



K&L GATES

The Catholic University of America Columbus School of Law: Conference on Developments in the Regulation of Financial Products 2024

Registered Fund and ETF Developments Panel

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FUND NAMES



FUND NAMES – FINAL RULE AMENDMENTS AND REGULATORY CONTEXT

- ***Final Names Rule Amendments*** – On September 20, 2023, the SEC adopted enhanced restrictions under Rule 35d-1 – the “Names Rule” – to prevent misleading or deceptive fund names
- Section 35(d) of the Investment Company Act prohibits fund names that are materially deceptive or misleading
 - Also provides the SEC with rulemaking authority to address materially deceptive or misleading fund names, recognizing the concern that investors may focus on a fund’s name to determine its investments and risks
- The SEC initially adopted the Names Rule in 2001. The Names Rule seeks to ensure that investors’ assets in funds are invested in accordance with investors’ reasonable expectations based on the fund’s name



FUND NAMES – REGULATORY CONTEXT

- Rule 35d-1 – Current Requirements:
 - **Scope of Current Rule** – Current rule applies to fund names indicating an investment emphasis in (1) certain types of investments (e.g., Stock Fund), (2) certain industries (e.g., Utilities Fund), (3) certain countries or geographic regions, (e.g., Japan Fund), and (4) tax-exempt funds (e.g., Municipal Fund). Also prohibits use of names suggesting guarantee or approval by the U.S. government
 - **80% Investment Policy** – If a fund’s name is covered by the rule, the fund must adopt a policy to invest at least 80% of the value of its assets in the type of investment suggested by its name
 - The 80% policy generally (1) applies at the time when a fund invests its assets, (2) is based on a fund’s net assets plus any borrowings for investment purposes, (3) applies "under normal circumstances" (allows temporary deviations), and (4) must be fundamental or changeable only on 60 days’ prior notice to shareholders (except for tax-exempt funds, which must have fundamental 80% policies).
 - **Notice Requirements** – There are special notice requirements in the event of a change to the 80% policy, including that the notice be separate from other fund-related communications and identified as involving a change in the fund’s 80% investment policy



NAMES RULE AMENDMENTS – SCOPE EXPANSION

- ***Expansion of Scope*** – Amendments expand the Names Rule’s 80% investment policy requirement to apply to any fund name with terms suggesting that the fund focuses in investments that have, or investments whose issuers have, “particular characteristics”
 - Coverage will include, for example, fund names with terms such as “growth” or “value,” or terms indicating that the fund’s investment decisions incorporate one or more ESG factors
 - The rule does not define the term “particular characteristics,” and instead the SEC included a non-exclusive list of examples of “particular characteristics”
 - The adopting release highlights the SEC’s view that “particular characteristics” will be recognized as any feature, quality, or attribute that suggests an investment focus
- ***ESG Integration Funds*** – The SEC did not take action on so-called “integration funds” – funds that include ESG terms in their names but consider ESG factors alongside other non-ESG factors



NAMES RULE AMENDMENTS – TEMPORARY DEVIATIONS

- ***Temporary Deviations from 80% Policy*** – Amendments retain the Names Rule’s current requirements for a fund to invest in accordance with its 80% investment policy “under normal circumstances”, and for the 80% investment requirement to apply at the time a fund invests its assets
- ***Quarterly Reviews*** – However, the amendments add a new provision that requires a fund to review its portfolio assets’ inclusion in its “80% basket” at least quarterly, thereby requiring funds to re-assess compliance with the rule’s requirements on a quarterly basis
- ***Grace Period*** – Amendments include specific time frames – generally 90 days – for getting back into compliance if a fund departs from the 80% requirement as a result of drift or in other-than-normal circumstances



NAMES RULE AMENDMENTS – OTHER

- **Derivatives** – Amendments generally require a fund to use a derivatives instrument's notional amount, rather than its market value, to determine the fund's compliance with its 80% investment policy, with certain adjustments
- **Enhanced Prospectus Disclosure** – Amendments require a fund to define in its summary and statutory prospectuses the terms used in its name, including the criteria used to select investments that the term describes.
- **Changes to Notice Requirements** – Amendments change the notice requirements to be more prescriptive. Change notices must include, as applicable, (1) a description of the fund's 80% policy; (2) the nature of the change to the 80% policy; (3) the fund's old and new names; and (4) the effective date of any investment policy or name changes. Other aspects of the notice requirements remain similar to the current Names Rule with some modification for electronic delivery.
- **Form N-PORT Reporting Requirements** – Amendments require funds to report the value of the fund's 80% basket, and whether an investment is included in the fund's 80% basket, in each case for the third month of every quarter. Also must include the definition(s) of terms used in the fund's name.
- **Recordkeeping** – Final rules include detailed recordkeeping provisions related to a fund's compliance with the Names Rule's requirements.





