

MARCH 10, 2025

Key Developments in Retail Products

23rd Annual International Conference on
Private Investment Funds

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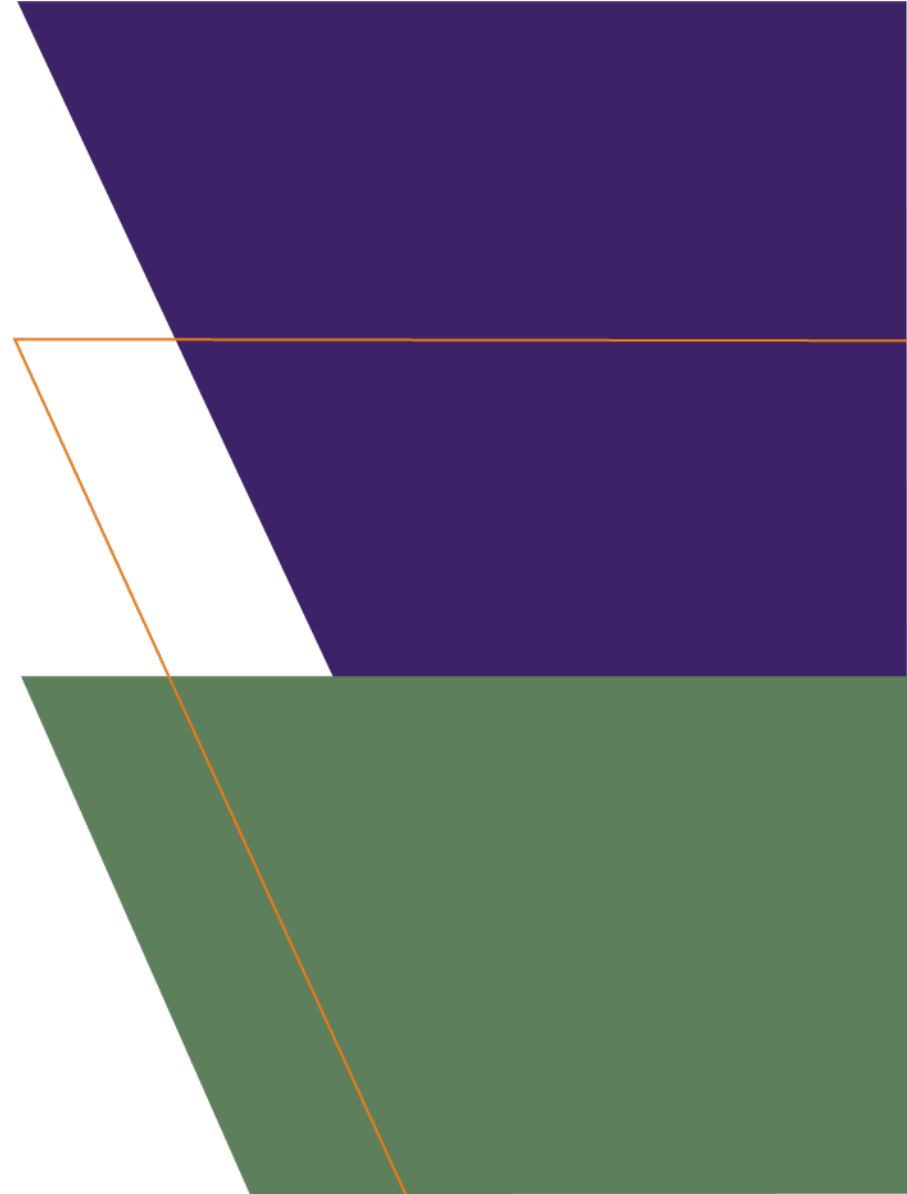
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Overview



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Overview

- Trends and Market Opportunities
- Investment Vehicle Selection and Regulatory Considerations
- Distribution Considerations
- What's Next?
- Q&A



Trends and Market Opportunities



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Trends and Market Opportunities

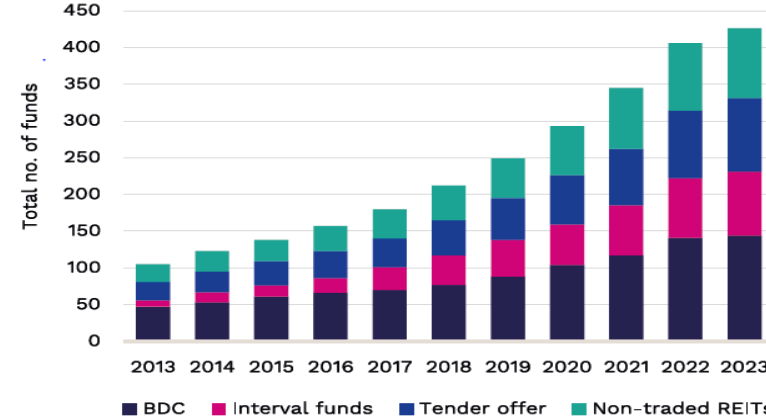
- Market Data
- Retail investors – HNWs, Mass Affluents, Savers
- European Market Trends

Market Data

86% of private equity firms expect alternative investments to dominate retail portfolios in the next five years ([Apex Group](#))

