ROPES & GRAY

# PERSPECTIVES

PRIVATE EQUITY INDUSTRY INSIGHTS

**FALL 2019** • Issue No. 1

## FOREWORD

**WELCOME TO THE INAUGURAL ISSUE OF *PERSPECTIVES*,** our quarterly publication featuring news, trends and legal developments in the private equity industry. We are thrilled to launch this new publication, which includes contributions from a cross section of our global team. With a preeminent global private equity practice, we see the market through a wide-angle lens—encompassing the full spectrum of fund and deal types and sizes—which informs our perspective. Each quarter, *PErspectives* will highlight noteworthy trends and other developments relevant to private equity clients in the U.S. and around the world.

In this Fall 2019 issue, we highlight: the SEC's recent debate over whether to expand access to private funds to retail investors and retirees; the increased focus on partnerships with digital health companies; the rise of SPACs in the Asia market; the erosion of the "marketing period" in syndicated all-bank acquisition financings; and recent market trends around the use of rep & warranty insurance in lieu of seller indemnification (as observed through data collected in our deals database).

We encourage you to reach out to any member of your Ropes & Gray team (or to the authors noted herein) with any questions regarding the contents of this newsletter or any other legal developments of interest to you. We look forward to continuing to bring our private equity clients timely news,

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# RETAIL INVESTMENTS IN PRIVATE FUNDS

*Regulatory Obstacles and Opportunities*

## INTRODUCTION

**OVER THE PAST SEVERAL YEARS,** regulators and market participants increasingly have called for the expansion of investment opportunities for retail investors and retirees. These calls for expanded opportunities have cited market structure changes, the looming retirement crisis and basic fairness to retail investors and retirees who do not meet existing regulatory proxies for investor "sophistication." SEC Chairman Jay Clayton, for example, observed that, in 2018, more capital was raised in the private markets than in the public markets, and that retail investors should (but currently do not) have access to those opportunities.[1] Because retail investors are generally limited to investments in public companies, market trends suggest that the investment opportunities available to retail investors have decreased.[2] Calls for expansion of retail investment opportunities have also noted that lack of access to investments in private funds[3] is contributing negatively to the retirement savings of many U.S. workers. Commenters have also noted the direct link between retail investors' access to investment opportunities, on one hand, and private companies' and small businesses' access to investment capital, on the other hand.

> **SEC Chairman Jay Clayton,** for example, observed that, in 2018, more capital was raised in the private markets than in the public markets, and that retail investors should (but currently do not) have access to those opportunities.

On June 18, 2019, the SEC published its Concept Release on Harmonization of Securities Offering Exemptions (the "Concept Release") to solicit public comment on exemptions from registration under the Securities Act of 1933 (the "Securities Act").[4] Most of the Concept Release describes the requirements and limitations of Securities Act registration exemptions that make up the existing exempt offering framework and solicits responses to a wide range of questions.[5] Commenters' responses are intended to help the SEC assess whether changes to applicable statutes and regulations are necessary or desirable to improve specific exemptions and, more generally, the existing exempt offering framework.

## STATE OF THE MARKET

**AT A HIGH LEVEL,** the federal securities laws and ERISA essentially foreclose significant retail investment in private funds. As described below, direct investment in private funds is generally available only to investors who meet both the "qualified purchaser" and "accredited investor" standards under the 1940 Act and the Securities Act, respectively. While a handful of "registered funds of private funds" currently exist in the marketplace, an SEC staff position requires that these products be sold only to accredited investors, which drastically limits their availability in the marketplace. In addition, practical considerations and legal risks largely deter sponsors of defined contribution plans (including 401(k) sponsors) from offering exposure to private funds to plan participants.

### FEDERAL SECURITIES LAWS

Private funds generally rely on an exclusion from the definition of "investment company" under Section 3(c)(7) of the 1940 Act to avoid registration as an investment company.[6] To rely on the Section 3(c)(7) exclusion, a private fund's securities must be owned exclusively by persons who, at the time of acquisition of the securities, are "qualified purchasers."[7] In our experience, most private funds of any significant size are Section 3(c)(7) funds that accept investments only from qualified purchasers. Approximately 98% of U.S. households are not qualified purchasers.[8]

The investor protection policies underlying the definitions of "qualified purchaser" and "accredited investor" have been a key feature of the federal securities laws. Investors who are neither accredited investors nor qualified purchasers—i.e., retail investors—are effectively blocked from investing directly in private funds.

