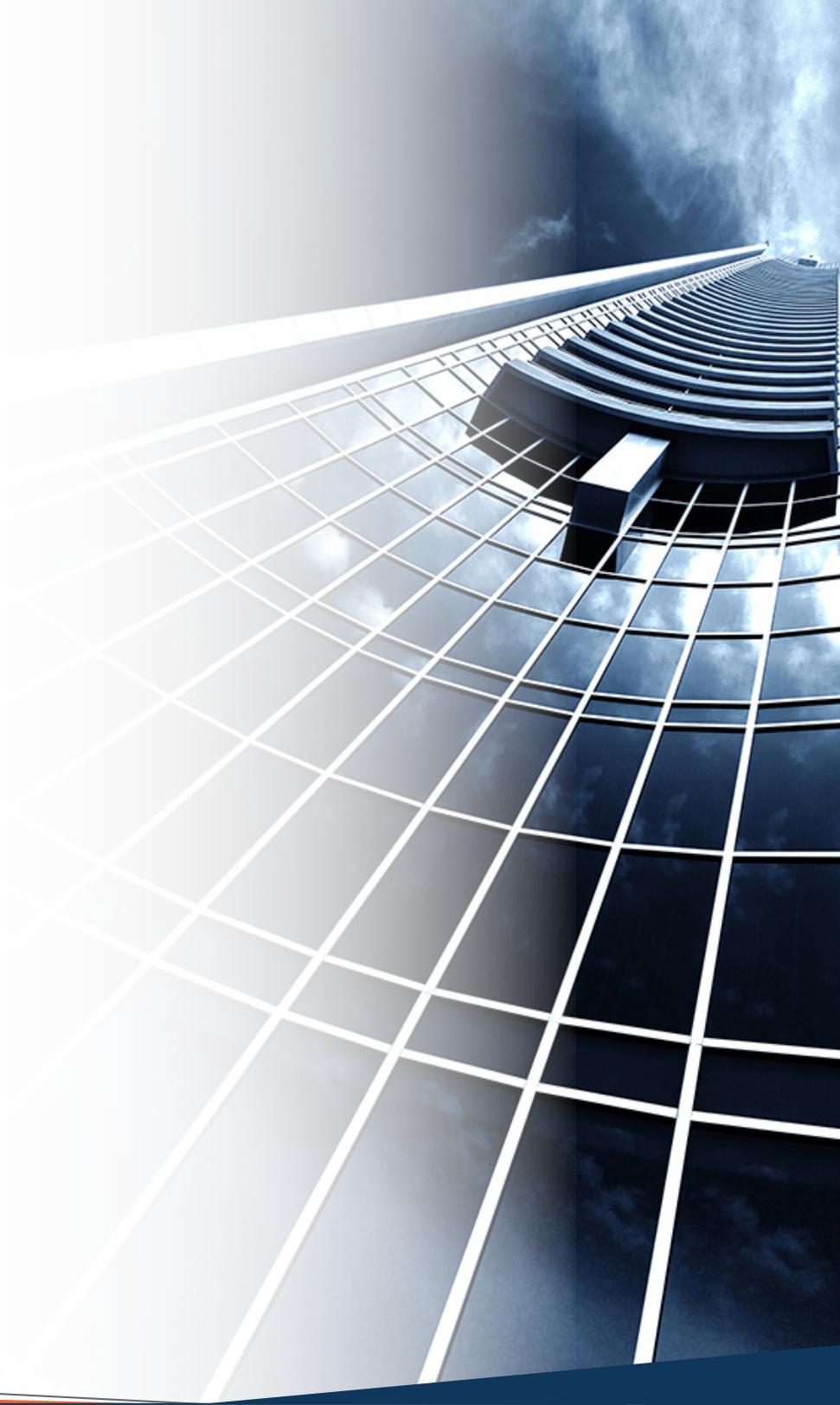
The panel also discussed the absence of ESG reporting and rating standards for portfolio companies and investment products and the wide range of methodologies and approaches used by the independent agencies providing ESG ratings of such companies and products. The panelists discussed the evolving approaches to regulating ESG in the EU and the U.S. While the EU is developing an ESG "taxonomy" to help investors evaluate ESG factors in their investments, the U.S. Securities and Exchange Commission is using a disclosure-based approach focused on assuring that investment firms' disclosures align with their actual investment processes.





About Dechert

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