

# Akin Gump

## Advising hedge funds from conception to succession

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**R**ewind 10 years and Akin Gump was barely on the map when it came to hedge funds in London. Although the US-headquartered firm has a long and distinguished history in the hedge space, the hedge fund practice in the UK was not a major focus. Fast forward to now, and Akin Gump Strauss Hauer & Feld has a good claim to be one of the very biggest hedge fund practices in London, with over 40 lawyers in the capital focused on the sector.

This explosion in numbers has meant that the firm can now confidently offer a full-service practice from formation, through to growth, and finally to succession, drawing on partners in two London offices as well as the well-established practice across the Atlantic. *The Hedge Fund Journal* spoke to the partners behind this growth at their 41 Lothbury offices in the heart of the City (which is also accompanied by another office in Bishops Square). This explosive growth has been led by Akin Gump partners Ian Meade and Tim Pearce. Steve Vine and, in particular, Prakash Mehta, the New York-based

heads of the firm's funds practice, were keen to build up the London offering to replicate the full-service hedge fund practice on the other side of the Atlantic – an ambitious task for the relatively late mover. However, Meade and Pearce were keen for the challenge, moving from Simmons & Simmons at the beginning of August 2012 to expand the hedge fund practice in earnest.

Akin Gump's reputation in the States is such that in September 2010 *Vanity Fair* magazine named it (along with one other) as the "Coke and Pepsi of the business" in a tongue-in-cheek guide to setting up a hedge fund. The brief from the start, says Meade, was to "replicate that success" in London and create a "really compelling and attractive offering" in a market that had matured into the second centre of hedge fund management worldwide.

Of course, simply replicating the US office was never the full story. The Akin Gump leadership, chaired by Kim Koopersmith, according to Meade, "includes people with a very international outlook and a significant degree of enthusiasm for growing the international side of the firm" – and with good

reason, with the hedge fund industry increasingly globalised.

"We saw it as a first step in the growth and development of not just the firm's offering in London," Meade says, "because from our perspective as hedge fund lawyers, it is an international business. It's not enough to be a firm that's strong in one jurisdiction." Funds respect borders less and less, and offices in multiple jurisdictions are the norm for funds above a certain size. The London expansion by Akin Gump represents a clear effort to offer a globalised practice for a globalised industry.

The firm can now point to 100+ funds-focused lawyers – including tax – worldwide doing the bread and butter hedge fund work – fund formation and fund structuring – but, as Pearce says, "That number is quite conservative," with broad and varied resources to draw on beyond those lawyers dedicated to pure hedge. For instance, the financial restructuring group, led by James Roome, London senior partner, is the largest of its type in the City and includes 45 lawyers, including the tax,



(L-R): Christopher Leonard, Tim Pearce, James Roome, Jon Hanifan, Ian Meade.

corporate, litigation, financial regulatory, antitrust and finance lawyers who work for hedge funds as part of the integrated restructuring practice which moved from Bingham McCutchen towards the end of 2014. It remains in the same physical 41 Lothbury office in London, which Akin Gump took on.

The arrival of the Bingham group saw Meade, Pearce and legacy Akin Gump partner Christopher Gorman-Evans joined by partners John Holton and Thiha Tun to comprise an integrated five-partner funds-focused team in the capital that works seamlessly with New York and the firm's other offices.

Akin Gump was, as Roome puts it, "our opposite number across the water" prior to his team joining. "They had a tremendous advantage over what we had [prior to joining Akin Gump] in that they had this hedge fund formation and fund work, which we were much smaller in, and which has proved to be a difference of scale," says Roome. "So the first impetus was to do with investment-type work, but we've rapidly seen the depth of the hedge fund relationships as an additional gain for us."

Partners Christopher Leonard, who is focused on hedge fund regulatory issues, Helen Marshall, a former head of enforcement at the FSA, and Davina Garrod, a noted expert in competition and regulatory matters who also advises hedge funds, were also part of the same "close-knit" group that joined with Roome. Chris Leonard sees it as "an amazingly neat jigsaw puzzle," offering compelling reasons for parties on both sides, and helping to push the London office as a whole towards the goal of mirroring the US practice.

### Institutions from the start

One of the main aims of this mirroring was to be able to offer a service which could guide a UK-based fund manager through from conception, to inception, and finally through to succession. Akin Gump's work in the London office has, says Meade, a "roughly 80/20 split between big, established, well-known large hedge fund managers, and then start-ups." Akin Gump in London previously did little start-up work at all for hedge funds, but now they consider themselves (based on feedback from prime brokers and others around the industry, in addition to awards received) as one of the leaders in the space.