## ERISA

Defined benefit plans are significant investors in private funds, and there is evidence that exposure to private fund investments is contributing to the outperformance of defined benefit plans compared to defined contribution plans.[9] Over the past few decades, however, employer-sponsored retirement accounts have migrated sharply away from defined benefit plans and toward defined contribution plans as the sole retirement plans for employees. This shift has resulted in increasing numbers of plan participants and their beneficiaries being deprived of the benefits of exposure to alternative asset classes in their retirement plans, despite sponsors and fiduciaries of defined contribution plans having shown interest in hedge funds and private equity investments.[10]

The DOL could facilitate investment in private funds by defined contribution retirement plans by providing formal guidance that (i) reaffirms the long-standing principle that a 401(k) fiduciary must consider the totality of factors related to investment options as opposed to just focusing on liquidity and fees and (ii) expands the safe harbor for plan fiduciaries who are making good faith efforts, well informed by expertise on long-term retirement investing, to provide participants with access to alternative asset classes that offer the potential for attractive gains and greater diversification to hedge risk.

## POTENTIAL BENEFITS OF PRIVATE FUNDS

The policy argument for expanding opportunities for retail investors to obtain exposure to private funds is that most such investors are missing out on an increasingly important set of investment opportunities. Some commenters claim that the federal securities laws, by foreclosing most investors from access to private offerings, facilitate wealth inequality in the U.S.[11] Separately, the significant number of households that are not prepared for retirement also supports expanding retail access to private funds.[12]

### Welcome LATERAL PARTNERS

**WE ARE PLEASED to announce that eight high-profile lateral partners with extensive experience serving private equity clients joined Ropes & Gray in 2019.**

**Scott Abramowitz**
*Private Equity*
New York

**Eve Ellis**
*Asset Management*
London

**Andrea Hwang**
*Finance* | New York

**Leonard Klingbaum**
*Finance* | New York

**Violetta Kokolus**
*Intellectual Property Transactions*
New York

**Edward McNicholas**
*Data, Privacy & Cybersecurity*
Washington, D.C.

**Cristine Pirro Schwarzman**
*Business Restructuring*
New York

**Carolyn Vardi**
*Private Equity*
New York

## POSSIBLE ALTERNATIVES

We examine three possible approaches to expanding retail access to private funds: (i) direct access, (ii) investment through a registered vehicle organized as a "registered fund of private funds," and (iii) investment through a feeder fund advised by a registered investment adviser ("RIA").

> **Three possible approaches** to expanding retail access to private funds: (i) direct access, (ii) investment through a registered vehicle organized as a "registered fund of private funds," and (iii) investment through a feeder fund advised by a registered investment adviser.

### DIRECT ACCESS

In a "direct access" model, retail investors would be permitted to purchase interests directly in private funds. As noted above, most private equity funds and hedge funds with substantial assets rely on the exemption from registration under Section 3(c)(7) of the 1940 Act, which currently limits holders to qualified purchasers. Therefore, a direct access model would require a number of legislative and/or administrative changes to the existing regulatory framework for private funds. To meet investor protection concerns, the SEC could impose restrictions on direct retail access to private funds designed to ensure that the extent of a retail investor's private fund exposure is appropriate for the investor's financial situation.

Despite the potential benefits of retail access to private funds generally, there are potential drawbacks to a direct access model. Even if retail investment in private funds becomes legally feasible, direct access may not be attractive to private fund sponsors. Many private fund sponsors do not have distribution networks capable of marketing to retail investors and may not have the operational or administrative capacity to service large numbers of retail investors. A potential solution to these operational and administrative challenges might involve an unregistered "feeder" fund sponsored by a financial intermediary. An unregistered feeder would require regulatory changes similar to those described above.

