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The Rise of the BDC Interval Fund

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Interval funds have seen a surge in popularity, with assets under management quadrupling in the past five years.[1] As asset managers continue to explore avenues to democratize the private credit markets and broaden their investor base, interval funds offer expanded opportunities to provide investors with access to alternative investment strategies. To date, all existing interval funds have been structured as registered closed-end funds (CEFs) under the Investment Company Act of 1940, as amended (1940 Act). However, structuring an interval fund as a business development company (BDC) may provide asset managers with certain regulatory flexibilities that are not available to CEF structures, while also introducing certain regulatory trade-offs. This article explores the regulatory and structural trade-offs between BDCs and CEFs for an investment vehicle operating as an interval fund.

What Is an Interval Fund?

An interval fund is a type of investment vehicle that makes periodic repurchase offers at predetermined intervals. Interval funds generally are offered on a continuous basis (as frequently as daily) at net asset value (NAV).

The interval fund structure was introduced by the Securities and Exchange Commission (SEC) in a report published in 1992.[2] The report highlighted concerns that Section 5 of the 1940 Act forces asset managers to choose between open-end and closed-end fund structures, constraining their ability to offer innovative products.[3] To address these concerns, the SEC proposed the interval fund structure, combining aspects of both open-end and closed-end funds. The report culminated in the adoption of Rule 23c-3 under the 1940 Act (Rule 23c-3) in 1993, which allows for an investment vehicle that provides significant, though not complete, liquidity.

Rule 23c-3 provides a mechanism for CEFs and BDCs to provide periodic liquidity to investors through periodic repurchase offers at scheduled intervals. Repurchases made under Rule 23c-3 are conducted at NAV. Prior to making a repurchase in reliance on Rule 23c-3, an interval fund is required to adopt a fundamental policy that provides (1) that the fund will make periodic repurchase offers pursuant to Rule 23c-3, (2) the periodic intervals between repurchase deadlines, (3) the dates of the repurchase request deadlines and means of determining the repurchase request deadlines, and (4) the maximum number of days between each repurchase request deadline and the next repurchase pricing date (Interval Fund Fundamental Policy). After adoption, the Interval Fund Fundamental Policy can only be changed with the approval of the so-called “1940 Act majority” of shareholders.[4]

Typically, interval funds offer periodic repurchases on a quarterly basis, although some funds offer repurchases on an annual, semi-annual, or monthly[5] basis. For each periodic repurchase offer, the interval fund must offer to repurchase between 5 and 25 percent of its outstanding common shares on the repurchase request deadline, and interval funds are required to pay shareholders the redemption proceeds in cash within seven days of the repurchase pricing date (that is, the date on which the repurchased shares are valued, which will be no later than 14 days after the repurchase request deadline). Interval funds are required to hold liquid assets equal to 100 percent of the repurchase offer amount from the date that notice is sent to shareholders until the repurchase pricing date. An interval fund may use a line of credit or similar instrument, such as a credit facility, to satisfy this "liquid asset" requirement in certain circumstances.

Rule 23c-3 requires an interval fund to compute its NAV at least weekly, or daily during any period when the interval fund is conducting an offering of its common shares except (1) days when changes in the value of the fund's portfolio securities will not materially affect its NAV, (2) days when no purchase order is received (unless such date is the date the fund would otherwise determine its weekly NAV), and (3) holidays.[6] Interval funds are also required to compute their NAV daily on the five business days preceding a repurchase request deadline.[7]

In short, the interval fund structure expands retail investors' access to alternative asset strategies by providing a vehicle with a liquidity option, albeit more limited than open-end products (that is, mutual funds). Further, by restricting liquidity to a scheduled timetable, interval funds are able to make investments in illiquid assets with long-term return potential.

Regulation of CEFs and BDCs

Historically, interval funds have been structured as CEFs even though Rule 23c-3 specifically permits a BDC to operate as an interval fund thereunder. CEFs are closed-end management investment companies registered under the 1940 Act and therefore subject to regulation under the 1940 Act. In contrast, BDCs are not registered under the 1940 Act but elect to be regulated by certain provisions of the 1940 Act.