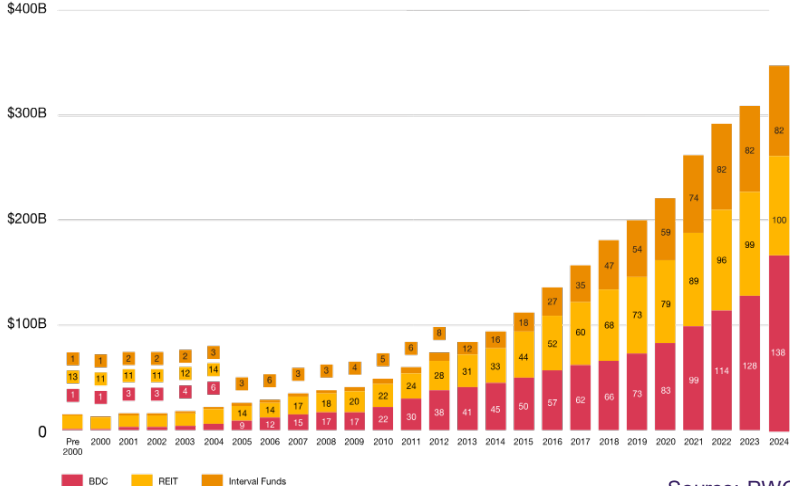
- Strong retail appetite for private funds, with 97% of asset management professional reporting strong or moderate interest from retail investors ([Apex Group](#))
- Private market asset classes of interest to retail investors include private equity, real estate, hedge funds, venture capital and infrastructure ([Apex Group](#))
- In the past decade, the cumulative number of interval funds has grown by 9.6x, tender offer vehicles 4x, non-traded REITS 4x, and BDCs 3.1x ([Preqin](#))

Cumulative number of evergreen fund structures (excluding ELTIF and LTAF)



Source: Preqin. Data as of January 2024

BDC, REIT and Interval Funds



Source: Convergence Inc.

Source: PWC

Market Data (continued)

- While institutions typically invest 25-35% in alternatives, the average retail investor's allocation to alternative is currently less than 2% and projected to grow to 5% in the next 3 years, potentially adding up to \$ 1.3 trillion in new capital ([McKinsey](#))
- It is estimated that more than \$1.2 trillion has poured into perpetual products ([Forbes](#))

Share of Investors' Global Wealth in Alternative Assets in 2022

By investor type



Sources: Bain analysis, Preqin, GlobalData

*Includes family offices

Retail Investors - HNW, Mass Affluents, Savers

- **HNW and Mass Affluents**

- Private Equity is not focused solely on legacy providers of capital—the pension funds, insurance companies and sovereign wealth funds—but has turned more to high-net-worth individuals for commitments. ([PitchBook](#))
- Focus will remain on high-net-worth investors and mass affluents where there is still an accreditation requirement.
- On February 24, 2025, Acting SEC Chairman Mark Uyeda delivered remarks at the Florida Bar’s 41st Annual Federal Securities Institute and M&A Conference and focused on empowering retail investment in private companies ([SEC](#))
 - “Most commentators seem to agree that the current income and net worth thresholds for an individual to qualify as an accredited investor either need to be changed or are insufficient”

“In exploring ways to allow for greater retail investing in private companies, any changes to the accredited investor definition should be considered together with how companies are likely to accept investments from individuals – directly or through pooled investment vehicles. If the latter, then consideration should also be given to changes under the Investment Company Act that would permit more retail investors to invest through private funds”

- [Acting SEC Chairman Mark Uyeda](#)
(February 24, 2025)

Retail Investors - HNWI, Mass Affluents, Savers (continued)

- **Savers**

- Historically, private equity access in the ERISA space has been limited to large traditional defined benefit pension plans. By comparison, sponsors of ERISA defined contribution pension plans (such as 401(k) plans) have been reluctant to offer private equity to their participants. This is due to several factors, including concerns about valuation, fee structures, liquidity, plan participant investment experience, disclosures, and conflicts of interest.
- DOL's 2020 "information letter" acknowledges that ERISA 401(k) plans may invest in professionally-managed, diversified asset allocation funds (e.g., target date funds) with private equity components if certain conditions are satisfied.
- In a December 2021 "information letter" the U.S. Department of Labor ("DOL") cautioned fiduciaries of small ERISA 401(k) plans against investing in private equity, except under certain conditions.

European Market Trends

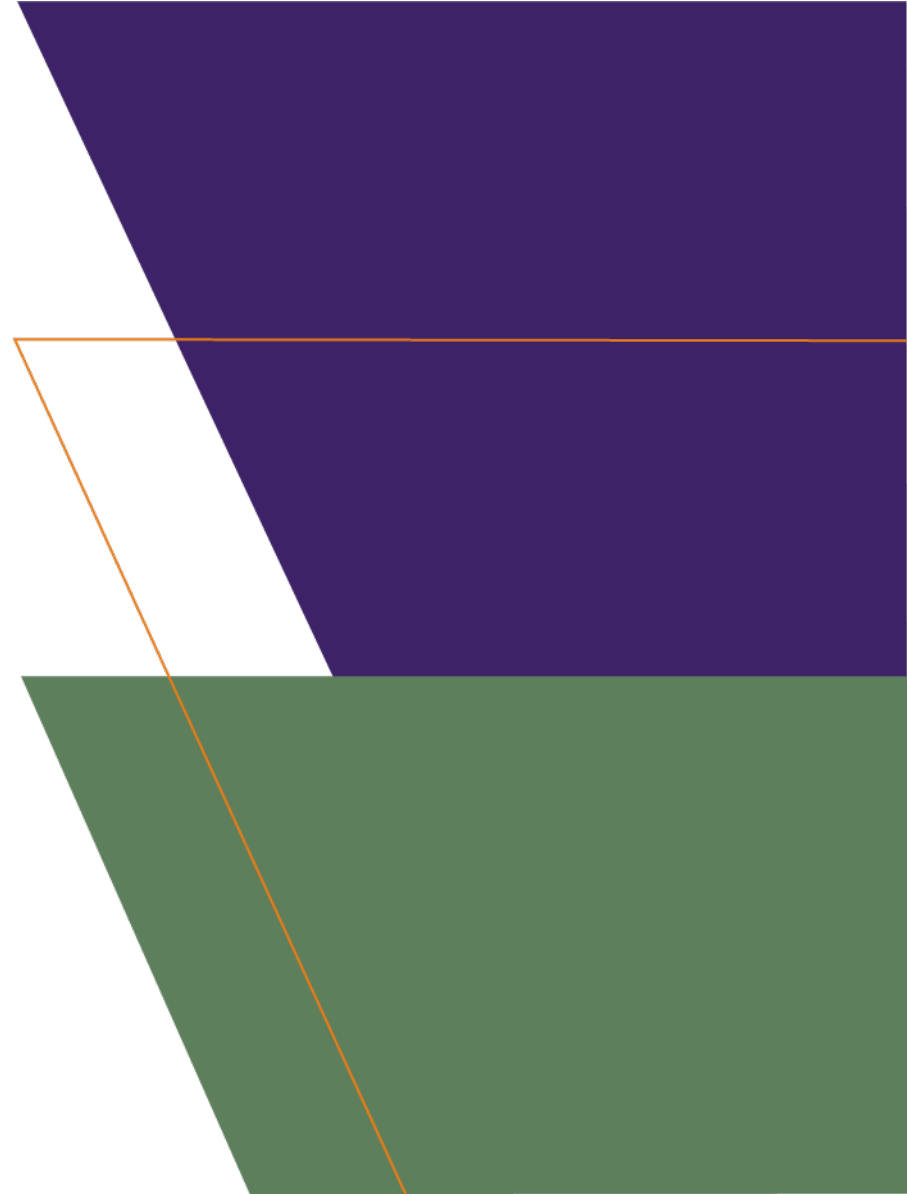
- Efforts at the EU level to further develop the Capital Market Union (CMU) with the aim of facilitating cross-border investments and unlocking access to capital. According to reports of the EU Council, there is €33 trillion in the EU in private savings (mainly currency and deposit accounts);
- The European long-term investment fund (ELTIF) is expected to play a large part in the CMU objective, enabling AIFMs to market ELTIF/AIFs in the EEA with passports to both retail and professional investors.
- As the professional investor market has matured over the last decade, alternative managers have been targeting private wealth investors by setting up Luxembourg evergreen vehicles replicating a model that was successful in the US.