Meade and Pearce are heavily involved on the start-up side, helping managers with their business development, and trying to foresee how managers can build good structures which allow for scale – as Pearce says, "They've got to be fairly institutional from day one" – while at the same time not going down a route that is too resource-intensive from the start. "It is also one of the areas," says Meade, "which is the most dynamic, entrepreneurial and

exciting because of the pace it all moves at. You're working with clients at a really exciting point in their development."

One of the focuses in this development, Meade says, is to "be sufficiently institutional to be able to tick the boxes in due diligence, but don't be so 'weapons-grade' in your infrastructure that you can't support the overhead." It can be a delicate balancing act, but one of the big attractions for start-ups coming to Akin Gump has been the familiarity of the partners with a wide variety of funds work. "The importance of the breadth of the offering is a very significant part of the success we've had," says Meade.

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Start-ups as they grow can draw on wider resources from partners with experience across the spectrum at Akin Gump. This can include detailed "on the ground" US regulatory advice from John Holton, working with Thiha Tun on private fund investment structures or working with Chris Leonard and Helen Marshall to build high-quality compliance policies, procedures and practices.

That experience has become a key selling point, according to Pearce: "That split between start-ups, going through to the largest managers out there, and also including the work that we do for the US clients in London, is, when you're talking to a client, extremely attractive for them – it's a great proposition. For example, if you're talking to a start-up you can say, 'Yes, we do start-up work,' but we also see what everyone else across the market is doing. We've got this great range of clients. Having that range was really important to us when we were looking at the kind of practice we were hoping to build, because it helps you and it helps the client get more traction and momentum."

### From London to New York

Another aspect of the importance of scale to the Akin Gump offering is the geographical reach. The opportunity to offer integrated advice in both London and New York was always a significant part of the attraction in joining the firm, for Meade and Pearce. Akin Gump has a longstanding commitment to ensuring that it has the right lawyers with the right expertise in the jurisdictions where the clients are. Having US-qualified lawyers based in London (as well as John Holton being a US-qualified practitioner of many years' standing, Christopher Gorman-Evans is also qualified to practice in both the US and the UK) and dual-qualified US/UK lawyers in the US, the firm is able to follow through on its commitments to make sure that clients can access the right resources.

Pearce is now confident that the cross-border capability is a significant differentiating factor for the firm. Offices in Geneva, Hong Kong (with the funds practice led by Anne-Marie Godfrey), and Singapore, led by Robert Griffin (who previously spent a number of years in London), can also be considered together with the strong London funds capability. "We're positioned as a firm in the key jurisdictions where the managers are," says Pearce, but the US hedge fund capability is key to those offices flourishing – because that is where the most investors comfortable with hedge funds are located.

"When you look at what we can offer a client," says Pearce, "I don't think anyone else can offer that breadth. When you take a step back and you look at the overall firm, the London, New York, Washington, Singapore, Hong Kong and Geneva offices, and what managers want, it ticks more boxes than anyone else."

This is a striking assertion, and (while perhaps open to debate or, indeed, the vagaries of manager preferences) this confidence is indicative of the importance that Akin Gump places on their transatlantic capabilities. This conscious emphasis reflects the broad changes they were seeing in the hedge fund industry – particularly in the wake of the financial crisis and the subsequent gradual recovery. Governments turned their sights on increasing regulation of alternative managers simultaneously (although not in perhaps as coordinated a manner as might be desirable).

"The industry was changing quite a lot," says Meade. "The things that were changing were that first of all you had this huge ingress of US regulation. Obviously for the last year we've all really focused on Europe and the AIFMD side of things, but prior to that you had an aggressive CFTC, SEC registration requirements, a lot of knotty US regulatory issues."

This increase in regulation coincided with a significant shift in the way that managers were raising money and the location of their investors. Akin Gump has seen a rise – mirrored throughout the industry – in the proportion of assets under management of European managers sourced from North American investors. This trend only serves to highlight that hedge funds now are almost by definition, as Leonard says, “international businesses being regulated by regulators in multiple jurisdictions.” To that end, the offices in London and New York work closely – and partner John Holton, brings expertise in the international application of SEC and CFTC law. Holton can offer US-specific advice to non-US firms from within the same office, giving, as Pearce says, “real-time US fund-related advice.”