### REGISTERED FUND OF PRIVATE FUNDS

In a "registered fund of private funds" model, a fund sponsor would organize a registered investment company that would invest its assets in a number of underlying private funds. The registered fund of private funds would be a closed-end company registered under the 1940 Act, and its shares would be offered to the public in a registered offering under the Securities Act.[13]

Unlike the direct access model described above, investment through a registered vehicle would afford retail investors with the protections provided by the 1940 Act and the Securities Act. Moreover, the existing disclosure and valuation requirements applicable to registered closed-end funds under the 1940 Act are adequate to address the risks and issues presented by investments in private funds.

### FEEDER STRUCTURE

A "feeder" fund model would involve a registered feeder fund sponsored by a wealth manager or other third party (e.g., a broker-dealer with an existing customer base) (an "intermediary") that invests substantially all of its assets in a single unaffiliated private fund. The feeder fund would be a closed-end vehicle registered as an investment company under the 1940 Act and would be marketed to an intermediary's existing customers.

A feeder fund model is likely the most quickly scalable of the three options described in this article. Intermediaries have organized feeder funds into hundreds of private funds. These feeder funds are currently offered only to customers who are qualified purchasers. With additional regulatory relief, these feeder funds could be offered to investors who are not qualified purchasers or accredited investors.

## CONCLUSION

**IT IS FAR TOO EARLY TO PREDICT** whether the Concept Release will lead to changes in the regulatory landscape. However, at the very least, the Concept Release indicates that the SEC is willing to consider expanding retail access to private funds. This could afford non-accredited investors the opportunity to more broadly diversify their investment portfolios and otherwise benefit from investments that may have returns with less correlation to the public markets.

From the perspective of a private fund sponsor, an expansion of investment opportunities in private funds to non-accredited investors could result in substantial new sources of investor capital. Similarly, traditional retail fund complexes might be able to use their existing distribution networks and operational capabilities to offer alternative strategies to a much wider section of the investing public, either on their own or in partnership with private fund sponsors. And, most importantly, allowing retail investors to diversify their investments to include private funds will provide them with wealth-building opportunities that currently are available only to wealthier investors.

Both private fund sponsors and traditional fund complexes should consider how they might create and offer products that could take advantage of any new regulatory flexibility. For example, private fund sponsors without an established retail distribution network may want to look for potential distribution partners, just as retail fund sponsors without established alternatives capabilities may wish to either build that capability or partner with a private fund sponsor that already has this capability.

*For a more detailed discussion on this topic, please see the full-length Ropes & Gray white paper, dated September 24, 2019 (available here).*

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**Authors:** Michael G. Doherty; David M. Geffen; Joshua A. Lichtenstein; Nathan D. Somogie

### FOCUS ON FINANCE

*Erosion of the "marketing period" in syndicated all-bank acquisition financings*

- Historically, a "marketing period" was used in acquisition financings consisting of syndicated term loans or high yield bonds. This was a period of 15-20 business days for the benefit of the buyer after satisfaction of all conditions precedent to closing, during which the financing could be marketed. Lenders were also provided a slightly shorter marketing period under the debt commitment letter.
- On the other hand, for direct lender facilities or club financings, no marketing period is necessary. Typically, an "inside date" is specified, prior to which the buyer does not have to close.
- The "marketing period" remains the norm in acquisition financings with a high yield component. In all-bank financings, sellers now demand that the marketing period be replaced with an "inside date" to expedite closing. Buyers have come to agree to this approach, particularly in competitive sale processes with multiple bidders.
- For buyers, this approach can create risk to the syndication timetable. The timeline may need to be longer to allow for ratings to be obtained/reaffirmed and for the marketing process to proceed. Depending on certain factors, periods of 30 days or less can make closing without the benefit of a full syndication more likely.

## HEALTHCARE CORNER

### ROPES & GRAY HOSTS DIGITAL HEALTH FORUM IN NEW YORK

At a well-attended forum on September 18, Ropes & Gray's healthcare lawyers, in collaboration with *Crain's New York Business,* explored the challenges inherent in digital health partnerships and debuted the results of a new survey—"From Innovation to Solutions: Building Strategic Partnership in an Evolving Digital Health Landscape."