Liquidity Risk Management Program Rule Amendments; Status of Swing Pricing and Hard Close Proposal



LIQUIDITY RISKS – REGULATORY CONTEXT

- ***Open-End Funds and Liquidity Generally*** – Because open-end funds offer investors daily liquidity, the SEC requires such funds to maintain liquid portfolios sufficiently liquid to meet redemptions. Among other things, the SEC limits open-end fund investments in illiquid securities to not more than 15% of net assets.
- ***Liquidity Risk Management Programs*** – In 2016, the SEC adopted Rule 22e-4 to enhance liquidity risk management by requiring open-end funds to adopt and implement formal LRMPs that require: (1) assessment, management, and periodic review of a fund’s liquidity risk; (2) classification of the liquidity of a fund’s portfolio investments into one of four prescribed categories – ranging from highly liquid to illiquid investments – including at-least-monthly reviews of these classifications; (3) determination and periodic review of a highly liquid investment minimum for certain funds; (4) 15% limitation on illiquid investments; and (5) board oversight.
- ***SEC Proposal in 2022*** – On November 2, 2022, the SEC proposed amendments to Rules 22c-1 and 22e-4 that would require the adoption of “swing pricing” and a “hard close” by all open-end funds (other than MMFs and ETFs) and changes to LRMPs. The amendments were intended to better prepare funds for stressed conditions and mitigate dilution of shareholders’ interests and incorporate lessons learned from the market events of March 2020.



FINAL SEC RULE AMENDMENTS

- ***Final SEC Rule Amendments in 2024:*** On August 28, 2024, the SEC adopted amendments to reporting forms for registered funds that will:
 - (1) require funds to file monthly reports of their portfolio holdings and other data on Form N-PORT within 30 days of month end (rather than monthly reports on a quarterly basis, 60 days after quarter end);
 - (2) make monthly Form N-PORT data (rather than quarterly) publicly available with a 60-day delay; and
 - (3) amend Form N-CEN to require open-end funds with liquidity risk management programs to identify and provide information about liquidity classification service providers that such funds use to comply with Rule 22e-4.
 - The SEC also provided guidance about open-end funds' administration of their liquidity risk management programs.
- **Liquidity Risk Management Program Guidance:**
 - Potential intra-month reviews of liquidity classifications
 - Meaning of "cash"
 - Highly Liquid Investment Minimums
- ***No Swing Pricing, Hard Close, or Liquidity Rule Amendments, For Now***



LRMP GUIDANCE

- While the SEC did not adopt amendments to the Liquidity Rule at this time, it provided guidance for funds subject to the Liquidity Rule to address questions raised through the SEC staff's outreach and monitoring.
- The Liquidity Rule requires open-end funds:
 - (1) to review liquidity classifications more frequently than monthly if there are relevant market, trading, and investment-specific considerations that may materially affect one or more of the investment classifications;
 - (2) to consider the time in which a fund can reasonably expect an investment to be “convertible to cash” (i.e., sold and settled) without significantly changing the market value of the investment; and
 - (3) to set a highly liquid investment minimum to the extent a fund does not primarily hold assets that are highly liquid investments.
- Frequency of Classification Review:
 - The SEC stated that a fund's LRMP should be reasonably designed to perform any required intra-month review of liquidity classifications and generally should identify, for example, the type of information a fund will use to identify relevant intra-month changes and to review liquidity classifications intra-month, as well as the timeliness of that information.
 - The SEC noted that the SEC staff observed multiple instances where funds were not prepared to review classifications intra-month in response to such changes.



