Simpson Thacher

Registered Funds Alert

September 2020

The latest edition of Simpson Thacher's Registered Funds Alert discusses how market disruptions affect regulated funds and ways in which sponsors can provide financial support; a call for the SEC to permanently adopt existing temporary relief related to follow-on co-investments; and a rebuttal to law professor comments on the SEC's concept release regarding private markets access and regulated funds.

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During Significant Market Downturns, Sponsors and Their Affiliates Can Provide Capital Support

A "black swan" event, such as the March 2020 downturn related to the COVID-19 pandemic, can significantly disrupt the operations of investment companies, in part due to difficulties in complying with requirements for raising capital under federal securities laws during market distress. In this Alert we discuss below how such disruptions can impact closed-end funds and BDCs (together with closed-end funds, "regulated funds"), and potential ways for sponsors of regulated funds to financially support a regulated fund during such disruptive events in a manner consistent with the requirements of the 1940 Act and other relevant federal securities laws. Sponsors are in a position to act more quickly to support a regulated fund than third parties due to their familiarity with the regulated fund (*e.g.*, due diligence is not required) and are often willing to accept certain risks to act in the best interests of shareholders. A more in-depth exploration of these topics will be available in an upcoming issue of *The Investment Lawyer*.

Potential Disruptive Effects of a Downturn on Regulated Fund Operations

a. Reduced Ability to Borrow or Issue Debt/ Preferred Shares Pursuant to Regulatory Requirements and Under Existing Lending Arrangements

Regulated funds must adhere to certain asset coverage ratios to draw on lines of credit or issue indebtedness or preferred shares (collectively, "senior securities") under the 1940 Act. A decrease in the value of a regulated fund's assets correspondingly reduces its asset coverage, thereby limiting its ability to borrow additional money or issue other senior securities. This hampers a regulated fund's ability to take advantage of potential investment opportunities that may arise due to asset mispricings in a market dislocation or to conduct normal operations.

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In addition to 1940 Act considerations, reductions in asset valuations also may lead to a contractual breach by a fund of asset coverage covenants in existing credit facilities or other lending arrangements, potentially causing an event of default.

b. Reduced Ability to Pay Preferred Share Dividends or Declare Distributions to Common Shareholders

Regulated funds with preferred stock or public debt outstanding may not declare any distribution (except a dividend payable in stock of the issuer), unless at the time of declaration, the regulated fund is in compliance with the 1940 Act asset coverage ratios. Credit facilities for regulated funds also may include similar contractual restrictions. Such restrictions may affect regulated funds intending to qualify as regulated investment companies under the Internal Revenue Code, as amended, as they are required to distribute at least 90% of their income to shareholders annually or be subject to entity level taxation. A regulated fund's inability to pay dividends could cause substantial reputational harm to the fund or the sponsor, particularly if the fund is designed to provide investors with current income.

c. Reduced Ability to Repurchase Shares

A regulated fund with senior securities outstanding (other than privately negotiated debt) may not repurchase any of its outstanding shares unless the regulated fund is in compliance with the asset coverage requirements discussed above. The share repurchase programs of tender offer closed-end-funds and BDCs and interval closed end funds operating under Rule 23c-3 of the 1940 Act may be negatively impacted by an inability to comply with the asset coverage limits, which could result in redeeming outstanding senior securities or suspending the repurchase program.

d. Inability to Issue Common Shares

The 1940 Act generally prohibits a regulated fund from issuing common shares at a price below current

NAV per share without shareholder approval. Under normal circumstances, shareholders may be willing to approve a share issuance if the discount (*i.e.*, the difference between the NAV and market price) is narrow, resulting in limited economic dilution to current shareholders. If the fund's share price trades at a premium (*i.e.*, market price is higher than NAV), only board approval is required. During market disruptions, share prices begin to depress, thus limiting a regulated fund's ability to raise common equity without shareholder approval. Both a regulated fund's shareholders and its board may be reluctant to approve issuing shares at a significant discount to NAV because of the higher economic dilution that current shareholders would experience compared to normal circumstances.

