

The image features a dark purple square in the top-left corner containing the text 'K&L GATES' in white, uppercase letters. The background is a composite image: a night cityscape with blurred lights, overlaid with a white line graph showing an upward trend, and a blue grid pattern on the right side. The overall theme is financial and technology.

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# K&L Gates New York Asset Management and Investment Funds Conference

October 26, 2023

# AGENDA

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1. Welcome

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2. New Structuring & Fund Raising Opportunities in Europe

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3. Break

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4. Enforcement, States and Guidance: ESG Update

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5. Managing the Pace of Regulatory Change

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6. Break

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7. Fireside Chat with Ed Dartley and Brooke Masters, US Financial Editor for the *Financial Times*

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8. Private Funds Fundraising in a Challenging Environment: Structuring and Liquidity Avenues to Reaching Your Goals

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9. Closing Remarks & Reception

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# New Structuring & Fund Raising Opportunities in Europe

## Speakers:

- Gayle Bowen, Partner – K&L Gates
- Mathieu Volckrick, Partner – K&L Gates
- Ravdeep Anand, Managing Director – Golub Capital
- Des Fullam, Chief Regulatory & Client Solutions Officer – Carne Group

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# Enforcement, States and Guidance: ESG Update

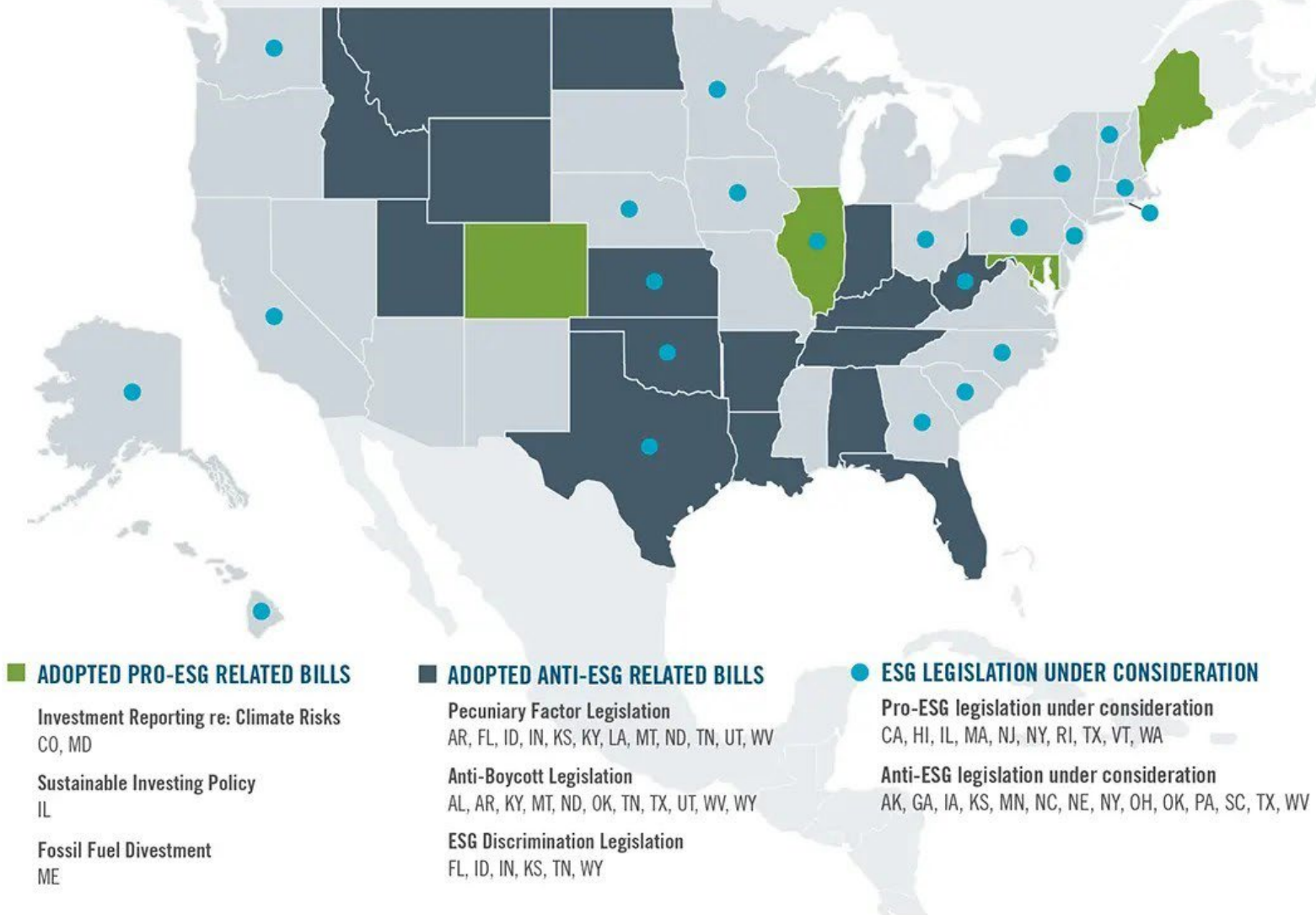
## **Speakers**

- Lance C. Dial, Partner – K&L Gates
- Amy J. Greer, Partner – K&L Gates
- Keri E. Riemer, Partner – K&L Gates

# Enforcement, States and Guidance: ESG Update

- The State of the States
  - State level ESG legislation
  - Interplay between state activity and proposed SEC rules
- Examinations/Enforcement
  - Increased scrutiny
  - Enforcement and Examination Activity
- Disclosure, Policies & Procedures
- Guidance and How to Proceed Pending Final Rules/Guidance
- Looking Abroad: Implications for Global Managers
- Questions/Feedback?

# ESG RELATED LEGISLATION



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# Managing the Pace of Regulatory Change