LRMP GUIDANCE

- Meaning of “Cash” :
 - The term “cash” under the Liquidity Rule means US dollars and does not include foreign currencies or cash equivalents. Funds should not base liquidity determinations in an international jurisdiction on the ability to sell, dispose of, or settle an investment into the local currency without also considering the ability to convert the local currency into US dollars for purposes of paying shareholder redemptions.
 - Funds should consider: (1) reasonable expectations of the period in which an international noncurrency investment can be sold and settled in the local market without significantly changing the market value of the investment; and (2) reasonable expectations of the period of time in which any international currency received upon settlement can be converted to US dollars without significantly changing the currency exchange rate.
 - If a fund does not reasonably expect to be able to convert the local currency into US dollars within seven calendar days because of currency controls or otherwise, then holdings of the local currency should be classified as an illiquid investment. Further, other investments in that jurisdiction that would be sold or disposed of in exchange for the illiquid local currency also should be classified as illiquid investments.
- Highly Liquid Investment Minimums:
 - When considering a fund’s investment strategy and portfolio liquidity, a fund that invests significantly in less liquid or illiquid investments, such as a bank loan fund, generally should consider establishing a highly liquid investment minimum that is higher than that of a fund that is more liquid.
 - This position also applies to funds with investment strategies that have had greater volatility of flows than other investment strategies – or that are reasonably expected to have greater volatility in reasonably foreseeable circumstances.



COMPLIANCE DATES; EXPECTED RE-PROPOSAL OF LIQUIDITY REQUIREMENTS

- **Compliance Date:** The amendments will become effective on November 17, 2025, and funds generally will be required to comply in Form N-PORT and N-CEN reports filed on or after that date, except for filers that are considered smaller entities (<\$1 billion AUM as of end of most recent fiscal year), which will have an additional six-month compliance period until 18 May 2026 to comply with the Form N-PORT amendments.
- **No Swing Pricing, Hard Close, or Liquidity Rule Amendments, For Now – Expected Re-Proposal of Liquidity Risk Management Provisions on RegFlex Agenda for 2025**
 - **Swing Pricing** – The proposed amendments would have required open-end funds to implement swing pricing. “Swing pricing” is the adjustment of a fund’s price above or below its NAV per share, which is intended to pass on the costs arising from shareholder purchase or redemption activity to the shareholders engaging in that activity and mitigate the dilution of existing shareholders’ investment
 - **Hard Close Requirement** – To enable implementation of swing pricing, the proposed amendments would have required funds to implement a “hard close”. Hard close requirement would mandate that an investor’s order to purchase or sell shares of a fund is eligible to receive the fund’s daily price only if the fund, its transfer agent, or a registered clearing agency receives an eligible order before the time the fund calculates its NAV, which is typically as of 4:00 PM ET.





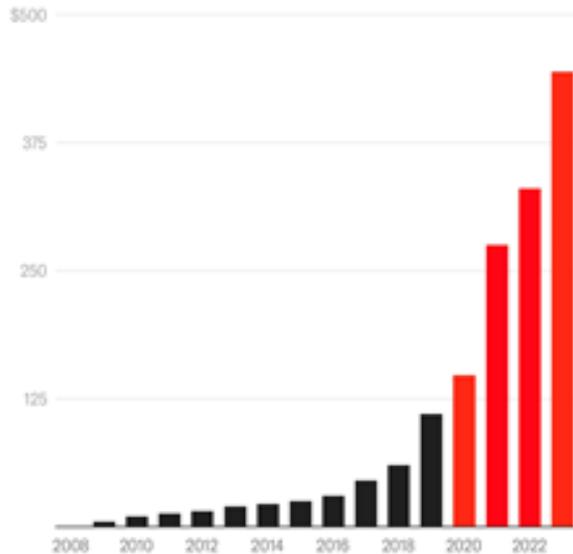
ETF PRODUCT DEVELOPMENTS – CONVERSIONS AND SHARE CLASSES



GENERAL US ETF LANDSCAPE ACROSS 2023/2024

According to Morningstar, in each calendar year since 2018, active ETFs gained at least \$25 billion and had an annual organic growth rate of more than 30 percent. By the end of October 2023, active ETFs had about \$444 billion in assets, triple the amount in October 2020.