Affiliated Capital Infusion Alternatives

The occurrence of a significant market downturn can cause typical sources of liquidity (*e.g.*, revolving credit facilities with banks, underwritten public debt or common stock equity issuances) for regulated funds to become unavailable or unfavorable, whether due to reduced lending or regulatory constraints. In such circumstances, the sponsor of a regulated fund may provide an alternative source of capital.

a. Equity Issuance

A sponsor can purchase common shares from a regulated fund in a private transaction to provide additional capital relatively quickly. Fortunately, unlike the numerous affiliated transaction prohibitions in the 1940 Act, the 1940 Act does not restrict a sponsor's ability to purchase securities issued by a regulated fund. However, sponsors must purchase the shares at or above NAV, which for publicly traded funds likely will be above the current market value per share to comply with the general prohibition under the 1940 Act on issuing common shares below NAV.[1]

b. Lending by the Sponsor to a Regulated Fund on an Unsecured Basis or the Issuance by the Regulated Fund of Preferred Shares to the Sponsor

To the extent that a regulated fund is not in danger of breaching its asset coverage requirements, as discussed above, a sponsor could act as a rapid form of liquidity to the fund by lending on an unsecured basis or purchasing preferred shares. Similar to an equity issuance, lending on an unsecured basis is not prohibited under the joint or affiliated transaction provisions of the 1940 Act. A secured loan from an affiliate, however, is viewed as prohibited for 1940 Act purposes.

c. Rights Offering Backstopped by the Sponsor or an Affiliate

One exception to the 1940 Act's general prohibition against issuing shares below NAV commonly used by closed-end funds is a rights offering to current shareholders, which may be issued at a subscription price below NAV to incentivize participation. Since shareholders will experience dilution upon issuance of shares in a rights offering when shares are trading below NAV, the SEC, through no-action relief, requires boards to make certain determinations, including a good faith determination that the offering would result in a net benefit to existing shareholders, including those who choose not to exercise their rights.

To alleviate the risk of a failed rights offering, a regulated fund's sponsor could act as a standby purchaser, or backstop, for the shares by agreeing to participate in the rights offering and oversubscribe to a significant degree. Acting as a standby purchaser of shares in a rights offering eases some of the economic burden on a sponsor by allowing the sponsor to purchase shares closer to the current market price, unlike a common share issuance at NAV, as discussed above.

d. Voluntary Waiver of Fees by the Sponsor

When a regulated fund is in distress or finds expenses too high, sponsors often waive some or all of their management and/or incentive fees (if applicable) for a period of time to reduce the regulated fund's ongoing expenses. Unlike the transactions described above, where a sponsor provides capital to a regulated fund, the benefit of fee waivers for sponsors is that they simply limit a revenue stream as opposed to actively putting capital

1. Of course, a sponsor can also purchase equity securities of a listed fund in the open market in accordance with any limitations on insider trading or market manipulation, but while that may have some effect on the share price, it will not result in an infusion of capital to the fund.

at risk. During market disruptions, sponsors too may find themselves capital-constrained and waivers may be a more attractive way to help a fund.

Significant market events can come with little warning and stress test the operations of regulated funds. Even though the 1940 Act carries with it a number of significant constraints regarding affiliated transactions, sponsors should be aware that they are not fully handcuffed from providing support to their regulated funds in such circumstances.

The Case to Permanently Extend the SEC's Temporary Co-Investment Relief to Allow "New Funds" to Participate in Follow-On Co-Investments

In prior Alerts, we have critiqued certain aspects of the current form of co-investment exemptive orders that the SEC has granted to regulated funds seeking to invest alongside affiliated funds in negotiated transactions. We also have encouraged the SEC to approve a new form of co-investment relief, which has now languished with the Staff for over a year but would fix many of the issues that arise under existing co-investment orders. Recently, the SEC temporarily addressed one common criticism levied against existing co-investment orders by allowing an affiliate of a BDC to participate in a follow-on co-investment even if the affiliate had not previously participated in a co-investment with respect to the same issuer. In this Alert, we make the case for permanent implementation of this temporary relief and the extension of the relief to all regulated funds, as we believe it addresses a key investor protection problem inherent in the structure of existing co-investment exemptive orders and will enhance capital flow to the small businesses BDCs were designed to support.