Investment Vehicle Selection and Regulatory Considerations



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Investment Vehicle Selection and Regulatory Considerations

Investment vehicle selection is largely driven by asset class and investment strategy

- **United States**
 - '40 Act funds
 - 3(c)(7) funds and operating company model
- **Europe**
 - Luxembourg
 - ELTIFs

United States

- **'40 Act Funds**
 - Interval Funds
 - Tender Offer Funds
 - Business Development Companies (BDCs)
 - Others (ETFs, Open-End Mutual Funds)
- **CITs**
- **3(c)(7) funds and operating company model**

'40 Act Investment Limitations

- Rules adopted under the 1940 Act limit a registered fund's ability to invest in illiquid assets.
- Registered open-end funds (such as mutual funds or ETFs) are prohibited from investing more than 15% of their net assets in illiquid investments.
 - An "illiquid" investment for this purpose means any investment that the fund reasonably expects cannot be sold or disposed of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment.
- Registered closed-end funds generally are not subject to restrictions on the amount of illiquid assets they can hold.
 - Closed-end funds operated as interval funds (in accordance with rule 23c-3 under the US Investment Company Act) that make periodic repurchases of their shares, however, are required to hold 100% of the repurchase offer amount in assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the fund has valued the investment (for the period between when the repurchase is accepted and paid).

'40 Act Investment Limitations (continued)

- Although not a statutory limitation, the SEC staff has a long-standing position of prohibiting registered funds that significantly invest in private funds (hedge funds, private equity funds, etc.) from being sold to retail investors.
 - The staff has applied this limitation to funds proposing to invest as little as 15% of their assets in private funds.
 - The staff has allowed funds exceeding these limits to register if the fund limits the sale of its shares to accredited investors or a higher standard.

Interval Funds

Target Investors

- Retail and/or institutional investors typically seeking credit/direct lending, real estate, infrastructure, insurance-linked securities or private equity investment strategies
- May be offered on retail distribution platforms (if Securities Act registered and strikes NAV daily)

Summary of Structure

- Shares may be offered continuously or at periodic closings at NAV
- Operate under Rule 23c-3 under the 1940 Act, which requires adoption of a fundamental policy to repurchase 5-25% of outstanding shares at defined intervals (typically quarterly, though can be semi-annual or annual), with limited ability to skip repurchases
- May offer multiple classes of common shares if the fund obtains an exemptive order from the SEC
- Differential management fees prohibited; may charge performance/incentive fees based on income without any investor qualification standards and, if sales limited to “qualified clients”, on capital gains/appreciation

Securities Law Registrations

- Closed-end, 1940 Act registered fund; typically registered under the Securities Act
- Current SEC staff position is that a fund investing more than 15% of assets in private equity or hedge funds may only be offered to accredited investors; as a general matter, if no Securities Act registration, must be offered to accredited investors

Tax Status

- Typically taxed as a regulated investment company (RIC); real estate-focused funds could be taxed as a real estate investment trust (REIT); must meet certain income and asset tests to qualify for applicable status.
- RIC investors receive 1099 forms instead of K-1 forms

Tender Offer Funds

Target Investors

- Retail and/or institutional investors typically seeking venture/private equity fund, and also could be seeking credit/direct lending, real estate, infrastructure or private equity investment strategies

Summary of Structure

- Typically, investments funded at periodic closings where shareholders purchase shares at NAV; it is possible to have a limited number or single closing; it is also possible to offer continuously
- Periodic tender offers (i.e., opportunities for shareholders to tender their shares for cash) conducted pursuant to Rule 13e-4 under the Exchange Act
- Amount and timing of tender offers are set by the fund's board and are typically up to 5% of the fund; boards are legally permitted to skip periodic tenders (typically quarterly, though can be semi-annual or annual), though commercial/market constraints may limit this ability
- May offer multiple classes of common shares if the fund obtains an exemptive order from the SEC
- Differential management fees prohibited; may charge performance/incentive fees based on income without any investor qualification standards and, if sales limited to qualified clients, on capital gains/appreciation

Securities Law Registrations

- Closed-end, 1940 Act registered fund; typically registered under the Securities Act but may be privately placed
- Current SEC staff position is that a fund investing more than 15% of assets in private equity or hedge funds may only be offered to accredited investors; as a general matter, if no Securities Act registration, must be offered to accredited investors