CEFs and BDCs are still subject to many of the same regulatory requirements under the 1940 Act, including limitations on their ability to (1) sell shares below NAV,[8] (2) participate in certain transactions with affiliates without exemptive relief from the SEC, or, in the case of BDCs with respect to so-called remote affiliates, the approval of a majority of the BDC's directors who are not "interested persons" as defined in Section 2(a)(19) of the 1940 Act (Independent Directors),[9] and (3) invest in securities issued by other investment companies (and vice versa),[10] as well as requirements to (1) maintain a majority of Independent Directors,[11] (2) maintain a bond issued by a reputable fidelity insurance company,[12] and (3) comply with requirements to maintain securities and other investments with a qualified custodian.[13] CEFs and BDCs are also subject to certain periodic public reporting requirements.[14]

In addition, CEFs and BDCs typically elect to be treated for US federal income tax purposes as regulated investment companies (RICs) under Subchapter M of the Internal Revenue Code of 1986, as amended (Code), and must comply with certain requirements to maintain their qualification as a RIC. As a RIC, such funds will not have to pay corporate-level US federal income taxes on ordinary income or capital gains distributed to shareholders as distributions.

Benefits of the BDC Structure for Interval Funds

Despite these similarities, because BDCs elect to be regulated under certain provisions of the 1940 Act, particularly Sections 54 through 65, the regulations governing BDCs differ from CEFs. Some of these regulatory differences may incentivize asset managers to structure interval fund vehicles as BDCs rather than CEFs, while others may swing in the opposite direction.

Leverage and Senior Securities

First, BDCs have more flexibility to incur leverage than CEFs. CEFs are required to maintain an asset coverage ratio[15] of 300 percent after the issuance of senior debt securities and 200 percent after the issuance of preferred stock. In other words, for each $1.00 of senior debt issued by a CEF, it must have $3.00 in assets after such issuance and for each $1.00 of preferred stock issued by a CEF, it must have $2.00 in assets after such issuance. In comparison, BDCs can take advantage of a reduced asset coverage ratio of 150 percent (that is, for every $1.00 of senior debt issued by a BDC, it must have $1.50 in assets after such issuance), subject to compliance with certain conditions.[16] Therefore, BDCs have more flexibility to incur additional leverage as compared to CEFs.

Further, while CEFs are limited to issuing one class of senior security representing indebtedness,[17] BDCs have greater flexibility to issue more than one class of senior security representing indebtedness.[18] Importantly, the SEC's current interpretation of Section 18(c) of the 1940 Act prohibits a CEF from obtaining leverage on both an unsecured and secured basis given the SEC's belief that unsecured debt and secured debt would constitute two separate classes of senior securities representing indebtedness.[19] As a result, BDCs also have significantly more flexibility to access different types of debt capital, including by issuing unsecured debt securities to retail investors and entering into secured credit facilities with banks or other financing arrangements.

Asset managers could benefit from the ability to incur additional leverage and issue multiple classes of senior securities representing indebtedness by structuring their interval funds to be BDCs as opposed to CEFs, thereby enhancing the funds' access to debt capital and expanding their lending capacity, which in turn can amplify the returns for their shareholders.

Capital Gains Incentive Fee

Unlike CEFs, investment advisers to BDCs can charge an incentive fee based on capital gains to retail investors/shareholders. While investment advisers to both CEFs and BDCs can charge base management fees and incentive fees based on income, investment advisers to CEFs are generally not permitted to charge incentive fees based on capital gains unless all CEFs' shareholders fall within the definition of a "qualified client" set forth in Rule 205-3 under the Investment Advisers Act of 1940, as amended (Advisers Act).[20] In contrast, an investment adviser to a BDC is able to receive capital gains incentive fees up to 20 percent of the BDC's realized capital gains net of all realized capital losses and unrealized capital depreciation over a certain period without the need to limit its investor base to "qualified clients."[21]

The ability to receive capital gains incentive fees from their retail BDC interval funds should be an attractive structuring option for asset managers that have an equity investment component as a significant part of their private credit investment strategies.