Rationale for the Current Restriction on "New Funds" Participating in Follow-On Co-Investments Is Faulty and Inadvertently Creates Investor Protection Concerns

Historically, the co-investment relief granted by the SEC has been premised on the idea that a regulated fund and its affiliates should be similarly situated with respect to the investments they hold in an issuer. Illustrating this point, one of the key conditions of the relief prohibits a regulated fund from investing in reliance on the relief if certain affiliates have any pre-existing investment in the issuer. The purported policy rationale behind this condition is that it protects investors from a situation in which a regulated fund's assets could be used to "prop up" an affiliate's existing investment. Accordingly, this condition is often referred to colloquially as the "propping up" condition.

The SEC has allowed only two exceptions from the propping up condition. Under both exceptions, any participating regulated fund is required to already have an investment in the issuer, which should serve to mitigate the propping up concern. These two exemptions allow a regulated fund to participate in a follow-on co-investment in reliance on the relief with one key requirement—all affiliated funds that participate in the follow-on also have a pre-existing investment in the issuer (and, except in limited circumstances, all participants must hold the same securities of the issuer). However, by requiring all follow-on participants to have existing investments in an issuer, the SEC has failed to account for certain fundamental characteristics of private funds, inadvertently reintroducing propping up concerns that can harm investors in regulated funds.

> *"However, by requiring all follow-on participants to have existing investments in an issuer, the SEC has failed to account for certain fundamental characteristics of private funds, inadvertently reintroducing propping up concerns that can harm investors in regulated funds."*

The SEC seemingly has failed to account for the fact that private funds typically have a limited investment period. For example, a private fund may have an initial commitment period of one-to-two years, followed by a three-to-five year investment period and two-to-three year period of managing portfolio investments prior to selling those investments, winding down operations and distributing capital back to investors (and/or raising a successor fund). This limited lifecycle may prevent a private fund from providing capital in follow-on co-investments that occur after its investment period. Under current co-investment relief, if a private fund initially participated in a co-investment alongside a regulated fund and that investment later requires additional capital support, the regulated fund will need to provide that support on its own, and a sponsor cannot use capital from any affiliated private funds or proprietary accounts of the sponsor that do not have a pre-existing investment in the issuer (collectively, "**new funds**"). This can result in the regulated fund being required to prop up the private fund's investment by funding more than its share of a follow-on investment. If the regulated fund and any other affiliates that are eligible to participate in the follow-on co-investment cannot provide sufficient capital, the investment could decline in value or the regulated fund could lose the investment altogether (for example, another sponsor provides the needed capital and refinances the issuer's debt), which harms the Main Street investors who make up the bulk of capital in BDCs.

In the order temporarily permitting a BDC to participate in a follow-on co-investment with new funds, the SEC acknowledged that a BDC "may face challenges absent these exemptions in providing capital" to portfolio companies in light of COVID-19. The order does not acknowledge that this issue predated the pandemic and will continue to be an issue after the temporary relief expires. For the reasons outlined above, the temporary exemptive relief should be extended permanently, and be expanded to apply to all regulated funds that would seek to co-invest in a follow-on with new funds.

Many BDCs Have Successfully Utilized the Temporary Exemptive Relief, but it Still Has Its Limitations

A number of BDCs have relied on the temporary ability to participate in follow-on co-investments with new funds. This has allowed sponsors to support portfolio companies better during the pandemic, which has proven to be particularly challenging time for the type of portfolio companies BDCs are designed to support.

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While the issuance of the temporary relief has helped support the BDC industry, it does not provide a complete solution to cash-strapped BDCs. In order for a new fund to participate in a follow-on co-investment under the temporary relief, a BDC is still required to participate in the follow-on transaction. Thus, while the temporary exemptive relief helps sponsors provide support to existing investments without forcing a BDC to overextend itself or sell other desirable investments at depressed prices to the same extent it may have absent the relief, the BDC still may face difficulty in funding even a small portion of a follow-on opportunity.