Massive Growth in U.S. Active ETF Assets



Dollar amount in Billions

Source: Morningstar

- 2023 was a record year for US ETFs overall:
 - **Assets**
 - The ETF industry in the United States reached a new milestone of **over \$8.1 trillion USD, up 24.6%** from \$6.5 trillion USD as at the end of 2022
 - **Launches**
 - **543** new ETFs launched in 2023 (the second highest year, 2021, had just under 480 new ETFs launched)
 - **75%** of those 2023 ETF launches were actively managed
 - **39** of the new ETF launches were **mutual fund conversions**
 - **Closures**
 - **Seven** of the ETFs launched **closed** by 12/31/23
 - US ETF **closures** in 2023 were **246**

ETFs VS. MUTUAL FUNDS

	Mutual Funds	ETFs
Cost	Operating expenses \$200-500k+	Operating expenses \$200-500k+
Structure	Stand-alone or Series Trust format	Stand-alone or Series Trust format
Exemptive Relief Filing	No	No
Share Creation + Redemption	Investors purchase and redeem directly from the fund in cash	Primary Market: Authorized Participants create/redeem shares through an in-kind cash transfer to funds
Market	No Primary Market. Focus on building brand awareness and scale in the Secondary Market through RIAs and broker-dealers	Focus on tactical solution products and brand awareness in both Primary (APs) and Secondary Market
Secondary Market Trading	Offered through a variety of distribution channels End of day share purchases and redemptions at NAV on Secondary Market	Offered through an exchange. Intraday trading on Secondary Market Typically end of day price at NAV but can deviate
Transparency	Portfolio holdings typically disclosed quarterly	Portfolio holdings disclosed daily
Tax-Efficiency	All shareholders realize capital gains distributed in fund; mutual funds required to pay out dividends and capital gains on an annual basis	Investors only realize capital gains with sale of own shares; in-kind creation and redemption result in fewer taxable gains
Platform Considerations	Fees vary by platform, platform fees for on-boarding (due diligence, operational, sales and marketing (12b-1, NTF, revenue share, and partnership fees), and data transparency	Fees vary by platform, platform fees for sales and marketing (commission fee platforms) and data transparency



CONVERTING A MUTUAL FUND TO AN ETF

- The first conversion of a mutual fund into an ETF was in 2022.
- There have been dozens of successful mutual fund conversions into ETFs.
- Depending on the structure of the mutual fund and the target (either an existing or shell ETF), a proxy vote of shareholders may not be necessary to convert.
 - In advance, it is important to also review the prospectuses, as well as the mutual fund's trust document and bylaws for any other restrictions.
- Other pooled investment structures, such as a private fund or SMA, have also been participants in a conversion into an ETF.



ETF SHARE CLASS OF A MUTUAL FUND

- For over 20 years, Vanguard has been the only fund complex to have an SEC approved share class of a mutual fund.
 - At the time, Vanguard obtained a patent for that structure, creating an effective monopoly.
 - In May 2023, that patent expired for Vanguard.
- The 2019 ETF Rule explicitly stated that a mutual fund share class listed as an ETF would not automatically fit within the rule, so any fund complex seeking to utilize that structure would need to file an exemptive application with the SEC to obtain approval. SEC concerns with ETF class in multi-class fund structure include brokerage, cash drag, and capital gains.
- Beginning in February 2023, numerous fund sponsors have filed exemptive applications with the SEC requesting approval.
- No amendments to the applications have been filed, and no formal action has been taken by the SEC on the applications. There is no required timeline by which the SEC must act.



ETF SHARE CLASS EXEMPTIVE APPLICATIONS – POTENTIAL BENEFITS OF ADDING ETF CLASS TO MUTUAL FUND

Potential Benefits May Include:

At the fund operational or product level

Tax benefits for an ETF share class within the fund (e.g., via in-kind transacting/redemptions)

Reduced or shared costs across the classes and the trust

Potential speed to market and speed to scale in AUM

At the fund investor level

Greater cost and tax efficiencies can be passed on to the investors

Can move from MF class to ETF class without cash redemption of shares and resulting tax impact

More investor options and places of access

At the distribution level

Leverage historical investment performance (if desirable)

Potential for continuity and ongoing access with existing distribution partners and channels

Continuity with investment team / PMs

Leveraging the existing brand





DIGITAL ASSET PRODUCT DEVELOPMENTS



DIGITAL ASSET PRODUCT DEVELOPMENTS – HISTORY AND BACKGROUND

- Brief Background on Bitcoin and Other Digital Assets:
 - Bitcoin was created in 2009 as the first decentralized “crypto” currency.
 - Bitcoin transactions are verified through cryptography and recorded on a public “blockchain”.
 - Since its creation in 2009, the price or value of a single bitcoin has risen from a zero to a peak of \$68,789 in 2021 and now sits at \$64,045.30 (as of 09/28/24)
 - Bitcoin is primarily used as a store of value – as opposed to a method of exchange (largely due to infrastructure issues)
 - Numerous other cryptocurrencies also have been introduced, including Ethereum, Tether, BNB and Solana, among many others.
- Recognizing its potential, the exchange traded product industry has attempted to launch regulated products that invest in Bitcoin since 2013.
- Until early 2024, the SEC had denied the listing rule applications for each such product on grounds that, among other things, the Bitcoin market is susceptible to market manipulation and includes market participants that are bad actors. The SEC has also noted concerns regarding custody, liquidity and pricing.