CEF Fundamental Policy

A CEF is required to adopt a fundamental policy regarding certain types of investments and investment practices, and such fundamental policies cannot be changed without stockholder approval.[22]

BDCs are not subject to this fundamental policy requirement and therefore have flexibility to change their investment objectives and/or strategies without obtaining shareholder approval.[23] However, BDCs are subject to certain other limitations with respect to their investments (which are discussed in further detail below) and, as noted above, must adopt an Interval Fund Fundamental Policy if they want to operate as an interval fund.

Tradeoffs of the BDC Structure for Interval Funds

Investment Restrictions on BDCs

While BDCs are not required to adopt fundamental policies under Section 8(b) of the 1940 Act, they are still subject to specific investment restrictions. Congress established BDCs to provide capital primarily to small, developing, and middle-market companies.[24] Therefore, the investment restrictions imposed on BDCs by the 1940 Act are designed to ensure that BDCs allocate their capital to these targeted portfolio companies.

Specifically, BDCs are required to invest 70 percent of their portfolios in "good" BDC assets.[25] "Good" assets include securities from "eligible portfolio companies" as defined in Section 2(a)(46) of, and Rule 2a-46 under, the 1940 Act. These are US issuers that (1) are not classified as investment companies, except wholly owned SBICs,[26] and would not be considered investment companies without the Section 3(c) exclusion;[27] and (2) either do not have a class of securities listed on a national securities exchange or have listed securities with a market value of under $250 million.

Asset managers considering whether to launch an interval fund using the BDC versus CEF structure should consider whether the investment restrictions imposed on BDCs align with the fund's intended investment objectives and strategies.

Blue Sky Requirements

Unlike CEFs, an interval fund structured as a BDC may be required to comply with state securities laws, often referred to as "Blue Sky Laws." A security issued by a CEF is considered a "covered security" under Section 18 of the Securities Act of 1933, as amended (Securities Act) and therefore states are preempted from substantively regulating the offer and sale of securities by a CEF (other than requiring CEFs to make certain notice filings with, and pay certain related filings fees to, the states in connection with the sale of their shares in the state).[28]

However, a security issued by a BDC is not a "covered security" under Section 18 of the Securities Act, therefore, interval funds structured as BDCs are required to comply with Blue Sky Laws, unless another preemption provision set forth in Section 18 of the Securities Act applies. For example, if a BDC interval fund were to only offer and sell its securities to "accredited investors" pursuant to Rule 506(b) or Rule 506(c) under the Securities Act, such securities would be considered "covered securities" and thus States would be preempted from substantively regulating the offer and sale of the BDC interval fund's securities.[29]

Blue Sky Laws vary from state to state, and compliance often can be costly and time intensive. Therefore, asset managers considering structuring an interval fund as a BDC should consider whether the benefits of the BDC structure (for example, flexibility to incur additional leverage, issue multiple classes of senior securities representing indebtedness and charge incentive fees on capital gains) outweigh the costs of compliance with Blue Sky Laws (or otherwise limiting its investor base to "accredited investors" to take advantage of the Blue Sky Law preemption provision contained in Section 18(b)(4)(F) of the Securities Act).

ERISA Plan Assets Rule

Under the Employee Retirement Income Security Act of 1974, as amended (ERISA), an investment by an employee benefit plan in a fund may cause the fund's underlying assets to be deemed "plan assets" for purposes of ERISA and/or the prohibited transaction rules under the Code (Plan Assets Rule). This would subject the fund (and its investment adviser(s)) to ERISA's heightened fiduciary responsibilities and prohibited transaction rules. However, CEF interval funds generally are not subject to such requirements because the Plan Assets Rule provides that an employee benefit plan's acquisition of CEF shares will not cause the CEF's underlying assets to be considered "plan assets" because the CEF is an investment company registered under the 1940 Act.