#### WHAT IS DIGITAL HEALTH AND HOW DOES IT INTERSECT WITH PRIVATE EQUITY?

At its core, digital health, also commonly referred to as "healthcare tech" or "health IT," refers to products and services at the intersection of information technology and data analytics, on the one hand, and the healthcare and life sciences sectors, on the other. Digital health is a vast field and spans different potential investment opportunities—including healthcare vendors, suppliers, providers and payors. Examples of digital health companies include: electronic medical record systems, clinical trial management software, health and wellness-related apps, telehealth/telemedicine providers, artificial intelligence applications to diagnostics, data analytics, and revenue cycle management software, among others.

Digital health companies generate, analyze or consume health data—and are increasingly forming alliances with providers, payors and life sciences companies in an effort to push the boundaries of how healthcare is delivered and consumed. These transactions require extensive vetting because of the complexity of legal issues involved, including patient privacy, data use, intellectual property, fraud and abuse, and evolving regulatory authorities being enacted by the U.S. Food and Drug Administration, the Office of Inspector General at the U.S. Department of Health and Human Services, and other governmental bodies, both foreign and domestic.

In the earlier phases of the market, digital health companies were looked at as more appropriate investments for venture capital and growth capital funds, but many are now mature enough to benefit from private equity investment and guidance, either as full equity buyouts, strategic transactions with existing investments or late stage capital rounds. Companies in this sector that have demonstrated a proof of concept, won flagship customers and shown increasing profitability are ripe for investment.

**OUR FEATURED PODCASTS** focus on legal issues of interest to the private equity industry. To access our full library of podcasts, please click here.

PODCAST **Private Funds Update: The UK Stewardship Code 2020**
This podcast discusses the recently published revised edition of the UK Stewardship Code and how it may affect UK asset managers.

PODCAST **Fund Subscription Facilities: Key Considerations for Limited Partners**
This podcast discusses the use of capital call facilities by private investment funds, including the pros and cons for limited partners of subscription facilities and recent ILPA guidelines.

PODCAST **PEP Talk: General Solicitation by Private Equity Funds Under 506(c)**
This podcast discusses the opportunity for private equity funds to engage in general solicitation during fundraising under Rule 506(c) of Regulation D of the Securities Act.

## WHAT ARE PEOPLE SAYING?

Nearly 100 Ropes & Gray clients and *Crain's* readers from the healthcare, pharm/biotech, provider, digital health and private equity sectors attended the forum.

Ropes & Gray revealed the results of a survey conducted by Ropes & Gray and *Crain's,* based on responses from more than 280 executives from the healthcare, life sciences, digital health and healthcare investment sectors, including many of Ropes & Gray's clients. The goal of the research was to examine partnerships with digital health companies to learn more about challenges, best practices and strategies for navigating complex strategic partnerships.

The report indicated that, *while the pace of interest in partnerships seems to be accelerating, most survey respondents lacked ties to a digital health company:* only 29% said they have either entered into a partnership or acquired a digital health company over the past year. Among those who did not consider an affiliation, 18% said digital health companies did not demonstrate a clear value proposition.

More than 60% of respondents said *healthcare's strongly entrenched business and reimbursement models make it difficult to bring digital health products to market,* while 47% think most health tech companies do not fully understand the healthcare market. *Data privacy and cybersecurity remain big issues in healthcare:* nearly 70% of respondents were concerned that a digital health partner would fail to secure or encrypt data prior to it being shared, and 34% were very concerned that their digital health partner would have accidental data breaches.

*A copy of the research paper is available online and can be viewed, here.*

**Authors:** Albert F. Cacozza; Deborah L. Gersh; Megan R. Baca; Edward R. McNicholas

## Congratulations **NEW PARTNERS**

**ROPES & GRAY RECOGNIZES FIVE outstanding recent promotees among our partner ranks. These accomplished attorneys bring their deep private equity industry and legal knowledge to our clients.**

**Lindsey Goldstein**
*Asset Management* | New York

**Arek Maczka**
*Finance* | New York

**Brynn Rail**
*Asset Management* | New York

**Elizabeth Todd**
*Private Equity* | London

**Katherine Waite**
*Asset Management* | Boston

## ASIA ANGLE

### THE GROWING SPAC MARKET

As investors and management teams become increasingly comfortable with special purpose acquisition company ("SPAC" or "SPACs") structures, and asset managers see SPACs as an alternative asset class to deploy capital, we have seen heightened interest in SPACs. According to SPAC Research, there have been 44 U.S. SPAC IPOs so far this year, raising an aggregate of approximately USD$10.5 billion. We have also seen a trend toward increased SPAC activity outside of the U.S., particularly in Asia, where there has been an increase in Asia-focused sponsors establishing SPACs, as well as SPACs seeking business combinations.