Adopting a New, More Principles-based Form of Co-Investment Relief Remains a Better Path Forward

In issuing the temporary exemptive relief, it is apparent that the SEC is not overly worried about private funds and a sponsor's proprietary accounts being taken advantage of to prop up a BDC's investments, presumably relying on the fact that investment advisers have an overarching fiduciary duty to those clients that should prevent such misconduct. This principle applies to regulated funds as well, and underpins the approach taken in the new form of co-investment relief that a FS Global Credit Opportunities Fund applied for last year (the "**FS Application**").

Under the conditions of the FS Application, any follow-on co-investment that involved a new fund would require approval of a regulated fund's board. The FS Application also fixes several other problems that arise under existing co-investment orders, including reducing the burden on regulated fund boards, reducing the administrative and compliance burden on sponsors to track and report to the board investment opportunities that fall outside a regulated fund's strategy and would permit joint venture subsidiaries to participate in co-investments.

We continue to believe that the SEC should adopt co-investment relief in the form of the FS Application, and have been advocating for a more principles-based approach to co-investment relief for nearly two years. Absent broader reform to co-investment relief, a helpful first step would be to correct permanently the misguided restriction on new funds participating in follow-on investments.

Expanding Retail Access to Private Markets Through Regulated Funds: A Response to a Comment Letter From Securities Law Professors

In June 2019, the SEC issued a concept release seeking comments "on possible ways to simplify, harmonize, and improve the exempt offering framework to promote capital formation and expand investment opportunities while maintaining appropriate investor protections."

To date, the SEC has received over 170 comment letters from a wide range of industry participants, including a letter from a group of 15 securities law professors. The law professor letter questions whether expanding access to private markets will raise investor protection concerns and argues that existing proposals to increase retail investor participation through pooled investment vehicles suffer from misconceptions about the private markets.

We agree with the law professors that any expansion of retail access to private markets must be careful to preserve core investor protections; however, we believe pooled investment vehicles, specifically registered investment companies and BDCs, are the best way to increase investor access to private markets investment strategies, as significant investor protections are fundamental elements of the existing regulatory framework for these types of fund structures. This Alert responds to some of the "misconceptions" raised in the law professor letter regarding retail access to private markets through pooled investment vehicles. Some of the arguments raised in the law professor letter relate to business issues, including the relative performance of private markets investments. This Alert focuses on the legal issues raised in the letter but we note that there is a significant body of research offering rebuttals to the law professors' business points.[2]

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Existing Retail Structures Are Not a Direct Substitute; Only Offer Limited Exposure to Private Markets

The law professor letter notes that retail investors can already access private markets indirectly through mutual funds and BDCs. Unfortunately, these existing channels are not true substitutes for direct access to private markets or only offer limited exposure to private markets.

According to a 2018 report from Morningstar, a low percentage of mutual funds have any exposure to private company equity. Even among large-cap equity funds, the subset of the mutual fund industry that has embraced private-company investment the most, only 5.8% of the 1,204 large-cap equity funds in Morningstar's database as of December 2017 had any level of investment in private companies. And even among mutual funds that hold equity in private companies, total exposure is typically modest and the resulting impact for fund investors is likely to be minimal. The median mutual fund in the Morningstar report invested in three privately held companies, totaling just 0.71% of overall fund assets.

> *"While BDCs originally were intended to be venture capital vehicles, Sections 17 and 57 and related rules under the 1940 Act make it difficult for a BDC or other closed-end fund to pursue a private equity strategy by taking significant equity stakes in portfolio companies, particularly for those sponsors who might manage retail vehicles alongside institutional ones."*

These small position sizes should not come as a surprise–a registered open-end fund is prohibited under Rule 22e-4 of the 1940 Act from investing more than 15% of its net assets in illiquid securities, thereby limiting the extent to which it may invest in private companies and private funds. In response to the Concept Release, a number of commenters, including the Institutional Limited Partners Association, recommended that the SEC ease liquidity constraints for target date funds with longer investment horizons, to provide greater flexibility to invest in illiquid assets, including private companies.