While a BDC interval fund would not receive the same per se exception from its assets being deemed "plan assets," it may rely on other exceptions under the Plan Assets Rule to avoid this designation, similar to other BDC structures. For example, if the BDC interval fund's shares qualify as "publicly-offered securities" under the Plan Asset Rule and/or if it restricts "benefit plan investors" (that is, employee benefit plans subject to ERISA, plans subject to the prohibited transaction rules under the Code such as individual retirement accounts, and entities that are considered "plan assets" of such employee benefit plans) to less than 25 percent of the total value of each class of its equity interests calculated in accordance with the Plan Assets Rule, the BDC interval fund's assets would not be considered "plan assets." Nonetheless, to avoid "plan asset" status, the BDC interval fund must analyze and monitor compliance with such exceptions under the Plan Assets Rule, unlike a CEF interval fund whose exception to "plan asset" status is by virtue of it being registered under the 1940 Act. This requirement could impose additional costs and complexities on BDC interval funds compared to CEF interval funds.

Benefits of the Interval Fund Structure for BDCs

In addition to assessing the benefits of structuring an interval fund as a BDC (as compared with a CEF), asset managers should also consider the pros and cons of operating a BDC as an interval fund, as compared to other BDC products designed to attract retail investors.

"Guaranteed" Liquidity Feature

As discussed above, interval funds have become an attractive investment vehicle for retail investors, largely because the vehicle offers a non-discretionary liquidity option at predetermined intervals. This feature may attract a broader group of investors than other BDC structures, such as publicly-offered, non-listed BDCs (Public Non-Traded BDCs)[30] and perpetual private BDCs[31] (Perpetual Private BDCs), which typically make repurchase offers on a discretionary basis. Public Non-Traded BDCs and Perpetual Private BDCs often implement discretionary repurchase programs pursuant to Rule 13e-4 (Rule 13e-4) of the Securities and Exchange Act of 1934, as amended (Exchange Act), whereby the BDC's board of directors has the discretion to make offers to repurchase shares. While Public Non-Traded BDCs and Perpetual Private BDCs typically make such repurchase offers on a quarterly basis, the BDC's board of directors has discretion to suspend or terminate such repurchases and there is no guarantee that such repurchase offers will be made. Further, unlike a repurchase offer pursuant to Rule 23c-3, Rule 13e-4 does not mandate a minimum number of shares that a BDC must offer to repurchase, so repurchase offers under Rule 13e-4 may offer less liquidity to shareholders than Rule 23c-3 which mandates that the interval fund offer to repurchase between 5 and 25 percent of its outstanding shares.

In contrast, repurchase offers under Rule 23c-3 can only be suspended or postponed upon the occurrence of certain events enumerated in Rule 23c-3, including if the repurchase offer would cause the fund to lose its RIC status or during a period where an emergency exists and, as a result, disposal of the fund's investments would not be reasonably practicable.[32] In addition, once adopted, an Interval Fund Fundamental Policy cannot be changed without shareholder approval.

In short, the interval fund structure provides investors with a more predictable liquidity option at scheduled intervals, unlike the discretionary liquidity of the Public Non-Traded BDC and Perpetual Private BDC structures. This predictability may attract a broader investor base to BDC interval funds compared to other BDC structures.

Access to Efficient Trading Platforms

BDC interval funds also potentially would have access to certain trading platforms designed to provide efficient processing of interval fund trades (colloquially referred to as point-and-click), which can be a useful tool to expand a fund's investor base. The two point-and-click trading methods often used by interval funds are the (1) NSCC Fund/SERV® (Fund/SERV) platform, and (2) DTCC Alternative Investment Product (AIP) platform. The pros and cons of each of the Fund/SERV and AIP platforms are further outlined below.

Fund/SERV is a trading platform that provides operational efficiencies to funds through its automated trading and settlement capabilities.[33] Fund/SERV eliminates paperwork and manual processing requirements (including providing for point-and-click share purchases) and facilitates a streamlined process for intermediaries (for example, broker-dealers and registered investment advisers) to make investments for their clients through the Fund/SERV platform. Further, because Fund/SERV was developed in 1986 and is widely used by open-end funds (for example, mutual funds), the technology is deeply integrated in the back-office operations of many funds and intermediaries. Interval funds that use the Fund/SERV platform can benefit from operational efficiencies, such as lower costs for the fund and reduced administrative burden on intermediaries and investors, potentially attracting a higher volume of investors.