Tax Status

- Typically taxed as a regulated investment company (RIC); real estate-focused funds could be taxed as a real estate investment trust (REIT); must meet certain income and asset tests to qualify for applicable status; RIC investors receive 1099 forms instead of K-1 forms

Business Development Companies (BDCs)

Target Investors

- Retail and/or institutional investors typically seeking credit/direct lending investment strategies; while BDCs are legally permitted to invest in equity (e.g., venture or growth strategies), modern BDCs primarily invest in credit

Summary of Structure

- Must have at least 70% of assets invested in debt or equity securities of issuers that are “eligible portfolio companies” (generally, U.S. issuers that are neither investment companies nor a company that would be an investment company but for an exclusion), and (1) does not have securities listed on a stock exchange or (2) have securities listed on a stock exchange but a market cap of <\$250M)
- BDCs may be privately offered, non-listed but publicly offered, or listed on an exchange
- May offer multiple classes of common shares if the fund obtains an exemptive order; it is common for non-traded BDCs to obtain such relief
- Charge management fees and typically charge incentive fees without shareholder qualification requirements; recent private and non-listed publicly offered BDCs often have incentive fees assessed both on income and capital gains; incentive fees on capital gains are limited by statute to 20% of realized capital gains (net of realized capital losses/unrealized capital depreciation)

Securities Law Registrations

- BDCs elect to be regulated as a BDC pursuant to Section 54 of the 1940 Act and are subject to somewhat more flexible provisions of the 1940 Act than other registered funds
- All BDCs make certain filings under the Exchange Act similar to operating companies (e.g., 10-K, 10-Q, 8-K); private BDCs not registered under Securities Act; non-traded publicly offered and listed BDCs register under the Securities Act, and listed BDCs are subject to applicable stock exchange rules
- Private BDCs must make certain notice filings with states (no substantive review); non-listed but publicly offered BDCs must register in all states offered (state law may also impose higher suitability standards for sales); listed BDCs have no Blue Sky requirements

Tax Status

- Typically taxed as regulated investment company (RIC); must meet RIC income and asset tests to qualify
- RIC investors receive 1099 forms instead of K-1 forms

401(k) Retirement Plan Access Vehicles

Target Investors

- 401(k) and state retirement plans; IRAs generally may not participate
- Funds may be offered directly to plan participants or indirectly as part of a target date fund (TDF) or other broadly diversified fund
- Eligibility is determined at the plan or vehicle level; individual participants need not be “accredited investors” or “qualified clients”

Summary of Structure

- Most commonly a collective investment trust (CIT); open-ended with regular new contributions funded by plan participants as salary is deferred into the plan
- The CIT must be maintained by a bank or trust company, and the asset manager is generally sub-adviser to the CIT
- Must strike frequent NAV (daily is common); needs to offer regular liquidity
- Alternative CITs are often included as part of a TDF, managed account or other structure that also holds liquid assets, and liquid assets would be used first to address regular liquidity needs
- No substantive constraints on the type of investment a CIT may make

Securities Law Registrations

- CITs are typically exempt from registration under 3(c)(11) of the 1940 Act; CITs must comply with applicable state banking regulations and/or rules of the Office of the Comptroller of the Currency

Tax Status

- Tax-exempt, provided the CIT complies with the requirements of Rev. Rul. 81-100
- Eligible investors under Rev. Rul. 81-100 are limited to: qualified 401(a) retirement plans, governmental plans, 403(b) plans, Puerto Rico plans and insurance company separate accounts

Operating Companies

- **Investment Company Act Status**
 - Could be structured as an operating company or 3(c)(5)/(6) vehicle -- not a “fund”
 - Must hold at least 60% of “good” assets (e.g., majority-owned subsidiaries other than funds)
 - Can not hold OpCo out as a “Fund” in marketing or other offering documents or in related discussions
 - Not an investment company under Section 3(a)(1) and therefore not required to register under the 1940 Act
- **No regulatory prohibitions on affiliated transactions, including joint transactions**
 - Subject to the same fiduciary and related requirements under the Advisers Act (e.g., managing conflicts, cross trades, principal transactions, etc.)
- **Portfolio Considerations**
 - No liquidity requirements—driven by market/distribution partner expectations
 - No regulatory limitations on leverage
 - No RIC or other diversification requirements
 - Broad flexibility in warehousing initial seed portfolio and ongoing warehousing capital deployment options, subject to 60/40 structuring test
- **No restrictions on management or performance fees**

Operating Companies (continued)

- **Board of Directors, including Independent Directors**
 - Board governance based largely on NYSE rules and Exchange Act
- **Exchange Act Reporting**
 - Exchange Act registration not required until 2,000 shareholders (unless needed sooner for ERISA purposes)
 - Will file 10-Qs, 10-Ks and 8-Ks
 - Subject to Reg. FD
 - Significant shareholders will be Section 13 and 16 reporting persons
- **Private Offering**
 - 506(b) offering under Regulation D (blue sky registration is not required)
 - Accredited Investor (AI) standard
 - No general solicitation/advertising
- **Not subject to the marketing rule under the Advisers Act, but subject to FINRA rules if applicable**
- **Notable Examples**
 - KKR Infrastructure Conglomerate
 - Apollo Asset Backed Credit Co

3(c)(7) Access Funds

- **Structured as 3(c)(7) funds that are Exchange Act registered and have a board of directors**
 - Limited to QPs
 - Same regulatory framework and limitations that are applicable to traditional private funds, except subject to Exchange Act reporting requirements
- **Board of Directors, including Independent Directors**
 - Board governance based largely on NYSE rules and Exchange Act
- **Portfolio Considerations**
 - No liquidity requirements—driven by market/distribution partner expectations
 - No regulatory limitations on leverage
 - No RIC or other diversification requirements
 - Maximum flexibility in warehousing initial seed portfolio and ongoing warehousing capital deployment options
 - Could invest directly and without limit (subject to disclosure) in other funds
- **Subject to the marketing rule under the Advisers Act and FINRA rules**
- **Notable Examples**
 - Blackstone Private Equity Strategies Fund
 - Stonepeak-Plus Infrastructure Fund

Europe

- Luxembourg fund toolbox offers different types of investment vehicles which are suitable for different types of strategies/assets classes and which can be offered to non-professional investors:
 - Specialized investment fund (SIF)
 - Reserved alternative investment fund (RAIF)
 - Part II fund
- Part II fund has become the most popular vehicle to offer alternative strategies to private wealth investors.
- Part II fund is not a new vehicle (Law of 25 August 1983) and can be structured as evergreen fund with different legal forms (including as special limited partnership).

