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THE RISE OF INTERVAL AND TENDER-OFFER UNLISTED CLOSED-END FUNDS

Unlisted closed-end funds have steadily gained popularity in recent years as they provide a more suitable investment wrapper for less liquid alternative investment strategies than a mutual fund or exchange-traded fund, and also allow managers to reach investors who desire more liquidity and transparency than a private fund may provide. This article focuses on two types of unlisted closed-end funds, interval funds and tender-offer funds, including their structure under the Investment Company Act of 1940, and the potential benefits that their structures may offer to fund sponsors.

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Investment companies registered under the Investment Company Act of 1940, as amended (1940 Act) (known as “registered investment companies” or “RICs”), have traditionally been classified as either open-end mutual funds or closed-end funds.¹ An open-end mutual fund engages in a continuous offering and provides investors with liquidity by allowing shareholder redemptions on a daily basis at the current net asset value (“NAV”) per share. Conversely, a traditional closed-end fund is listed on a national securities exchange and utilizes a capital structure more akin to a public operating company, generally not issuing new shares or offering shareholder liquidity, but rather relying on the public markets for investors to buy and sell shares in the secondary market following an initial public offering (“IPO”).

These traditional lines of demarcation have been blurred in recent years. On the more liquid and passive side of the market, exchange-traded funds (“ETFs”) continue to grow and, in many cases, have replaced traditional open-end mutual funds. The traditional closed-end fund market has also seen a significant slowdown, with no new IPOs in the last two years. With the slowdown of the open-end mutual fund and traditional listed closed-end fund markets, an alternative type of closed-end fund, known informally as an unlisted closed-end fund, has seen tremendous growth in recent years. As of December 31, 2023, the unlisted closed-end fund market grew to 200 total funds with \$145 billion in assets under management and 16 new fund sponsors entering the unlisted closed-end fund market in 2023 alone.² This article focuses on two types of unlisted

¹ §5(a) of the 1940 Act. Section 5(a) defines an “open-end company” as a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer and defines a “closed-end company” as any management company other than an open-end company.

² Kimberly Flynn and Nicole Matousek, *10 Lessons Learned in Launching Interval and Tender-offer funds*, XA Investments (2023), https://api-funds.paralel.com/download_resource/?id=2799&ticker=XAI.

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