WHAT CHANGED?

- In Fall 2021, the NYSE Arca filed a proposed listing rule on behalf of the Grayscale Bitcoin Trust (GBTC).
- The SEC denied the application in June 2022, as it had all others stating that:
 - The listing rule was not “designed to prevent fraudulent and manipulative acts and practices”, and failed to satisfy the SEC’s significant market test, which requires the listing exchange to have a surveillance sharing agreement (“SSA”) in place with a regulated market of significant size.”
- However, in Spring 2022, the SEC had approved listing rules for two exchange traded products that would invest primarily in Bitcoin futures (derivatives-based ETFs).
 - SEC based its approvals of these futures products on the basis that the listing exchange had an SSA in place with the Chicago Mercantile Exchange which the SEC determined to be a market of significant size with respect to Bitcoin Futures.
- Grayscale sued arguing that the denial of its application by the SEC was “arbitrary and capricious” under the Administrative Procedure Act.
- On August 29, 2023, the D.C. Circuit Court of Appeals issued its decision agreeing with Grayscale, vacating the SEC’s denial and issuing a mandate for the SEC to take action consistent with its decision.



SEC APPROVALS OF SPOT BITCOIN ETPS

- At the time of the court's decision in August 2023, there were 11 issuers that had pending listing rule applications and registration statements for spot Bitcoin ETPs. The SEC had delayed consideration of each application pending the outcome of the Grayscale litigation; however, one application had a final deadline for the SEC to act of January 11, 2024 – as such that became a potential target date for resolution.
- On January 11, 2024, the SEC issued a joint decision approving the listing rule with respect to all 11 products that were pending, and on January 12 (10 of the 11) registration statements went effective allowing shares to commence trading.
- SEC Chair Gary Gensler Statement Excerpt on Order of Approval:

“Importantly, today’s Commission action is cabined to ETPs holding one non-security commodity, bitcoin. It should in no way signal the Commission’s willingness to approve listing standards for crypto asset securities. Nor does the approval signal anything about the Commission’s views as to the status of other crypto assets under the federal securities laws or about the current state of non-compliance of certain crypto asset market participants with the federal securities laws. As I’ve said in the past, and without prejudging any one crypto asset, the vast majority of crypto assets are investment contracts and thus subject to the federal securities laws.”



Further Developments and What's Next?

- Ethereum ETPs:
 - On May 23, 2024, the SEC approved the listing of 8 spot Ether ETPs, and on July 23, 2024 declared their registration statements on Form S-1 effective.
 - The approvals make Ether only the second digital asset available to be traded on a spot basis in an ETP wrapper.
- Industry expectation is that assets in these initial and other funds will continue to grow – particularly as asset allocators and other model providers begin to add the exposure in their allocation models.
- These actions do not widely open the door to registered products based on other crypto-currencies, as the SEC remains skeptical.
- With the launch of the products, a broad array of sophisticated traditional financial services firms that had previously avoided digital assets entirely have become engaged. This could signal a broader acceptance and may help with the adoption of further infrastructure necessary to have broader adoption of crypto currency and digital assets generally in the US.