### EU regulation

Many of the biggest regulatory developments have taken place in Europe, where AIFMD has been, in Meade’s words, “a bit of a Year Zero”. The implications of this affect managers worldwide and the AIFMD reverberations are still being felt – albeit at a slowing pace. “There is this vast wave of regulation that is washing over managers operating in Europe,” says Leonard. “If they’re trading in Europe from the US, they need access to people who understand the market rules, the trading rules in Europe. That’s something that we’re well placed to deliver.”

Leonard focuses his practice on EU and UK regulation – one of the areas of fastest and broadest change over the last few years. Meade’s aforementioned description of AIFMD as “Year Zero” seems particularly apt in light of Leonard’s talk at *The Hedge Fund Journal’s* Compliance, Governance, Regulatory Reporting and Tax conference at the end of last year, entitled “After the AIFMD Apocalypse”. The title was self-consciously exaggerated, but it is indicative of the huge challenge that faces managers both in the EU and those caught in the net from beyond.

### Diversification

Industry changes have also gone hand-in-hand with bigger regulatory issues. “As the transactions they become involved in become more complex and more sophisticated,” explains Leonard, “the application of regulation to those becomes equally knotty and difficult.” As the market has matured and the low-hanging fruit has been picked – or, at least, is being eyed by more firms – more esoteric transactions are increasingly seen as a way to achieve uncorrelated returns. This focus on optimising investment products inevitably requires significant legal input, which is leading to more variation in fund jurisdiction than was perhaps the case 10 years ago.

“Undoubtedly we’ve seen diversification in terms of where the products are,” says Pearce, “but that’s more often driven by the type of product than it is, necessarily, by going to a particular jurisdiction because you just want an EU version of a Cayman fund. As a firm we are product-agnostic – we are where the managers are.”

Regulatory arbitrage this is not. Rather, firms are increasingly focusing on distribution challenges, including the proliferation – still continuing – of UCITS funds, ‘40 Act funds, and even mutual funds. These structures (with attendant liquidity requirements) are not for everybody, but for those for whom their strategy fits, there exists a significant opportunity – but one which might open up a whole raft of complex cross-border regulatory issues.

The diversification of products is also driving an increasingly large portion of Akin Gump’s work. Leonard, for instance, is seeing an increase in structured trades and also in shareholder activism – the latter the specialism of the team led by Roome based in the Lothbury office. Another growing theme is co-investment, traditionally a private equity staple, but increasingly becoming associated with hedge.

Meade explains that, “Increasingly investors are going to managers and saying, ‘We love what you do; we would like to access that in a more concentrated way.’” This concentration is particularly favoured by funds of funds keen to show their added value in the face of the squeeze on fees, but the vehicles involved can raise very complex tax and regulatory issues (and are gradually attracting regulator attention).

The growth in popularity of such structures is just one sign of a general broadening of the hedge sector at both ends, into both the more liquid end (where retail assets await) and the private equity end. As Roome confirms, “It’s awfully difficult to tell some of them apart now,” with the word hedge stretching across a huge variety of products and structures.

### Tax

Another area in which cross-border issues have come increasingly to dominate the agenda is taxation. Akin Gump’s hedge fund tax advisory practice is led not by a lawyer, but rather by former EY tax specialist, Jon Hanifan. This sounds unusual, but one of the main aims from Akin Gump’s point of view was to have someone who was experienced in dealing with the tax technical issues and the taxation authorities on a regular basis. In addition, rather than having a total separation between legal advice and accounting services, Akin Gump sought to connect the two. “It makes a lot of sense,” says Hanifan: “to have somebody in the practice who speaks accountant. Accountants have been hiring lawyers for years, and to have someone go the other way, particularly

to lead the funds tax practice, was not common when we did it, but it’s a key part of our joined up offering.”

Meade agrees: “One of the things that was attractive about working with Jon was the emphasis. It’s not enough to know the law; you have to understand the business to be able to give sensible, pragmatic advice to clients.” And an important part of that understanding in tax in the UK is simply having had experience of dealing with HMRC. Meade explains: “On the tax side it’s incredibly important to understand not just what it says in the yellow book, but also to understand the attitude of the Revenue, in the same way that on the regulatory side, one really needs to understand not just what the regulation says but also the attitude of the regulators. That’s a huge advantage.”

