StradleyRonon

Retail Alternative Funds

As market demand for alternative investments rises, investment firms and fund sponsors are increasingly focused on making alternative asset classes and strategies available to a wider audience, including retail investors. Stradley Ronon brings a variety of disciplines relevant to retail alternatives — registered funds, hedge funds, private equity and private credit, real estate, lending, structured finance, investment management mergers and acquisitions, tax, Employee Retirement Income Security Act (ERISA) and more — allowing us to add value from product innovation, structure and design through launch and continued operations.

How We Can Help Across Types of Alternative Investments

We are well-versed in advising investment firms, fund sponsors and boards in addressing the complex issues related to a variety of alternative assets as well as strategies, including:

- Real estate and real estate securities
- Private equity
- Venture capital
- Private credit
- Mezzanine debt
- Syndicated debt
- Distressed debt
- Commodities and natural resources, including precious metals
- Digital assets, blockchain and cryptocurrencies
- Currencies and depositary receipts
- Energy and infrastructure
- Derivatives
- Artwork
- Collectibles
- Litigation funding
- Public and private below-investment-grade and nonrated debt
- Whole loans, including mortgage loans, marketplace loans and merchant cash advances
- Collateralized, structured and asset-backed securities

In addition, our experience with derivative instruments, including their trading and documentation as well as the impact of Commodity Futures Trading Commission (CFTC) and National Futures Association (NFA) regulation, has allowed us to assess early in the process any “showstopper” issues, advise on complicated compliance questions, and assist management in educating others (including independent board members) on these new products.

Our Services

Given our significant depth and breadth of experience across a wide variety of alternative products, Stradley Ronon is well positioned to assist with the full spectrum of legal issues and operational considerations relevant throughout a product’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., interval fund versus tender offer fund, 1940 Act registered exchange-traded fund (ETF) versus 1933 Act only exchange-traded product (ETP), non-traded real estate investment trust (REIT) versus 1940 Act registered REIT)) based on considerations unique to the product, its portfolio and its intended investors.

Product Formation and Initial Registration

Assisting in the original drafting and/or review of product formation and registration documents and navigating the registration process with the U.S. Securities and Exchange Commission (SEC), including helping clients address staff comments that often include questions about how alternative funds plan to address various regulatory 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 and business development companies (BDCs).

Establishing Distribution and Shareholder Servicing Arrangements

Providing legal support to funds and fund sponsors as they navigate the distribution landscape and its unique considerations for alternative products. For alternative funds that will be sold through third-party platforms, we have experience in reviewing and negotiating platform distribution and/or shareholder servicing arrangements.

Investor Qualification Issues

In the context of product structuring and distribution arrangements, providing guidance on investor qualification considerations and how various product structuring decisions may impose or alleviate certain limitations.

Advice on Fee Structures

Assisting clients in navigating applicable parameters in establishing fee structures for their funds as well as formulating employment and compensation structures for portfolio managers and other service providers. These considerations are frequently brought into sharp focus where alternative assets are introduced in the retail fund structure.

Exchange Listing

Providing guidance with respect to the rules and listing standards of the exchanges on which certain alternative products are listed and interfacing with various listing exchanges on behalf of clients.

Deal Support

Providing sophisticated support and guidance with respect to portfolio acquisitions, workouts and exit opportunities across a wide variety of alternative asset classes.

Complex Issues Introduced by Alternative Investments

Helping clients navigate liquidity, valuation, custody and other complex regulatory and practical considerations related to investments in alternatives, including issues arising under the Investment Company Act of 1940 (1940 Act) and the Investment Advisers Act of 1940.

Effective Tax Planning

Advising on tax matters and entity structuring (1) to navigate the needs of a diverse investor base (including U.S. and non-U.S. tax-exempts and pension funds, foreign individuals and entities, and sovereign wealth funds) to minimize tax costs and streamline compliance requirements; and (2) for funds subject to special tax rules, such as regulated investment companies (RICs), REITs, grantor trusts and publicly traded partnerships.

Plan Asset/ERISA Considerations

Counseling on the often-complex issues arising under the fiduciary and prohibited transaction rules of ERISA and the Internal Revenue Code as they relate to products and services provided to retirement plans and accounts, advising on venture capital operating company (VCOC) and real estate operating company (REOC) compliance, and assisting in the creation of hard-wired master-feeder structures.

Navigating State Law Registration, Regulation and Licensing

Assisting clients in navigating the applicability of state securities laws, including with respect to funds that will be publicly offered but neither 1940 Act registered nor exchange-traded, as well as advising on state licensing and regulatory matters relating to asset acquisition, ownership and servicing.

Ongoing Regulatory Support

Assisting in the preparation of initial and ongoing regulatory filings and associated regulatory relief.

Commodity Pool Operator (CPO) and Commodity Trading Adviser (CTA) Registration and Regulation

Advising on whether particular portfolio investments are commodity interests under the Commodity Exchange Act and the rules of the CFTC, and guiding fund sponsors, advisers and pooled vehicles through often complex analyses regarding their status as CPOs, CTAs and commodity pools and the availability of certain exemptions from regulation.

Swaps and Derivatives Documentation and Regulatory Compliance

Providing legal and practical guidance on establishing and modifying derivatives trading documentation, keeping clients apprised of and in compliance with changing regulatory requirements, and engaging in advocacy with regulators on behalf of our clients in the face of evolving regulations.

Crowdfunding Platforms

Advising clients in creating and maintaining funding portals pursuant to Regulation CF, Regulation D and Regulation A+, including support with necessary filings and the review of advertising materials.

Fintech and Digital Assets

In collaboration with our fintech practice, serving as legal and business advisers to fintech companies and entrepreneurs throughout all stages of the company growth cycle, providing creative and practical advice with respect to product structuring and regulation, and advising on intellectual property matters.

Corporate Actions (Reorganizations)

Providing legal advice on structuring and executing corporate actions, including conversion from one type of fund structure to another and reorganizations that involve multiple products.

Investment Management M&A

Advising clients on regulatory, tax and other considerations in connection with the sale of an advisory business, assisting in review and preparation of due diligence, obtaining necessary client consents, and preparing required regulatory filings.

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.