However, Fund/SERV requires all funds to be continuously offered and NAV to be determined on a daily basis, and it does not permit future dated trades to be submitted by intermediaries (although future dated repurchases are permitted). Asset managers considering using the Fund/SERV platform for a BDC interval fund should consider whether it has the operational capacity to determine NAV on a daily basis.

AIP is a newer trading platform that launched in 2008 and is designed for alternative, less-liquid products that typically are not registered. While the AIP platform provides for automatic, electronic processing of trades, AIP does not offer integrated settlement (such as Fund/SERV), and intermediaries are required to submit paperwork through back-office procedures in connection with settlements and repurchases. The AIP platform also is still evolving and is less established than the Fund/SERV system.

However, AIP does not require funds to determine NAV daily and permits intermediaries to submit future-dated trades, which can be warehoused by the fund. It also allows for future-dated repurchases to be submitted.

Both Fund/SERV and AIP may provide operational efficiencies for interval funds to process a high volume of trades at a lower cost and, most importantly, without the need to obtain signatures from investors on subscription documents to process such trades as must Public Non-Traded BDCs and Perpetual Private BDCs.

However, while Fund/SERV and AIP may provide operational efficiencies for BDC interval funds by streamlining trades and repurchases, the investors or intermediaries effecting such trades in a BDC interval fund would still be required to coordinate with the BDC interval fund and/or its service providers to comply with any regulatory obligations applicable to the BDC interval fund, including under Blue Sky Laws, and provide any necessary confirmations in connection with the fund's suitability standards (for example, state suitability standards for publicly offered BDC interval funds and "accredited investor" standards for privately offered BDC interval funds). Due to the novelty of BDC interval funds, ongoing discussions between the BDC interval fund, its distribution agents, service providers (for example, transfer agent and blue-sky service providers) and trading platforms would likely be required to establish the necessary back-office procedures and determine how the trading platforms available to CEF interval funds could efficiently support the BDC interval fund structure.

Less Burdensome Repurchase Requirements

Public Non-Traded BDCs or Perpetual Private BDCs that make repurchase offers under Rule 13e-4 of the Exchange Act are subject to more robust disclosure requirements than BDC interval funds that make repurchase offers under Rule 23c-3. Specifically, BDCs conducting repurchase offers pursuant to Rule 13e-4 are required to file tender offer statements on Schedule TO and the related exhibits (Schedule TO) with the SEC as soon as practicable upon the commencement of the tender offer. A Schedule TO is required to include (1) a summary term sheet; (2)

information about the issuer (for example, name, address and business) and its background; (3) terms of the offer to repurchase (for example, price, number of securities, expiration date); (4) a description of certain agreements between the issuer and related parties (for example, directors and executive officers) and agreements involving the issuer's securities; (5) the purpose of the offer to repurchase; (6) the source of funds used to repurchase shares; and (7) audited financial statements for the past two years and unaudited financial statements for the most recent fiscal quarter, among other requirements. Certain documents are also required to be filed as exhibits to the Schedule TO, including an offer to purchase, form of transmittal letter, form of letter of withdrawal, form of acceptance letter and other key documents.

In contrast, a BDC interval fund would be required to file a Form 23c-3 in connection with repurchase offers, which is composed of a cover page with the notice to shareholders attached. The notice to shareholders must include certain information about the offer to repurchase and the fund, including the repurchase amount, fees applicable to repurchase, the relevant dates for the repurchase, procedures for shareholders tendering shares, procedures for the interval fund to repurchase shares pro rata, the interval fund's NAV within seven days of the repurchase offer, and the market price on the day NAV was computed.[34] The Form 23c-3 must be filed within three business days of delivering the notice of repurchase to shareholders.

Repurchase offers under Rule 13e-4 of the Exchange Act also must comply with other SEC rules, including Regulation 14E, which impose additional restrictions on repurchase offers that are not implicated in connection with repurchase offers made pursuant to Rule 23c-3.

Asset managers that structure a BDC as an interval fund may benefit from the more limited disclosure and substantive regulatory requirements applicable to repurchases made pursuant to Rule 23c-3 as compared to Rule 13e-4.