### SOME BASICS ON SPACS

A SPAC is a shell company that raises money through an IPO with the intention of consummating a business combination in a targeted industry during a prescribed time period (usually 18-24 months). As a newly formed "blank check company," a SPAC has no track record, but attracts investors by leveraging the experience of its sponsors to identify attractive operating businesses and complete a business combination in the required time frame. As part of the IPO, a SPAC provides its initial public investors with additional equity rights, who are typically also provided with the right to receive their capital back at the time of the business combination. As an additional safeguard, most of the SPAC's offering proceeds are placed in a trust account, with the express purpose of using such proceeds for a business combination or to fund redemptions. SPAC sponsors typically provide financing to cover the SPAC's fees and expenses, and receive an initial 20% interest in the SPAC following the IPO.

### PRIMARY BENEFITS OF SPACS

While there are complexities in the SPAC structure, sponsors, bankers and managers have refined the structure over time to allow it to be a competitive alternative in auctions and other private acquisition situations. As a result:

- **FOR SPONSORS,** a SPAC provides an alternative asset class for deploying capital in the public markets, with access to a broader base of potential investors and attractive economics.
- **FOR PUBLIC INVESTORS,** a SPAC provides an opportunity to invest alongside experienced industry experts and deal professionals while enjoying the liquidity of publicly traded securities, as well as the additional protections afforded by the unique structure.
- **FOR SELLERS,** including private equity funds, a SPAC provides access to a sophisticated buyer, liquidity, additional growth opportunities with an assured exit through the public markets, and often, a quicker, and more certain acquisition process.

> **We have seen a trend** toward increased SPAC activity outside of the U.S., where there has been an increase in Asia-focused sponsors establishing SPACs.

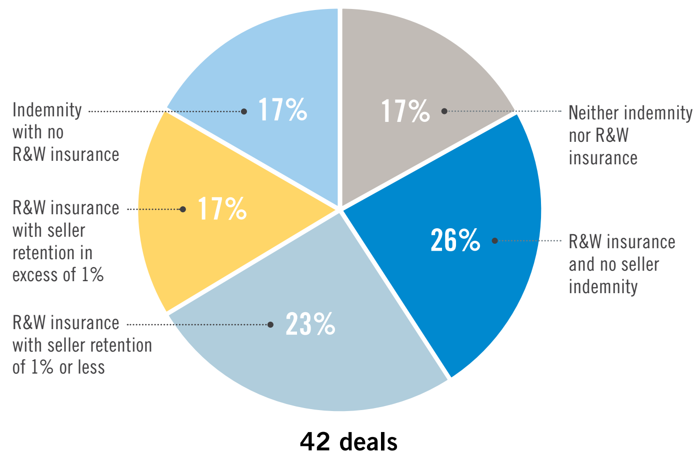
Given their structures, SPACs often come to the table with clear indications of the marketability of the business combination before an acquisition gets signed up, committed financing and a supportive stockholder base. Simply stated, a business combination with a SPAC allows for more flexibility in coming up with a transaction structure that makes sense for all parties. We expect growth in SPACs to continue as the industry evolves, and the market requires certain, more creative M&A solutions for private equity sponsors and other investors.