This understanding is perhaps especially important with regard to an issue that is so at the mercy of conflicting political forces. This status can lead to degrees of uncertainty over future implementation – for instance, in the concerns over disguised investment management fees, non-UK domiciled individuals and the remittance basis, or the uncertainty as to the details of the implementation of the BEPS (Base Erosion and Profit Shifting) programme. This is not only limited to UK laws either. “Everyone is aware of the global drive for tax transparency,” says Hanifan. “FATCA is not going away. The burdens are only going to increase – certainly in the short term.”

This can seem pretty intimidating, but one aspect of his practice that Hanifan stresses is keeping the varying (even, sometimes, almost conflicting) regimes in perspective. On FATCA, for instance, Hanifan explains that, “If you’re a hedge fund manager that has six US investors and you would recognise them if you walked past them in the street, it’s important that your advisor isn’t putting you through fear.” Having experience of the requirements at multiple different levels of fund size and complexity is an important aspect of guiding managers through what can seem like a maze without fear that they are not doing enough to fulfil their legal requirements.

### Succession

This kind of balancing act is one that is being played out more and more in an industry that has moved almost completely away from the old stereotype of two men and a Bloomberg terminal. But however inaccurate that cliché always was, one thing that it does represent well is the common reliance on key individuals within hedge funds, leading inevitably to the issue of succession. As Meade points out, “Something that really characterises the funds practice here is the longevity of the relationships

that we have with clients”, with Soros, Apollo, and Angelo, Gordon among the roster of clients for which Akin Gump still acts after decades.

Each of the partners that *The Hedge Fund Journal* spoke to is clear that succession is an issue that will not be going away: “We talk about succession now as the real theme for the industry,” says Meade. “You see these businesses growing and maturing, often very keenly focused around one or two individuals. What happens next? That’s becoming a much bigger part of the story for managers in London. At the moment it’s a very vivid and live issue for a lot of managers.”

There is still a lag in the UK (and, by extension, in all of the other hedge fund centres) behind the US industry. But this lag has actually become a differentiating factor for Akin Gump, with their broad experience of the same issues with some of the biggest funds in America. Access to that knowledge base has become a key part of the offering in the UK practice as well, as the industry in London catches up in terms of number of firms surviving to the point of succession, with more and more firms facing the same issues – although for varying reasons. These range from the obvious problem of having a single star talent retiring around which strategies revolve, but can also include situations where the former second in command moves more into the driving seat. Other examples include firms that are looking to raise the value of their franchise, doing deals with one of the increasing number of institutional investors and funds acquiring stakes in hedge fund management businesses to expand beyond founders. This means that Akin Gump helps in different ways for different clients, depending on how readily their corporate structure will allow for handover to another manager – how institutional it is.

“It’s quite interesting being part of that maturation of the industry,” says Roome. “It impacts us in more than just the different questions they ask: it impacts the way we behave with them and the way we interact with them, and the way we organise ourselves.”

Often this change is from “personal relationships, very often with a founder” to a more formal manner befitting a larger firm which may even go on to be listed (as has been the case more in the US industry). “As they institutionalise and mature,” says Roome, “what happens is that our relationships are institutionalising and maturing as well. The way we interact with them, we’re finding ourselves becoming more institutionalised and mature.” Of course, this maturation process does not happen in isolation: experience of every step of the process means that knowledge of succession issues feeds back into the work that Akin Gump undertakes for start-ups. “We’re acting for clients now that we were acting for when we were green and in our first funds jobs,” says Pearce. “You see, as these businesses mature, that it helps you with the spectrum of clients.”

#### **Flexibility**

It all adds up to a broad practice that prides itself on being able to handle anything that is thrown at it. While the practice in London is comparatively new, it is made up of individuals and groups that have been working through many of the major changes in the industry. Akin Gump also now has a scale and breadth across the world that few others can match, reflecting an industry that keeps on broadening in scope.

“Being able to have multi-faceted practices through the firm, that puts us in a great position in being able to help the managers with whatever they want,” says Pearce. Akin Gump lawyers in the relatively new London office can draw on a broad range of advice from around the world and from a wellspring of hedge fund knowledge far above the superficially young age of the practice. It also allows for flexibility for a relationship based on what the manager wants: “Some clients still want that very traditional relationship where there’s a key person, a key individual,” says Pearce. “Other clients want diversification within an organisation and diversification outside with other advisors. The important thing for us is to be able to offer the solution that a particular client wants and be flexible around that.” **THFJ**

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