FINRA Rules

Numerous rules issued by the Financial Industry Regulatory Authority, Inc. (FINRA) govern the compensation received by FINRA members (that is, broker-dealers) in connection with their public distribution of securities of CEFs and BDCs. The primary purpose of these FINRA rules is to promote fairness, transparency, and investor protection in public offerings by regulating how compensation paid to FINRA members is structured and disclosed.

FINRA Rule 5110 exempts an interval fund, whether structured as a BDC or CEF, from the requirements of Rules 2310 (FINRA Rule 2310) (discussed below), 5110[35] and 5121[36] of the FINRA Manual.[37]

CEF interval funds are instead required to comply with the requirements of Rule 2341 of the FINRA Manual (FINRA Rule 2341), which imposes (1) a cap on total sales charges (for example, asset-based, front-end and deferred);[38] and (2) a cap on the maximum amount of annual asset-based sales charges of 0.75 percent. FINRA Rule 2341 also allows a 0.25 percent annual service fee to be paid by a fund for certain "shareholder liaison" services, which will not be considered a sales charge. However, FINRA Rule 2341 applies exclusively to CEFs; therefore, a BDC interval fund would not be subject to the requirements of FINRA Rule 2341.

In contrast, a BDC that is not operated as an interval fund would be required to comply with FINRA Rule 2310, unless another exemption applies. FINRA Rule 2310 imposes certain suitability standards on recommended transactions.[39] Additionally, FINRA Rule 2310 imposes (1) a cap of 10 percent on brokerage commissions based on gross proceeds (10 percent Cap) and (2) a cap of 15 percent on organization and offering expenses, including commissions, based on gross proceeds (15 percent Cap).

The FINRA rules that would be applicable to a BDC interval fund are somewhat ambiguous given the exemption contained in FINRA Rule 5110 and the fact that FINRA Rule 2341 does not per se apply to BDCs. Specifically, a public offering of securities by a BDC interval fund would be exempt from the requirements of FINRA Rule 2310 (as discussed above). However, based on the plain language of FINRA Rule 2341(a), a BDC interval fund would not be subject to the rule because it is not a registered investment company under the 1940 Act.

If FINRA were to adopt an interpretive position that subjects public securities offerings by BDC interval funds to its rules, the stronger position would be for FINRA to align the requirements applicable to BDC interval funds with the requirements applicable to CEF interval funds under FINRA Rule 2341. This is because the distribution strategies and fees applicable to BDC interval funds will likely be more similar to those of CEF interval funds than to Public Non-Traded BDCs.

Implications for Multi-Class Exemptive Relief

The ability to offer multiple classes of shares with different fee structures is beneficial for funds to tailor different classes of shares for specific distribution channels, thereby potentially attracting a broader investor base. Historically, BDCs have been restricted in their ability to offer multiple classes of shares with different expense structures because such different expense structures could be deemed to create multiple classes of "senior securities" in violation of Section 18 of the 1940 Act.

In 2020, the SEC granted the first order for multi-class exemptive relief (Order) for a Public Non-Traded BDC. In April 2025, the SEC expanded BDCs' access to multi-class exemptive relief by granting the first Order to a Perpetual Private BDC. As a result, BDCs that obtain such multi-class exemptive relief are permitted to offer multiple classes of shares subject to compliance with the conditions of the exemptive relief order (Order).

One condition of such Orders is that BDCs receiving multi-class exemptive relief comply with the provisions of FINRA Rule 2310 (that is, the 10 percent Cap and 15 percent Cap). In addition, the Orders impose an SEC-created cap of 10 percent per share on total compensation paid to underwriters, broker-dealers and affiliates thereof. If a BDC interval fund seeks such relief, it would be beneficial to request that the SEC grant an Order with a condition requiring compliance with FINRA Rule 2341 in lieu of FINRA Rule 2310 for the reasons discussed under the section on FINRA Rules above.

While such relief would be novel given that all Public Non-Traded BDCs and Perpetual Private BDCs that have obtained multi-share class exemptive relief have agreed to comply with FINRA Rule 2310, a BDC interval fund would be on firmer ground requesting that only FINRA Rule 2341 apply to it given that CEF interval funds that obtain multi-class exemptive relief are only required to comply with FINRA Rule 2341 as a condition to receiving such relief.