Europe (continued)

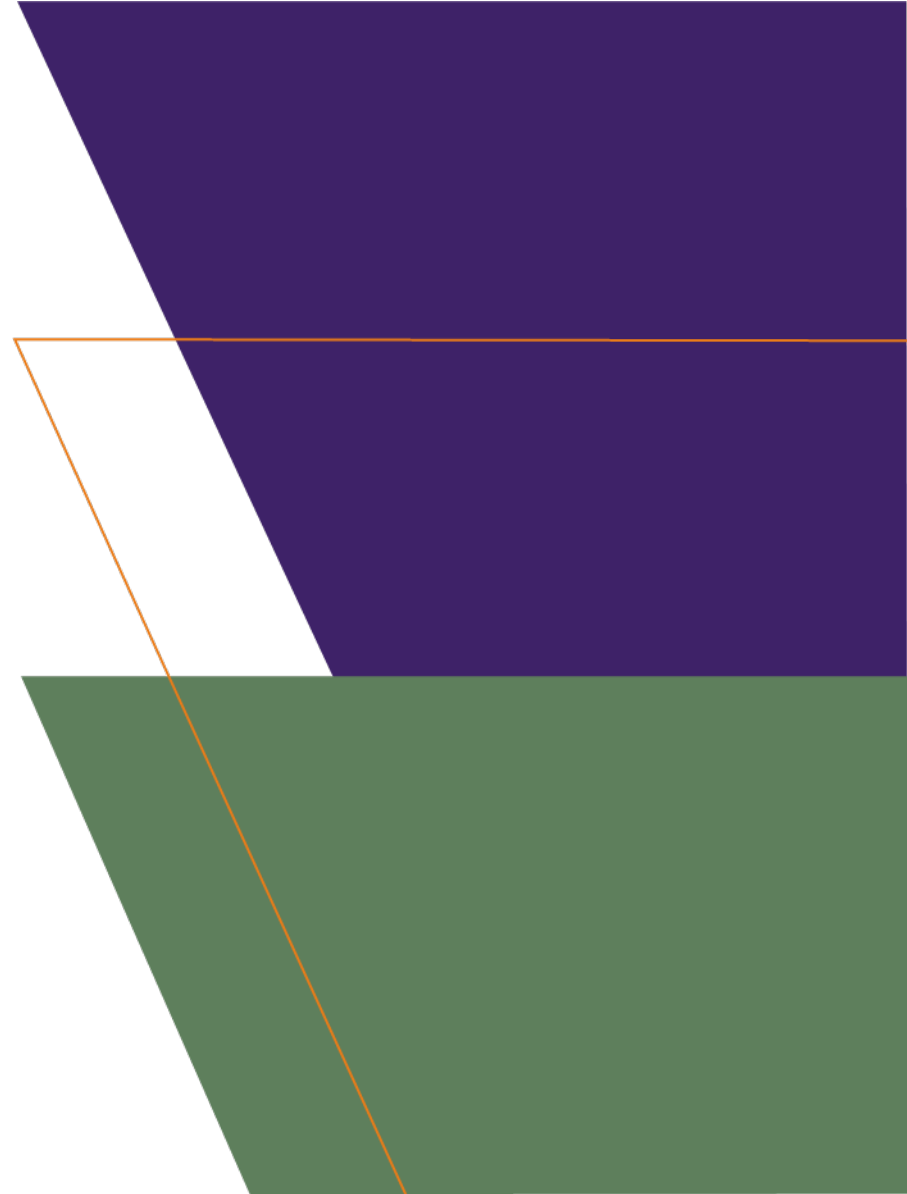
- The SIF, RAIF and Part II fund can be structured and labelled as an ELTIF which provides the benefit of an EU marketing passport for all investors (including retail).
- The publication of the final regulatory technical standards (RTS) in October 2024 under the revised ELTIF Regulation have put an end to confusion that existed around liquidity rules for ELTIFs, and have confirmed ELTIFs as a suitable vehicle to structure evergreen funds.
- The ELTIF Regulation brings some additional limitations and asset eligibility requirements which requires an in-depth assessment of the contemplated strategy and portfolio of assets.



Distribution Considerations



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U.S. Considerations

- **Retail Investor Classification**

- Accredited Investor
- Qualified Client
- Qualified Purchaser
- Reg. BI
- FINRA
- NASAA

- **Structuring**

- Feeders/parallel funds
- Accessing offshore markets

- **Regulatory**

- Advisory vs. brokerage models
- 401(k)/ “savers” access

- **Governance**

- Care obligation for distributors
- Due diligence

- **Liquidity**

- Mismatch
- Liquidity solutions

Non-U.S. Considerations

- **Top Issues**
 - Fragmented regulatory regime
 - Direct vs. intermediated distribution
 - Investors/distributor education on Alternatives
 - Differences in institutional vs. retail investor preferences

Non-U.S. Considerations (continued)

- **Regulatory**

- While the Part II fund cannot benefit from the AIFM passport when offered to non-professionals, registrations in certain EEA countries to offer the Part II fund to certain types of non-professional investors are possible
- In certain jurisdictions, the setting up of a parallel fund is necessary, whilst other countries may be approached via local feeders
- With the ELTIF label, the vehicles benefit from the EU marketing passport
- For alternative managers: distribution challenges i.e. from institutional to individual investors