RETAIL ACCESS TO ALTERNATIVE ASSETS

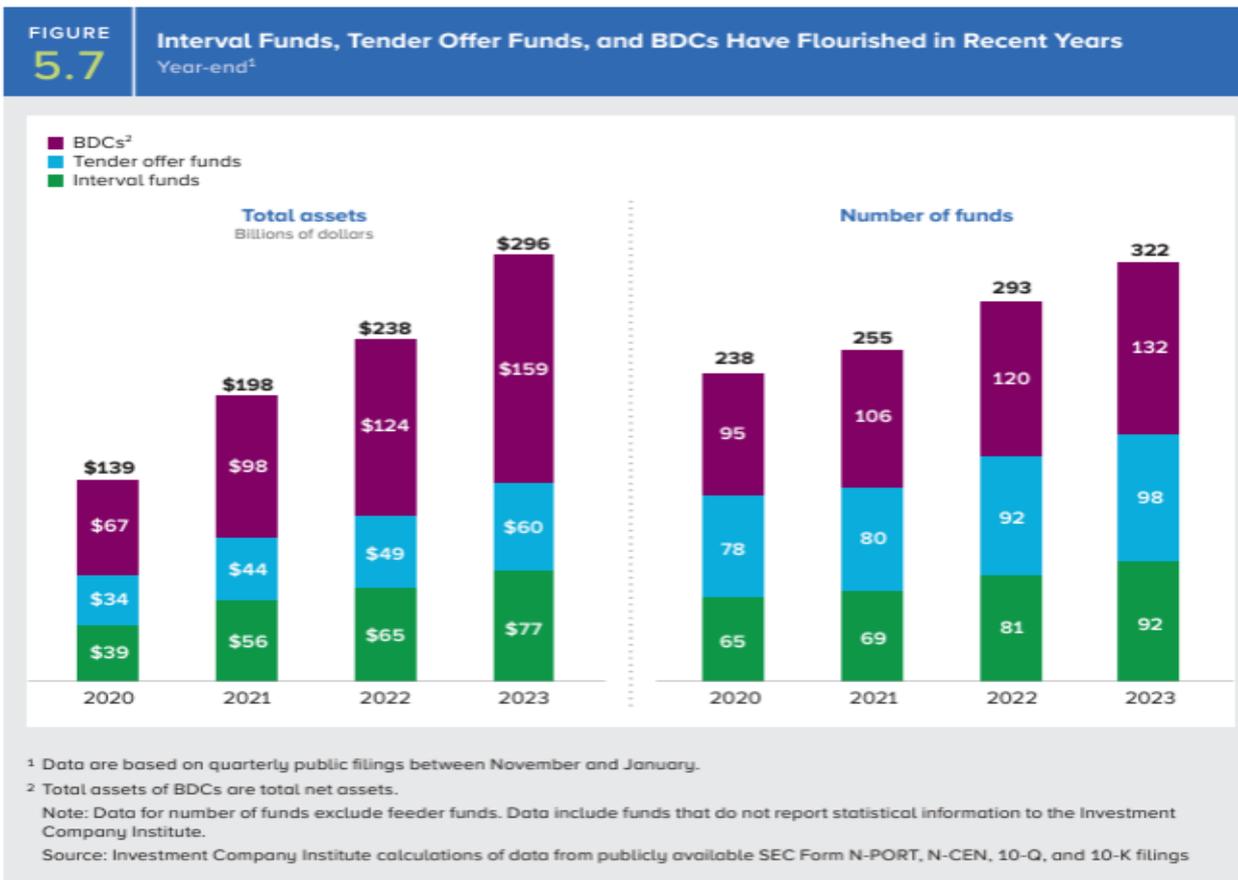


SIGNIFICANT INTEREST IN ALTERNATIVE INVESTMENTS

- Increased demand in recent years from private wealth channels seeking diversification through alternative investments has resulted in financial advisors looking for products to address this growing need.
- Certain segments of the market have historically not been as accessible to retail investors, as they have largely been institutional markets (e.g., private credit and private equity).
- At the same time, the number of public companies has decreased. At its highest in 1996, there were approximately 7,300 publicly traded companies in the US, compared to about 4,300 today.
- Interval funds and tender offer funds have become popular fund structures to provide access to alternative strategies and less liquid investments, by combining attractive features of closed-end funds and open-end funds.