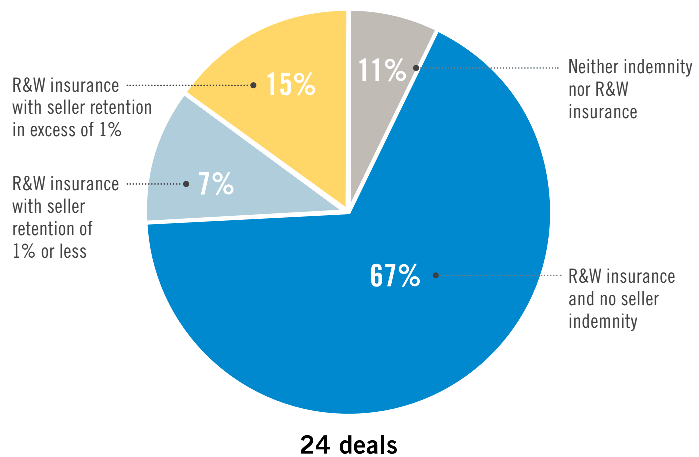
**Authors:** Oliver Nip; Carl P. Marcellino; Paul D. Tropp

## PE MARKET WATCH *Seller Skin in the Game*

We collect data from closed transactions to enter into our database, which contains information on over 1,500 deals—including mid-cap and large-cap transactions and a mix of buy-side and sell-side experience. The charts represent data on seller indemnification obligations (based on our database) for the period 2H 2018 through 1H 2019.

Although the market in general is moving away from seller indemnification, the move has been more pronounced in sponsor-to-sponsor deals, where close to 80% of sponsor-to-sponsor deals on which Ropes & Gray has worked have not included seller indemnification. However, indemnification has frequently been replaced with representation and warranty insurance, with sponsors purchasing insurance in more than 85% of the deals.




## PE BY THE NUMBERS

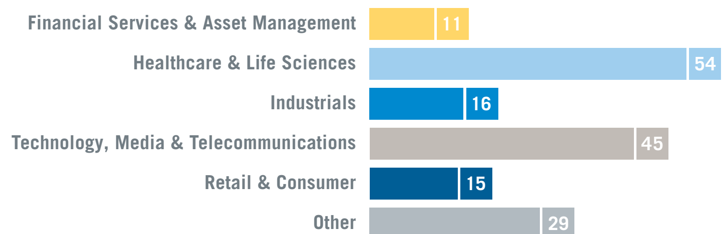
*A Global Private Equity Transactions Practice*

Jan. 1–Sept. 30, 2019 (announced PE-related transactions)

**170** Deals

**$66+** Billion in transactions

**17** Countries



# PERSPECTIVES

Represented **Advent International** in its acquisition of AccentCare

Represented **Arsenal Capital Partners** in its acquisition of Hopebridge

Represented **Atairos** in its minority investment in ProQuest

Represented **Audax Group** in the sale of Magnitude Software to 3i Group

Represented **AVALT** in its acquisition of Ned Stevens

Represented **Avista Capital Partners** in its acquisition of GCM Holding Corporation

Represented **Axcel Management AS** in its acquisition of Phase One

Represented **Bain Capital** in its acquisition of the HR business of Works Applications

Represented **Bain Capital** and its portfolio company Innocor in connection with Innocor's merger with FXI

Represented **Baring Private Equity Asia** in the merger of its portfolio company Clarivate Analytics and Churchill Capital Corp.

Represented **Berkshire Partners** and its portfolio company Affordable Care in the acquisition of DDS Dentures + Implant Solutions

Represented **Charlesbank Capital Partners** in its minority investment in Park Place Technologies

Represented **CCMP Capital** in its acquisition of Brookfield Global Integrated Solutions Canada

Represented **Evergreen Coast Capital** in its investment in WorkForce Software

Represented **Gauge Capital** in its partnership with the owners and management of irth Solutions to recapitalize the company

Represented **Genstar Capital** in its acquisition of Advarra

Represented **GHO Capital Partners** in the sale of Caprion Biosciences to Arsenal Capital Partners

Represented **Golden Gate Capital** in its investment in Ensemble Health Partners

Represented **Harvest Partners** in its investment in Integrity Marketing

Represented **H.I.G. Capital** in the sale of Caraustar Industries to Greif, Inc.

