Interval & Tender Offer Funds

Operating as continuously offered closed-end funds (CEFs) that offer periodic liquidity to shareholders, interval funds and tender offer funds have become increasingly popular vehicles for offering broad access to investment strategies and asset classes that were previously available only to institutional investors.

Serving as fund, sponsor and/or board counsel to more than 15% of currently active interval and tender offer funds, we are well-versed in the creation and operation of these funds and add valuable perspective with respect to initial product development and structuring decisions, formation and registration, corporate actions such as reorganizations, regulatory filings, exemptive relief enabling funds to co-invest alongside affiliates as well as exemptive relief allowing for multi-class and distribution fee structures, and ongoing compliance and regulatory issues. We also provide trusted counsel to the boards of directors/trustees that oversee these types of funds.

Navigating the Complexities of Alternative Assets

Our lawyers help funds and boards address the complex liquidity, valuation and custody issues related to the alternative assets in which many interval funds and tender offer funds invest, including private credit (directly originated loans and senior securities), syndicated debt, distressed debt, marketplace loan investments, and alternative/harder-to-access credit investments (including public and private below-investment-grade and nonrated debt, as well as collateralized/structured/asset-backed obligations), as well as private equity and other investments in energy and infrastructure, physical real estate, real estate securities and underlying real estate investment trusts (REITs), commodities and litigation finance.

A Valuable Position

By bridging both the private fund and registered fund worlds, Stradley Ronon is uniquely positioned to assist asset managers who are interested in implementing their alternative strategies in a registered fund vehicle in order to gain access to the retail marketplace. Our experience with these products and the underlying private credit, real estate and/or private equity deals within their portfolios allows us to provide effective and pragmatic advice with respect to complicated compliance questions. Additionally, our deep familiarity with these products and strategies and our experience in representing fund boards enables us to provide valuable assistance to fund management as they educate fund boards on these new products.

Our Services

Stradley Ronon assists with all legal issues throughout a fund’s life cycle.

Initial Structuring Decisions

Helping clients navigate initial structuring decisions, including weighing the pros and cons of utilizing one particular type of fund structure over another (e.g., the choice between an interval fund vs. a tender offer fund) based on considerations unique to the product and its portfolio, and also advising on how best to structure portfolio investments pre- and post-launch with a view toward regulatory considerations and tax efficiency.

Establishing Fund Policies

Providing support in the initial launch phase of new products, including with respect to establishing fund policies. For example, in setting the timing for repurchase offers or tender offers, it is important to consider how the fund will manage liquidity and cash flow (particularly if the fund will in turn invest in underlying vehicles with lock-ups).

Fund Formation and Initial Registration

Routinely assisting in the original drafting and/or review of fund formation and registration documents, and navigating the registration process with the U.S. Securities and Exchange Commission (SEC), including helping clients to address staff comments that often include questions about how funds plan to address various Investment Company Act of 1940 (1940 Act) considerations in the alternative asset context.

Obtaining Exemptive Relief

Working with clients to obtain exemptive relief necessary for the operation of their funds, including relief that allows for multi-class and distribution fee structures within closed-end interval funds or tender offer funds, and co-investing relief that is frequently relied upon by credit funds.

Assistance in Navigating the Distribution Landscape

Providing legal support to funds and fund sponsors as they make important decisions about their distribution and marketing approach, highlighting as part of this process various up-to-date practical and operational considerations unique to interval and tender offer funds. For funds that will be sold through third-party platforms, we are well-versed in reviewing and negotiating platform distribution and/or shareholder servicing arrangements.

Advice with Regard to Advisory Fee Structures

Assisting clients in navigating applicable parameters in establishing advisory fee structures for their funds. While these considerations are not unique to interval funds and tender offer funds, these considerations are frequently brought into focus where alternative assets are introduced in the retail fund structure.

Interval Fund Regulatory Compliance

Helping clients navigate the nuanced applicability of various regulatory requirements in the interval fund context, where funds operate as hybrids between open-end and closed-end funds.

Corporate Actions (Reorganizations)

Providing legal advice on structuring and executing corporate actions such as converting an existing investment fund into an interval or tender offer fund structure, reorganizations involving interval or tender offer funds, and conversions from one fund structure to another, such as an interval fund converting into an open-end fund.

Drafting Regulatory Filings for Periodic Tender Offers

Assisting in the preparation of regulatory filings in connection with periodic repurchase offers or periodic tender offers, the latter of which involves more detailed documentation and filings with the SEC.

Representative Matters

- Advised on the conversion of the Bluerock Private Real Estate Fund (formerly, Bluerock Total Income+ Real Estate Fund) (Ticker: BPRE) from an interval fund to an exchange-listed closed-end fund. With $3.5 billion in net assets, BPRE is now the largest listed real estate fund in existence.

- Serving as fund, adviser and/or independent director counsel for more than 15% of currently active interval and tender offer funds — representing more than $24 billion in net assets — including funds sponsored by Apollo, Ares, Bluerock, BlackRock, Capital Group, Central Park Group (Macquarie), GCM Grosvenor, Hamilton Lane, Invesco, KKR, Nuveen, Privacore and Yieldstreet.
- Assisted numerous clients in obtaining and interpreting co-investment exemptive relief from the SEC that permits funds to invest alongside affiliates in privately negotiated deals that would otherwise be prohibited by the 1940 Act.
- Guided one of the largest online real estate investing platforms through the merger of six income e-REITs into a newly created 1940 Act registered interval fund, resulting in a combined portfolio of approximately $450 million of assets under management.
- Advised a global investment management firm on the reorganization of a listed CEF into a newly created interval fund with net assets of more than $750 million at the time of the reorganization.
- Served as fund counsel in connection with the launch of a variety of new funds including, among others, interval funds sponsored by Nuveen and Capital Group/KKR.
- Advised on Section 351 conversions of private funds to interval funds or tender offer funds, including preparation of all transaction-related and board documents.