



**Rajib Chanda's Remarks to Investor  
Advisory Committee on 12/10/2024**

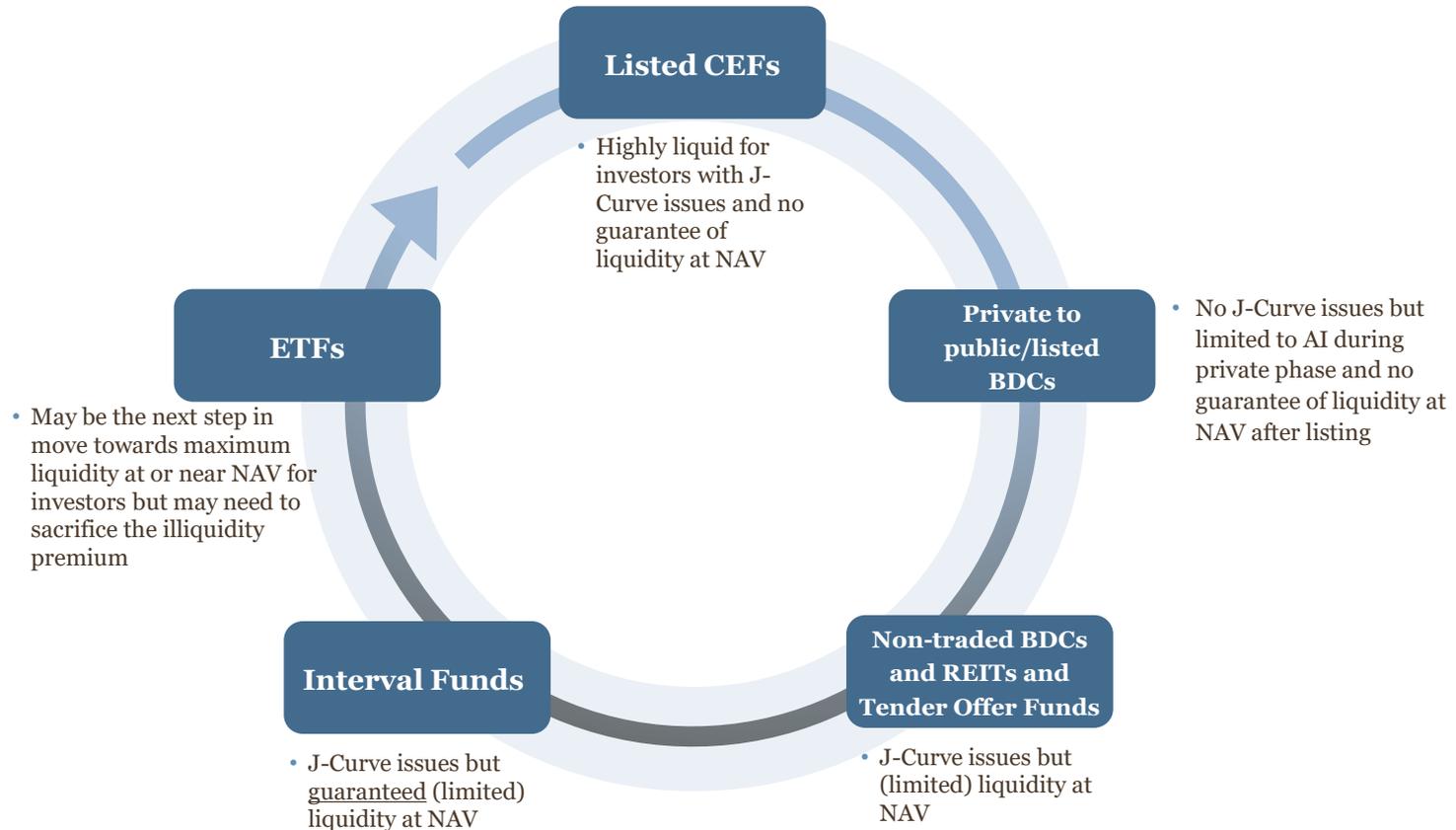
# What Do Retail Investors Want When Allocating to Private Markets?



- Traditionally, private market strategies come in a wrapper with the following characteristics, designed for **institutional investors**:
  - A commitment to invest over a period of time, with funding only when a sponsor has identified specific market opportunities.
  - An expiration of that commitment, even if money remains uninvested.
  - Liquidity at the end of a specified term or on exits of investments, sometimes many years in the future.
  - Narrowly targeted opportunities, with individualized excuse rights.
  - A focus on tax efficiency, with (mostly) limited concern for complexity of tax reporting.
- Conversely, **individual investors** are human beings, and they prefer:
  - Certainty as to (1) the amount of money they are investing, and (2) when that money will be withdrawn from their account.
  - No possibility that they will be required to provide more money in the future.
  - Some liquidity to account for life events, like payment of college tuition or death or divorce.
  - Broad diversification, especially when allocating a small amount of their investment portfolios to an asset class.
  - Simple tax reporting, including at some cost to tax efficiency.