## **Moderator**

- Eden L. Rohrer, Partner – K&L Gates

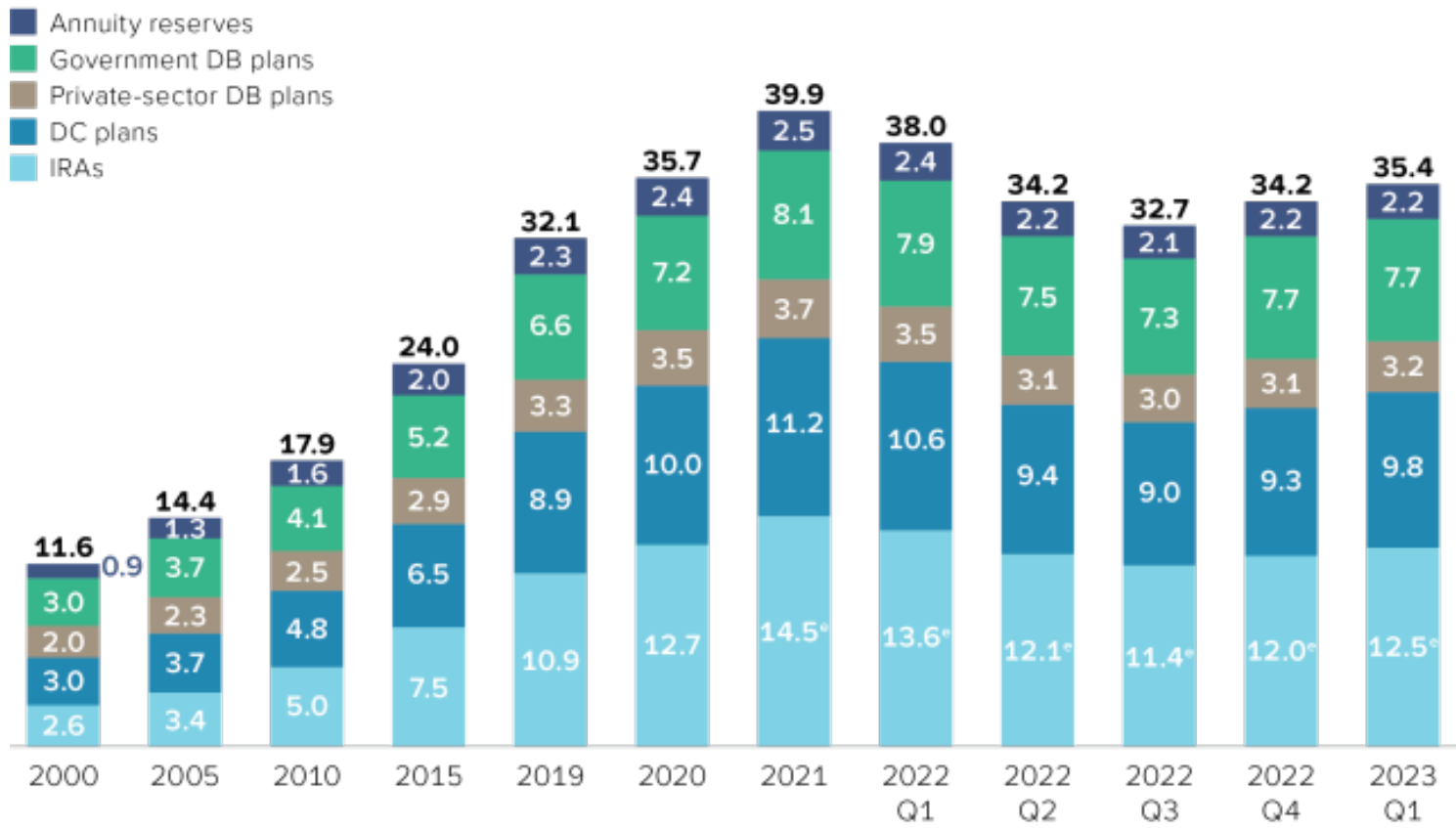
## **Speakers**

- Jennifer L. Klass, Partner – K&L Gates
- Peter J. Shea, Partner – K&L Gates
- Robert L. Sichel, Partner – K&L Gates



Source: SIFMA, “SEC Rulemaking Tracker” <https://www.sifma.org/resources/general/sec-rulemaking-tracker/>





Source: Investment Company Institute, “Retirement Assets Total \$35.4 Trillion in First Quarter 2023”.  
[https://www.ici.org/statistical-report/ret\\_23\\_q1](https://www.ici.org/statistical-report/ret_23_q1)

The logo for K&L GATES is displayed in white, uppercase letters on a dark purple rectangular background. The background of the entire slide features a blurred cityscape at night with bokeh lights, overlaid with a white line graph and several semi-transparent blue circles of varying sizes.

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# Fireside Chat with Brooke Masters of the *Financial Times*

## Speakers

- Ed Dartley, Partner – K&L Gates
- Brooke Masters, US Financial Editor - *Financial Times*

# Private Funds Fundraising in a Challenging Environment: Structuring and Liquidity Avenues to Reaching Your Goals

## Speakers

- Ed Dartley, Partner – K&L Gates
- Jacqueline Duval, Partner – K&L Gates
- Adam J. Tejada, Partner – K&L Gates
- Robert H. McCarthy Jr., Partner – K&L Gates

# Current Market Challenges

Private equity fundraising is **effectively flat** year on year 2022 to 2023:

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<b>\$146.2 billion</b>	vs	<b>\$146.3 billion</b>
raised in Q1 2022		raised in Q1 2023

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Source: "Private Equity Q1 2023: Preqin Quarterly Update", published by Preqin, April 28, 2023.

# Current Market Challenges

**Number of fund closings has decreased significantly:**

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**247** in Q1 2022      to      **140** in Q1 2023

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Source: "Private Equity Q1 2023: Preqin Quarterly Update", published by Preqin, April 28, 2023.

# Current Market Challenges

**Size** of fund vehicles has **grown**:

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**~ \$400 million**  
since 2020

to

**~ \$850 million**  
as of Q1 2023

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Source: “Fundraising Report Q1 2023”, published by Buyouts Insider, May 25, 2023.

# Current Market Challenges

**Slower PE deal volume** in private equity means **less liquidity** – exacerbating the fundraising environment

Source: “Private Equity Q1 2023: Preqin Quarterly Update”, published by Preqin, April 28, 2023.