- **Liquidity**

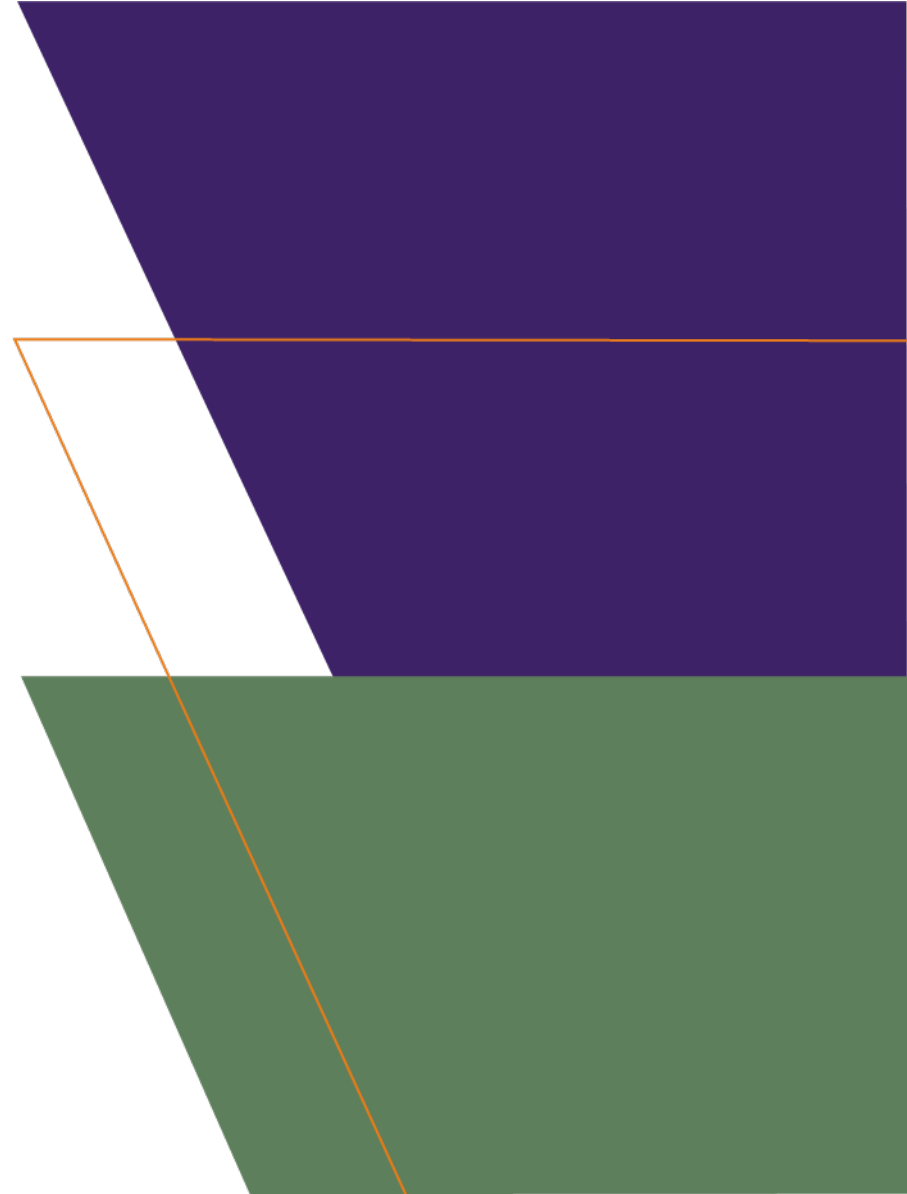
- Liquidity profile is driven by the asset class
- Certain common features for Part II funds: generally monthly subscriptions, and monthly or quarterly redemptions at NAV with 3% to 5% limit
- Liquidity profiles need to be assessed carefully
- For ELTIFs, the ELTIF rules governing the liquidity terms need to be assessed with caution



What's Next?



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U.S. Regulatory Considerations in the Trump Administration

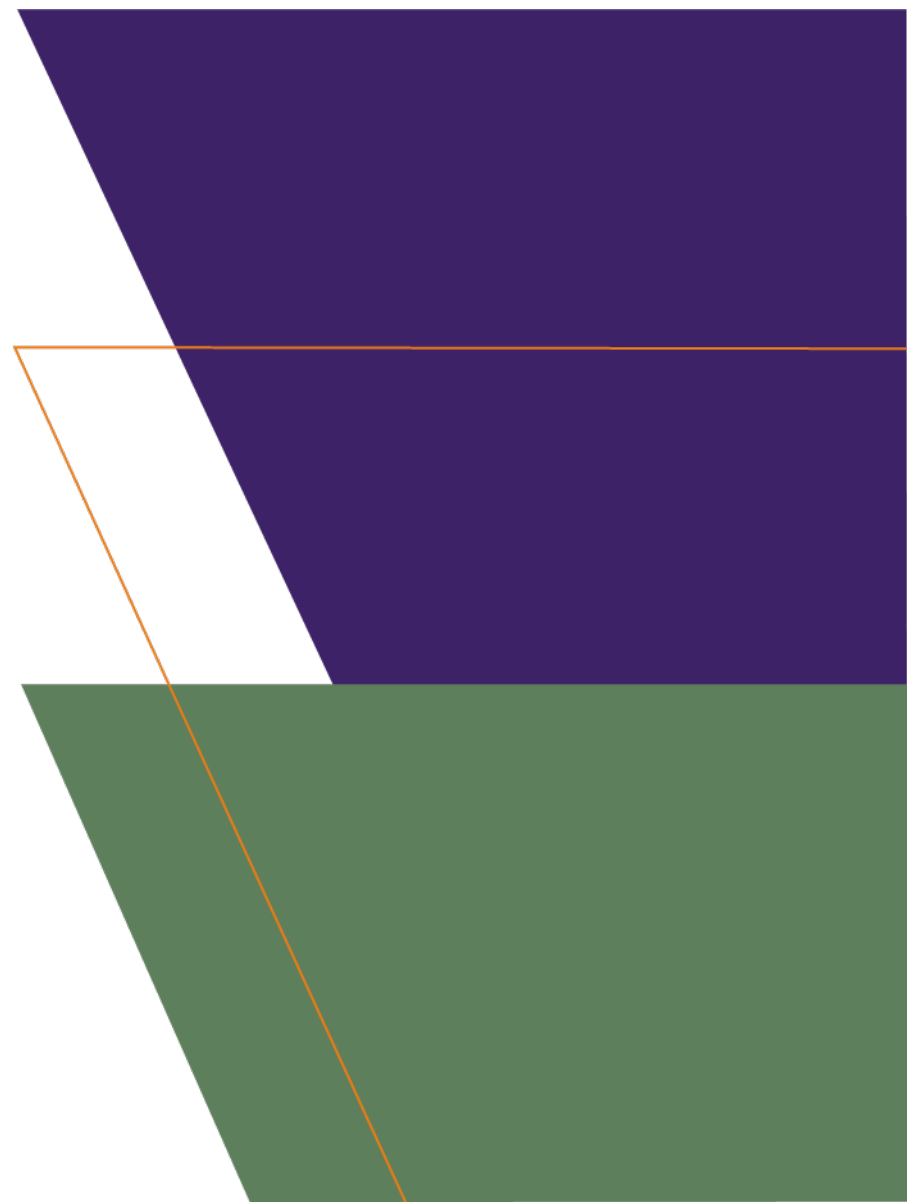
- Changing Tide at the SEC
- New Product Innovation
- Strategic Partnerships: Unlocking Retail Access
- Capital Formation Reforms
- Marketing Rule Interpretive Guidance
- Simplified Co-Investment Relief