SIGNIFICANT GROWTH IN CLOSED-END FUNDS INVESTING IN ALTERNATIVE ASSETS



*Source: ICI Factbook 2024



OPEN-END AND CLOSED-END FUND BASICS

- Open-End Funds
 - Redeemable by investor daily
 - Must hold 85% liquid investments
- Closed-End Funds
 - Not redeemable by investor
 - May invest up to 100% in illiquid assets
 - Historically conducted single offering (IPO) and shares traded thereafter on an exchange to allow investor liquidity
- Rise of continuously-offered closed-end funds (Rule 415)
 - Tender Offer Funds
 - Interval Funds



OVERVIEW OF INTERVAL FUNDS

- Overview of Interval Funds:
 - Continuously-offered registered closed-end funds that provide liquidity to investors through periodic share repurchases
 - Rely on Rule 23c-3 under the Investment Company Act of 1940
 - Interval funds conduct repurchase offers for their shares under Rule 23c-3 repurchase procedures rather than formal tender offers
 - Repurchase process is similar to a tender offer but simpler and less expensive for the fund and investors



ADVANTAGES

- Combines attractive features of closed-end funds and open-end funds.
 - Like other closed-end funds, ability to invest in less liquid financial instruments because fund is not subject to fluctuations in asset size from the need to meet daily redemption activity like mutual funds
 - Unlike some alternative products, open to all investors if fund is publicly offered.
 - Appeal to investors looking for the regulatory safeguards of a registered fund coupled with greater exposure to illiquid investment classes (as compared to a mutual fund)
- Continuously offered, so fund size can grow over time
- Redemption/repurchase activity is controlled by board action and adviser recommendation
- Treated like an open-end fund for purposes of share registration and annual updates, with registration fees based on net sales
- No required FINRA filing fees, and subject only to FINRA Rule 2341 which imposes varying caps on sales compensation/distribution fee level like open-end funds



CHALLENGES

- Must establish “fundamental” policy of making periodic repurchase offers, changeable only by a majority vote of the fund’s outstanding voting securities
- Subject to portfolio liquidity requirement during repurchase offer period:
 - During repurchase offer period, fund must hold liquid assets equal to the full amount offered for repurchase
 - If the board chooses a low repurchase offer amount that is oversubscribed, the fund may need to accept tendered shares on a *pro rata* basis, thus limiting investor requests
- Repurchase offer timing and amount restricted by rule
- Suitability considerations



COMPARISON WITH MUTUAL FUNDS

	Interval Fund	Mutual Fund
Structure	Closed-end	Open-end
Shares Offered	Continuously	Same
Exchange listed?	No	No
Share Classes	Single class only, unless exemptive relief obtained.	Yes, Rule 18f-3
Share Pricing	No less frequently than weekly, but at least daily on the 5 business days preceding a repurchase request deadline	Each business day
Share Registration and annual Updates	Registration fees based on net sales; Rule 486 process	Same; Rule 485 process
Share Liquidity	Solely from periodic repurchase offers	Must redeem shares on any business day when requested by shareholder
Repurchase/ Redemption Amount, Procedures and Fees	Share repurchases made at net asset value (“NAV”). Periodic repurchases must comply with Rule 23c-3(b) under the Investment Company Act of 1940. May charge shareholders a stated repurchase fee, not exceeding 2% of repurchase proceeds.	Share redemptions made at NAV. Generally must meet redemption requests within seven days. May charge shareholders a stated redemption fee, not exceeding 2% of redemption proceeds, and/or a contingent deferred sales charge for shares redeemed before a stated minimum timeframe.



COMPARISON WITH MUTUAL FUNDS (CONT'D)

	Interval Fund	Mutual Fund
Borrowing	<p>Any borrowing, including any borrowings to cover repurchases or any issuance by the fund of senior securities, must meet the asset coverage limitations of 300%, including the amounts borrowed.</p> <p>Practical limits on borrowing exist to great degree than other closed-end funds based on Rule 23c-3 requirements</p>	<p>A mutual fund using a leverage strategy may borrow only from a bank, provided the fund meets the asset coverage limitations of 300%, including the amounts borrowed.</p> <p>A mutual fund not using a leverage strategy can still borrow, but only from a bank and only for temporary purposes.</p>
Portfolio Liquidity Requirements	<p>During the repurchase offer period, an interval fund must hold liquid assets equal to the amount of the shares offered for repurchase. Liquidity determined in same manner as open-end funds – seven days.</p>	<p>At all times a mutual fund may not invest more than 15% of its net assets in illiquid investments.</p>



COMPARISON WITH MUTUAL FUNDS (CONT'D)

	Interval Fund	Mutual Fund
Distribution Fees and Sales Charge	Subject to FINRA Rule 2341, which imposes varying caps on sales compensation/distribution fee levels.	Same.
Directors	A majority of the directors of both an interval fund and a tender offer fund must be directors who are not “interested persons” of the fund, and those directors must select and nominate any other disinterested directors.	Same.