## This results in:

- **Fundraising** concerns for all managers, especially smaller funds.
- **GP concerns** related to deploying capital and exiting positions, and flow of fees and carry.
- **LP concerns** related to liquidity.



# Current Market Trends in Fundraising

- Strategy specialization
- Economic incentives (e.g., fee breaks for early closing investors)
- Extended fundraising periods
- Interest in accessing non-US markets

# Current Market Trends in Fund Structuring

- Open-ended funds
- Co-investments and joint ventures
- SMAs and funds of one
- Seed investors, anchor investors, and GP stakes

# Liquidity Strategies

## LP-led Secondaries

- Traditional or “plain vanilla” sale of LP interest in one fund
- Portfolio sales
- More complex flavors:
  - Deferred consideration
  - Derivative secondaries
  - Synthetic transactions
  - Leveraged/secured portfolios as collateral

## GP-led Secondaries

- GP-organized process to proactively offer liquidity to existing LPs
- Secures additional time and/or capital for a fund’s unrealized investments
- Forms
  - Fund restructurings
  - Strip sales
  - Annex/top-up funds
  - Tender offers
  - Preferred equity

## Continuation Funds

- New fund vehicle formed to acquire one or more assets from the original fund
- Forms
  - Single-asset
  - Multi-asset
  - Strip sales

# Secondary Transactions

- Preliminary Questions and Considerations
  - GP consent and LPA restrictions in LP-led secondary transactions
  - Effect of SEC Private Fund Adviser Reforms – fairness or valuation opinion now required for GP-led secondary transactions
- Transaction Characteristics
  - Structures and terms are highly bespoke – no two deals are the same
  - Buyers are typically secondaries funds or sophisticated institutional investors
  - GP-led transactions allow sponsors to retain control while minimizing risk execution
- Trends
  - Almost all secondary transactions were traditionally LP interest sales
  - Recently, GP-led transactions are increasingly viewed as a smart portfolio management tool
    - Leading sponsors in Europe and the U.S. are now able to access this market without it being viewed as a sign of weakness
  - Growth in GP-led transaction volume and techniques is expected to continue

# Continuation Funds

	Transaction Overview	Potential Benefits	Applicability
<b>Single-Asset Continuation Funds</b>	<ul style="list-style-type: none"> <li>▪ Sponsor sells all or a portion of a portfolio company to a new FCV</li> <li>▪ New FCV is capitalized with new investors and rolling LPs</li> <li>▪ Transaction proceeds are distributed to fund LPs</li> <li>▪ Sponsor continues management of the new FCV</li> </ul>	<ul style="list-style-type: none"> <li>▪ Optional liquidity event for LPs</li> <li>▪ Extends duration to maximize the company's value creation potential</li> <li>▪ Potential to secure new capital for follow-on investment(s) and/or debt refinancing</li> <li>▪ Ability to reset sponsor economics</li> </ul>	<ul style="list-style-type: none"> <li>▪ Extend holding period for strong or trophy asset</li> </ul>
<b>Multiple-Asset Continuation Funds</b>	<ul style="list-style-type: none"> <li>▪ Sponsor sells all or a subset of assets across a fund or multiple funds to a new FCV</li> <li>▪ New FCV is capitalized with new investors and rolling LPs</li> <li>▪ Transaction proceeds are distributed to fund LPs</li> <li>▪ Sponsor continues management of the new FCV</li> </ul>	<ul style="list-style-type: none"> <li>▪ Transaction price provides a true sale valuation</li> <li>▪ Usually does not trigger change of control provisions</li> </ul>	<ul style="list-style-type: none"> <li>▪ Select assets require more time and/or capital to maximize value</li> </ul>

# Overcoming Obstacles

- Provide specific and particularized disclosures to existing and potential investors
  - Where possible, existing LPs and new investors should have access to the same diligence materials regarding the transaction and the underlying assets
- Consider tag-alongs, rights of first refusal and other rights that may be applicable at the portfolio company level
  - Applicability will often depend on “affiliate transfer” provisions in company documentation and how fund restructuring is structured
- Mitigate various potential conflicts of interest that arise from the sponsor serving as fiduciary on both sides of the transaction



Thank You

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