Conclusion

The decision to structure an interval fund as a BDC or CEF involves navigating a complex landscape of regulatory trade-offs. While BDCs offer greater flexibility in leverage and the ability to charge capital gains incentive fees, they also come with specific investment restrictions and potential costs pertaining to Blue Sky Law compliance. Conversely, the CEF structure allows more flexibility in the types of investments the fund makes (albeit within the parameters of its fundamental policy) and avoids Blue Sky Law compliance costs, but imposes limitations on leverage and incentive fees on capital gains. The interval fund structure also can benefit BDCs by attracting a broader investor base through regulatorily-mandated liquidity and offering operational efficiencies via interval fund trading methods. Asset managers must carefully weigh these factors to determine the optimal structure that aligns with their investment objectives and strategies, ultimately aiming to maximize returns and broaden access to alternative asset strategies for investors.

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NOTES

1 Pitchbook, "Interval Funds Near $100 Billion in AUM" (May 10, 2025), available at *https://pitchbook.com/newsletter/interval-funds-near-100-billion-in-aum*.

2 Division of Investment Management, Securities and Exchange Commission, "Protecting Investors: A Half Century of Investment Company Regulation" (May 1992).

3 Section 5 of the 1940 Act requires that a management company be classified as either an "open-end company" or a "closed-end company." *See also id.* at 424.

4 *See* Section 2(a)(42) of the 1940 Act.

5 Rule 23c-3 does not explicitly permit monthly repurchase offers so interval funds seeking to offer monthly repurchase offers must obtain exemptive relief from the SEC.

6 *See* Rule 23c-3(b)(7) under the 1940 Act.

7 *See id*.

8 *See* Section 23(b) of the 1940 Act.

9 *See* Section 17 or 57 of the 1940 Act and Rule 17d-1 thereunder.

10 *See* Section 12(d)(1) of the 1940 Act.

11 While Section 10(a) of the 1940 Act only requires that 40 percent of a CEF's board of directors be comprised of Independent Directors, an interval fund's board of directors must be made up of at least a majority of Independent Directors if it relies on certain exemptive rules under the 1940 Act. Under Section 56 of the 1940 Act, a majority of a BDC's board of directors must be Independent Directors.

12 *See* Section 17(g) and Rule 17g-1 under the 1940 Act.

13 *See* Section 17(f) of the 1940 Act.

14 CEFs are required to file annual and semi-annual reports pursuant to Section 30 of the 1940 Act, as well as monthly reports on Form N-PORT. BDCs are required to file annual, quarterly and current reports required by Sections 13 or 15 of the Exchange Act.

15 "Asset coverage" of a class of a senior security representing indebtedness is defined in the 1940 Act as the ratio of gross assets (less all liabilities and indebtedness not represented by senior securities) to outstanding senior securities representing indebtedness. "Asset coverage" of a class of a senior security which is a stock is defined in the 1940 Act as the ratio of gross assets (less all liabilities and indebtedness not represented by senior securities) to outstanding senior securities representing indebtedness, plus the aggregate involuntary liquidation preference of the outstanding class of such senior security which is stock. *See* Section 18(h) of the 1940 Act.

16 Under Section 61(a) of the 1940 Act, BDCs typically are required to maintain an asset coverage ratio of 200 percent, but BDCs are permitted to reduce their asset coverage ratio to 150 percent subject to (1) prior approval by the board of directors (in which case the reduced asset coverage ratio will become effective one year after such approval) or shareholders (in which case the reduced asset coverage ratio will become effective the first day following such shareholder approval), and (2) certain ongoing reporting requirements.

17 *See* Section 18(c) of the 1940 Act ("it shall be unlawful for any registered closed-end investment company to issue or sell any senior security representing indebtedness if immediately thereafter such company will have outstanding more than one class of senior security representing indebtedness….").

18 *See* Section 61(a)(3) of the 1940 Act ("[n]otwithstanding section 18(c), a business development company may issue more than one class of senior security representing indebtedness….").