Q&A



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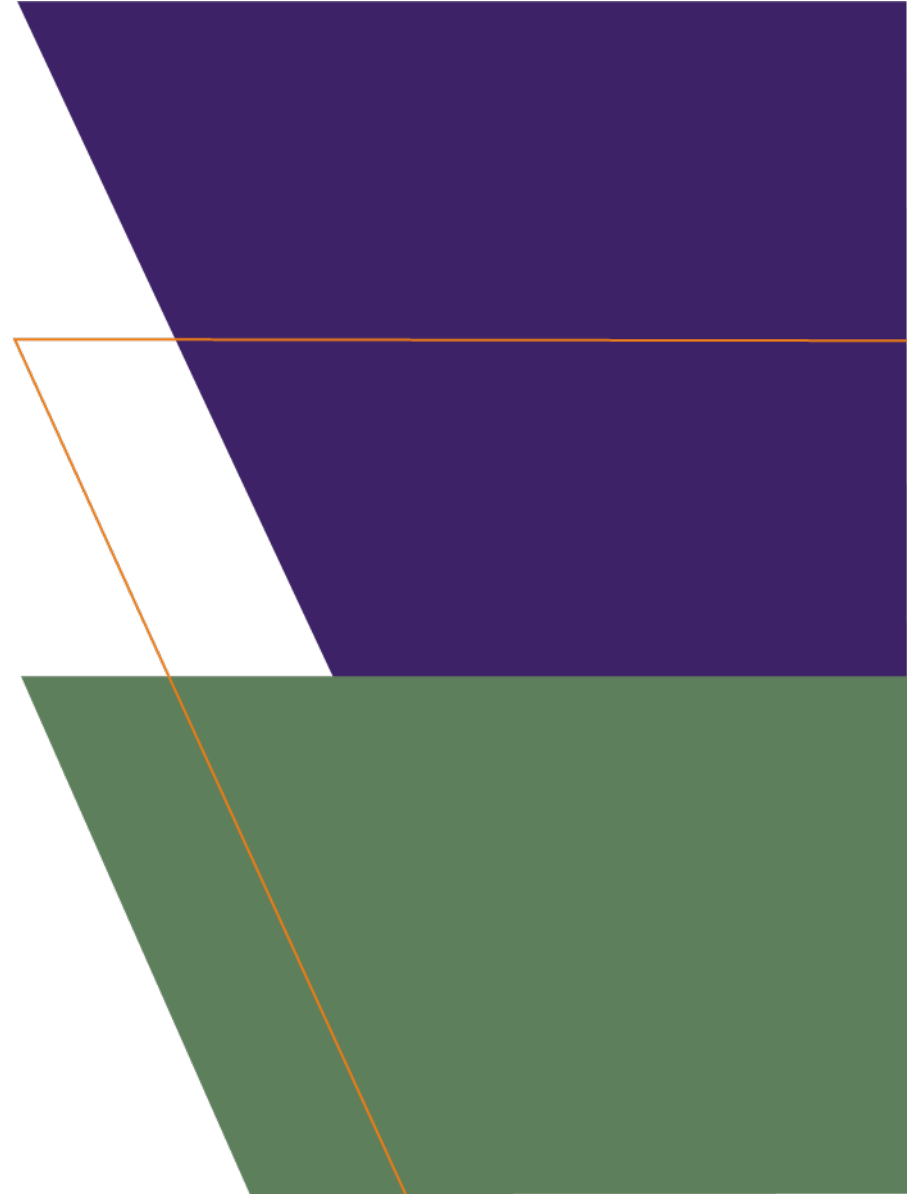




Appendix



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United States - Retail Vehicle Considerations