Represented **Kohlberg & Co.'s** portfolio company Osmose Utilities Services in its sale to EQT Infrastructure

Represented **New Mountain Capital** in the sale of Convey Health Solutions to TPG Capital

Represented **Partners Group** in its investment in Blue River PetCare

Represented **Silverfleet Capital** in its acquisition of a majority stake in BOA CoreDux

Represented **TPG Capital** and its portfolio company Beaver-Visitec International in the add-on acquisition of PhysIOL 9

## **ENDNOTES** *from Retail Investments in Private Funds* *(page 2)*

1. Interview with Jay Clayton, SEC Chairman, in Washington (April 9, 2019), The David Rubenstein Show (Bloomberg May 8, 2019) *available at* https://www.bloomberg.com/news/videos/2019-05-08/the-david-rubenstein-show-sec-chairman-jay-clayton-video?srnd=peer-to-peer. In August 2019, Chairman Clayton stated that "[p]rivate capital raising is now outpacing capital raising in our public markets, yet our Main Street investors have no effective access to investments in private capital offerings." Remarks at SEC's Small Business Capital Formation Advisory Committee Meeting (Aug. 13, 2019) *available at* https://www.sec.gov/news/public-statement/statement-clayton-081319.

2. Although retail investors can, to a certain extent, invest in private companies indirectly through registered investment funds such as mutual funds and closed-end funds, as Part II of this article discusses, such access is limited.

3. This article uses the term "private fund" to refer broadly to funds that are sold in exempt offerings, including private equity buyout funds, private credit funds, hedge funds and venture capital funds.

4. Rel. No. 33-10649 (June 18, 2019) *available at* https://www.sec.gov/rules/concept/2019/33-10649.pdf.

5. The Concept Release discusses and solicits comments on the conditions and requirements for the following exempt offerings: Regulation D offerings pursuant to Rules 504, 506(b), and 506(c); Regulation A offerings by Tier 1 and Tier 2 issuers; intrastate offerings pursuant to Section 3(a)(11) and Rules 147 and 147A; and certain crowdfunding transactions under Section 4(a)(6). Comments on the Concept Release must be submitted to the SEC no later than September 24, 2019.

6. Although a private fund seeking investments from non-qualified purchasers can instead rely on the exclusion from the definition of investment company under Section 3(c)(1) of the 1940 Act, such funds are limited to no more than 100 beneficial owners. We believe that this limitation would be a substantial impediment to widespread access by retail investors.

7. Section 2(a)(51)(A) of the 1940 Act generally defines the term "qualified purchaser" to include (i) a natural person who owns at least $5 million in investments, (ii) a family-owned company that owns at least $5 million in investments, (iii) a person, acting for its own account or the accounts of other qualified purchasers, who, in the aggregate, owns and invests, on a discretionary basis, at least $25 million in investments, and (iv) a trust with respect to which the trustee and each person who has contributed assets to the trust is a person described in (i), (ii) or (iii).

8. *See* CCMR Report at 26.

9. *See* CCMR Report at 49-52 (noting that studies examining the performance of defined benefit plans and defined contribution plans show that defined benefit plans outperform defined contribution plans).

10. *See* Advisory Council Report on Employee Welfare and Pension Benefit Plans, *Report to the U.S. Secretary of Labor: Hedge Funds and Private Equity Investments* (Nov. 2011) *available at* https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/about-us/erisa-advisory-council/2011-hedge-funds-and-private-equity-investments.pdf ("DOL Advisory Council Report").

11. *See, e.g.,* Kevin G. Bender, *Giving the Average Investor the Keys to the Kingdom: How the Federal Securities Laws Facilitate Wealth Inequality*, 15 J. BUS. & SEC. L. 1, 2 (2016); Usha Rodrigues, *Securities Law's Dirty Little Secret,* 81 FORDHAM L. REV. 3389 (2013).

12. *See, generally,* James M. Poterba, *Saver Heterogeneity and the Challenge of Assessing Retirement Saving Adequacy,* 68 NAT. TAX J. 377 (2015).

13. Unlike a registered open-end investment company, a registered closed-end fund does not need to satisfy redemption requests and is not subject to the 15% limitation on "illiquid investments" imposed by Rule 22e-4 under the 1940 Act. Accordingly, a registered closed-end structure is better suited to an investment strategy that involves significant exposure to illiquid private funds.



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