# A Continually Evolving Set of Choices

Market choices reflect a balance between illiquidity of the asset and the liquidity of the investment



# Issue: Retail Investors Lack Access to Direct Private Equity Products



- Individual investors have gained significant access to private equity through so-called “secondaries strategies,” usually in a registered fund wrapper.
  - This has been limited by informal SEC Staff position to accredited investors only.
- However, registered fund regulations do not work well for direct private equity investing, particularly when the investment adviser exercises control over the underlying portfolio company.
  - Ideal access for retail investors is through sponsors who have demonstrated uptake from the sophisticated institutional investor community; *i.e., ideally, a retail registered PE fund would share deals with private funds managed by sponsors with a track record of success.*
    - Existing SEC “co-investment relief” extends to an initial transaction but does not extend to transactions with the underlying portfolio company *after* the sponsor controls more than 5% of the equity of the underlying company (or 25% if the fund is a BDC). This may, in some circumstances, even limit the ability of a sponsor to invest more money in the company.
    - It is also unclear under that relief whether a sponsor can provide needed services for a fee to the portfolio company, which is a hallmark of the private equity model.
    - Because sponsors cannot charge performance-based fees (which align the incentives of a sponsor with those of the investors) to retail funds, the sponsors that are most successful in attracting institutional capital may be disinclined to provide retail access to direct private equity.
- As a result, the most successful private equity sponsors are likely to avoid creating products for retail investors, and retail investors are likely to end up with no access to direct PE, or access only to those sponsors who cannot attract institutional capital.
  - Absent changes, we are likely to see a continued proliferation of products for wealthy individuals through non-1940 Act structures, instead of for retail investors through 1940 Act structures.

# How can the SEC Better Promote Access to Private Market Investments for Retail Investors?



## Modernize Ability of Registered Funds to Invest in Private Markets

- The 1940 Act limitations on affiliated transactions are not well-suited for a scenario where the “affiliate” with whom a fund is prohibited from transacting is the company owned by the fund itself, alongside other pools of capital managed by the same sponsor.
- Limitations on ability of registered funds to invest in affiliated private funds also lead to inefficient and suboptimal approaches for creating broadly diversified private markets products.
- **Investor Protection Principles:** Protection against overreaching affiliated transactions are at the heart of the 1940 Act. Care must be taken to craft rules and regulations consistent with the Congressional purpose of such limitations.
  - For example, rules and regulations (including exemptive orders) could:
    - prohibit multiple layers of fees charged by the same sponsor;
    - require that service arrangements for portfolio companies are negotiated on an arms-length basis based on market comparables; and
    - require independent board approval of certain conflicted transactions.

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Hailed as a “Trailblazer” by the *American Lawyer* for his legal contributions to the democratization of access by ordinary investors to private markets investments, Rajib heads the Firm’s Retail Funds practice and is Co-Managing Partner of the Washington, D.C. office.

Rajib has helped design investment products that have been publicly referred to as “revolutionary,” “category-killing” and “the fund innovation of the year.” Rajib also advises firms on M&A transactions in the asset management industry (acquisitions, minority investments and joint ventures).

Rajib regularly represents the leading asset management firms in the world, including recent representations of Apollo, Artisan Partners, BC Partners, Benefit Street, Blackstone, Blue Owl, Carlyle, Cohen & Steers, Collier Capital, Diameter Capital, EQT, Golub, HarbourVest, HPS, Irradiant Partners, JPMorgan Asset Management, KKR, Lexington Partners, Morgan Stanley, New Mountain, Onex Credit, Principal, Sixth Street Partners, SkyBridge Capital, Starwood Capital Group and TPG Angelo Gordon, among many others.

Rajib is highly-ranked by *Chambers USA*, which reports that clients highlight that “his expertise in regulated funds and knowledge of the markets is very valuable” and “he knows the market inside and out and is highly commercial.” He is also recognized as a “Leading Lawyer” by *The Legal 500*, which reports that he is “an industry thought leader who provides cutting edge advice on the most difficult questions.” He is one of only three registered funds attorneys in the United States designated as a “Market Leader” by *IFLR 1000*. Rajib also provides counsel to boards of registered funds, and has been nominated four times for the Independent Counsel of the Year award at the Mutual Fund Awards, winning in 2018.

Rajib leads the Firm’s Partner Development Committee, and has previously served as the Administrative Partner for the Firm’s Washington, D.C. office, Firm Hiring Partner and Co-Chair of the Firm’s Diversity Committee.

- Counsel to sponsors of BDCs, including Blackstone, Sixth Street Partners, Golub Associates, New Mountain, TPG Angelo Gordon, Benefit Street, Carlyle, BC Partners, Onex Credit, Irradiant Partners and Diameter Capital
- Counsel to sponsors of registered funds, including Blackstone, KKR, Carlyle, JPMorgan, Collier Capital and Artisan Partners
- Counsel to sponsors of operating companies that own real estate, infrastructure or private equity assets, including KKR, Apollo, Blackstone, Starwood, Blue Owl, Morgan Stanley and Cohen & Steers
- Business development company transactional matters, including representation of Blackstone/GSO with respect to its separation from the Franklin Square funds; Oaktree in its acquisition of the Fifth Street BDC relationship; BC Partners in its externalization of the management of the former KCAP BDC and the subsequent public BDC acquisitions of several other public BDCs; Benefit Street in the merger of its BDCs; and KKR in its transaction to become sole adviser to Corporate Capital Trust
- Asset management joint ventures, including Carlyle in its joint venture with OppenheimerFunds to launch an interval fund, KKR in its joint venture with iCapital with respect to the iCapital KKR Commitments Fund (a tender offer fund), and Ares in its joint venture with CION to launch an interval fund
- Acquisitions and sales of asset management businesses, including MassMutual in the sale of OppenheimerFunds to Invesco; Oaktree in its merger with Brookfield; and Blackstone and Corsair Capital, in their majority investment in First Eagle Investment Management
- Counsel to fund boards, including the Independent Trustees of the Stone Ridge Funds