	Reach	Exclusivity	Flexibility	Allocation	Market Risk	Expense
Operating Company	<ul style="list-style-type: none"> • Broader reach than a retail 3c7 <ul style="list-style-type: none"> – lower eligibility standard (accepts AI) 	<ul style="list-style-type: none"> • Fewer Competitors will be able to launch an OpCo with a competing strategy <ul style="list-style-type: none"> – Strategy requires a significant pipeline of buyout or primary control deals which only a select few managers will be able to achieve 	<ul style="list-style-type: none"> • Less flexible investment portfolio than retail 3c7 <ul style="list-style-type: none"> – requires at least 60% of investments to be “good assets”, i.e., investments into PortCos controlled by sponsor – Can be managed by weighting and deal size 	<ul style="list-style-type: none"> • Limited allocation issues <ul style="list-style-type: none"> – Existing fund documents may not fully contemplate the type of governance sharing required, but also unlikely to prohibit it either 	<ul style="list-style-type: none"> • Greater regulatory risk before SEC; newer structure that is less tested 	<ul style="list-style-type: none"> • More expensive and resource intensive to launch • Higher ongoing regulatory compliance costs <ul style="list-style-type: none"> – Potential for deal-by-deal structuring costs – ongoing monitoring of 1940 Act compliance
Retail 3(c)(7)	<ul style="list-style-type: none"> • Less reach than OpCo or 1940 Act vehicle <ul style="list-style-type: none"> – higher eligibility standard (natural persons must have 5mil+ in investable assets when compared with an income over \$200k USD for accredited investors) 	<ul style="list-style-type: none"> – More Competitors will be able to launch retail 3c7 vehicles because the barriers to entry are much lower and much more manageable 	<ul style="list-style-type: none"> • Most flexible investment portfolio <ul style="list-style-type: none"> – broad, near unlimited investment flexibility 	<ul style="list-style-type: none"> • Potentially no allocation issues <ul style="list-style-type: none"> – Evergreen 3(c)(7) vehicles are still just private funds; unlikely to require a change to existing fund documents or allocation disclosure in order to launch 	<ul style="list-style-type: none"> • Less regulatory risk; structure will rely on certain no-action positions, but will largely be done in accordance with well-tested precedent 	<ul style="list-style-type: none"> • Less expensive and easier to launch • Lower ongoing compliance costs
1940 Act Vehicles	<ul style="list-style-type: none"> • Broadest potential reach as theoretically can even be trader <ul style="list-style-type: none"> – lower eligibility standard (accepts AI) 	<ul style="list-style-type: none"> – More Competitors will be able to launch 1940 Act vehicles that focus on indirect exposure to assets 	<ul style="list-style-type: none"> • Less flexible investment portfolio <ul style="list-style-type: none"> – Investments will need to comply with 1940 Act requirements restricting joint transactions with affiliated persons 	<ul style="list-style-type: none"> • Significant allocation issues <ul style="list-style-type: none"> • Co-investment relief will require that opportunities are shared on a <i>pro rata</i> basis, meaning that regional funds will not be able to give priority allocation in the ordinary course. Potential end arounds could involve the use of unconsolidated JVs • Co-invest landscape may change providing more flexibility in the near future 	<ul style="list-style-type: none"> • Some regulatory risk; structures could need to rely on joint ventures and other structures in order to share investments with private funds non-pro rata – these approaches are interpretive positions and not fully blessed by the SEC 	<ul style="list-style-type: none"> • More expensive and resource intensive to launch • Higher ongoing regulatory compliance costs <ul style="list-style-type: none"> – Potential for deal-by-deal structuring costs – ongoing monitoring of 1940 Act compliance

United States - Key Comparisons of Interval Funds, Tender Offer Funds and BDCs

	Interval Funds	Tender Offer Funds	BDCs
May Engage in continuous offerings	Yes	Yes	Yes
Exchange listed	Possible	Possible	Possible
May be offered to retail investors	Yes	Yes	Yes
Portfolio liquidity requirement	Partial (only during periodic repurchase offers)	No	No
Daily NAV calculations	Yes (during periodic repurchase offers) ¹	No ²	No ²
Periodic redemptions	Yes	Discretionary	Possible
Performance fees	Possible depending on investor base ³	Possible depending on investor base ³	Yes

Source: [Why More Alternative Asset Managers Should Embrace the 1940 Act](#) (Willkie Farr & Gallagher LLP)

1. An interval fund also generally must calculate NAV on a daily basis during any period when the interval fund is offering its common stock.
2. Closed-end tender offer funds and BDCs that are continuously offered typically calculate NAV monthly or quarterly in connection with investor subscriptions, and at certain other times (e.g., in connection with share repurchases).
3. CEFs are able to pay incentive fees on realized capital gains only if all investors are “qualified clients” as defined under the Investment Advisers Act of 1940 (the “Advisers Act”) (currently, \$2.2 million net worth/\$1.1 million assets under management). The same limitation does not apply in the case of an incentive fee on dividend and interest income.

Luxembourg Alternative Investment Fund Structures

	Part II Fund	Specialised Investment Fund (SIF)	Reserved Alternative Investment Fund (RAIF)	Partnership (not subject to Lux. product law)	+ ELTIF label (possible for any AIF structure)
Legal form	corporate form (public limited company, partnership limited by shares, common limited partnership, special limited partnership) and contractual form (<i>fonds commun de placement</i>)			corporate form	No restrictions
Eligible assets	unrestricted	unrestricted	unrestricted	unrestricted	ELTIF Regulation
Diversification	max. 20% in one single issuer	max. 30% in one single issuer	max. 30% in one single issuer	No	ELTIF Regulation
Eligible Investors	Unrestricted	well-informed investors: <ul style="list-style-type: none"> ▪ Institutional investor ▪ Professional investor ▪ Any other investor who: <ul style="list-style-type: none"> ✓ confirmed in writing adhesion to the status of well-informed investor, AND ✓ invests a minimum of EUR 100,000 <p>(or has been the subject of an assessment by a credit institution, an investment firm, a management company or an authorised AIFM certifying his expertise, his experience and his knowledge in adequately appraising the contemplated investment)</p>		unrestricted	No restrictions
Distribution	EU passport to professional investors Marketing to retail investors under private placement regimes possible if and to the extent permitted by local rules	If SIF qualifies as AIF: EU passport to professional investors Marketing to well-informed investors not qualifying as professional investors under private placement regimes possible if and to the extent permitted by local rules	EU passport to professional investors Marketing to well-informed investors not qualifying as professional investors under private placement regimes possible if and to the extent permitted by local rules	If it qualifies as AIF: EU passport to professional investors Marketing to investors not qualifying as professional investors under private placement regimes possible if and to the extent permitted by local rules	EU passport to professional and retail investors
Regulated (CSSF supervision)	Yes	Yes	No (only if ELTIF label for the purpose of compliance with the ELTIF Regulation)	No (only if ELTIF label for the purpose of compliance with the ELTIF Regulation)	Yes