19 *See Israel Development Corporation*, Investment Company Act Release No. IC-3214, 40 S.E.C. 582, 1961 WL 61046.

20 *See* Section 205(a)(1) of, and Rule 205-3 under, the Advisers Act. Under Rule 205-3 of the Advisers Act, a "qualified client" is defined as (i) a client who

has at least $1,100,000 under the management of an investment adviser immediately after entering into an investment advisory contract with such investment adviser, (ii) a client who the investment adviser reasonably believes, immediately prior to entering into an investment advisory contract with such investment adviser, has a net worth of more than $2,200,000, (iii) is a qualified purchaser under Section 2(a)(51)(A) of the 1940 Act, or (iv) is an executive officer, director, trustee, general partner or person serving in a similar capacity of the investment adviser or an employee of the investment adviser who participates in the investment activities of the investment adviser as part of his or her regular functions or duties and has been performing such functions or duties for at least 12 months.

21 *See* Section 205(b)(3) under the Advisers Act.

22 *See* Section 8(b) of the 1940 Act.

23 Except that a BDC cannot withdraw its election to be regulated as a BDC without shareholder approval. *See* Section 58 of the 1940 Act.

24 Congress established BDCs in 1980 through the Small Business Incentive Act of 1980, which amended the 1940 Act.

25 *See* Section 55(a) of the 1940 Act.

26 "SBIC" means a small business investment company, which is a privately owned company that is licensed and regulated by the U.S. Small Business Administration.

27 Certain asset classes that have become increasingly popular in the private credit industry rely on the exclusion from the definition of "investment company" under Section 3(c) of the 1940 Act, including collateralized loan obligations and asset backed financings. As such, a BDC interval fund may be more limited than a CEF interval fund in investing in such asset classes.

28 *See* Section 18 of the Securities Act, which provides that "no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof . . . [r]equiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to . . . a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940."

29 *See* Section 18(b)(4)(F) of the Securities Act.

30 Public Non-Traded BDCs conduct continuous public offerings via the filing of a Form N-2 registration statement under the Securities Act and, as discussed in detail above, must "blue-sky" their public offerings with the securities regulators in each state in which they seek to offer and sell their securities.

31 Private BDCs do not publicly offer or sell their shares to the public but instead do so by issuing their securities to "accredited investors" pursuant to the so-called "private placement" and other exemptions from the registration requirements of the Securities Act. "Perpetual-life" private BDCs have an indefinite duration, which reduces the risk of such BDCs being forced to liquidate assets during market downturns.

32 *See* Rule 23c-3(b)(3) of the 1940 Act.

33 Fund/SERV is included in net settlement obligations along with other DTCC products.

34 *See* Rule 23c-3(b)(4).

35 FINRA Rule 5110 requires underwriters to file information about the offering with FINRA, including details on underwriting compensation, to allow FINRA to review and approve the terms.

36 FINRA Rule 5121 prescribes certain disclosure and other requirements when a FINRA member has a conflict of interest (as defined therein).

37 *See* FINRA Rule 5110(h)(2)(B).

38 The cap on sales charges is based on a percentage of "new gross sales." Funds without asset-based sales charges have a maximum aggregate sales charge ranging from 6.25 percent to 8.5 percent of the offering price, depending on factors like service charges, dividend reinvestment at NAV, and quantity discounts. For funds with asset-based sales charges (excluding service fees), the cap on aggregate sales charges, including front-end, deferred, or asset-based charges, varies from 6.25 percent to 7.25 percent of total "new gross sales," plus an interest rate on asset-based

charges equal to the prime rate plus one percent per annum. This cap is applied continuously without annual or periodic cut-offs.

39 Under FINRA Rule 2310(b)(1), members must have a reasonable basis to believe that a recommendation to purchase, sell, or exchange a security is suitable for at least some investors based on reasonable diligence to understand the potential risks and rewards. In addition, under FINRA Rule 2310(b)(2), members must have a reasonable basis to believe that a recommendation is suitable for a particular customer based on the customer's investment profile, including factors such as age, financial situation, investment experience, and objectives.

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