In contrast to equity mutual funds, closed-end investment company structures are better suited to pursue illiquid investment strategies as they do not provide daily redemption rights for investors and therefore are not subject to Rule 22e-4. However, few private equity-style closed-end regulated funds exist. While BDCs originally were intended to be venture capital vehicles, Sections 17 and 57 and related rules under the 1940 Act make it difficult for a BDC or other closed-end fund to pursue a private equity strategy by taking significant equity

2. *See e.g.,* Robert S. Harris, Tim Jenkinson & Steven N. Kaplan, *How Do Private Equity Investments Perform Compared to Public Equity?*, 14 J. INV. MGMT. 14, 15 (2016) (finding that returns to investors in private equity funds with post-2005 vintage years have been roughly equal to returns in the public markets but acknowledging "[t]hat performance will improve if the historical J-curve pattern of private equity funds—in which fund multiples increase over a fund's life—continues to hold."); Committee on Capital Markets Regulation, Expanding Opportunity for Investors and Retirees: Private Equity at 19 (November 2018) (noting that adding a private equity component to an investment portfolio can provide protection in times of market stress); Georgetown Center for Retirement Initiatives, The Evolution of Target Date Funds: Using Alternatives to Improve Retirement Plan Outcomes (June 2018), (finding that allocating just 20% of a target date fund's portfolio to private equity funds increased median annual retirement income by 13%, as compared to a baseline portfolio without private equity investments).

stakes in portfolio companies, particularly for those sponsors who might manage retail vehicles alongside institutional ones. For example, if a registered fund or BDC buys more than 5% of the equity of a company together with a private fund, following the initial investment, the 1940 Act would prohibit any follow-on transaction with the portfolio company (such as contributing additional capital in a subsequent financing round) on the basis that the portfolio company is an affiliated person of the registered fund or BDC. The 1940 Act regulatory restrictions also significantly constrain regulated funds from co-investing alongside private equity funds that take controlling equity stakes in companies. As a result, most closed-end funds and BDCs pursue an income-oriented strategy and focus on investments in the debt of small and mid-sized companies and are unlikely to provide exposure to private equity investments.

For all of these reasons, the claim that retail investors already have access to private markets strategies is a gross mischaracterization of the present investment landscape.

Private Markets Regulated Funds Provide Access to Experienced Managers, Liquidity and a Diverse Portfolio

The law professor letter also argues that current proposals for pooled vehicles structures include features that cannot coexist in practice, including investor liquidity, illiquid investment exposure, broad diversification, and the lack of a need for retail investors to monitor the fund manager and the fund's investments. Below we discuss why these attributes actually can exist in a properly structured regulated fund (if the SEC provides appropriate relief from certain regulatory restrictions, including those discussed above).

Various Liquidity Options Are Available for Regulated Funds With Illiquid Strategies

Regulated fund pursuing a private markets strategy can offer investors several different types of liquidity options. A regulated fund pursuing a private markets strategy would likely be structured as a closed-end fund due to the illiquid nature of its investments. Closed-end funds are not required to provide shareholders with daily redemption opportunities like open-end mutual funds, allowing a closed-end fund to manage liquidity with more predictability. Closed-end funds can list their shares on a national securities exchange, providing liquidity to investors using the most elegant liquidity system for investments ever devised—the U.S. stock markets. For unlisted closed-end funds, it is quite common to provide shareholders with limited periodic (often quarterly) liquidity through an interval fund or tender offer fund structure (for example, a fund might repurchase up to 5% of its shares each quarter). An unlisted private markets regulated fund would likely allocate a modest portion of its portfolio to a more liquid strategy to facilitate the fund's periodic liquidity, or could choose to do less frequent repurchases for a larger portion of the fund's shares to align with the liquidity events of its underlying portfolio companies.

Diversification Is Achievable Through Fund-of-Funds Structures and Required for Pass-Through Tax Treatment

We agree with the law professor letter that holding an interest in a single private equity fund may not provide the average retail investor with meaningful diversification, and that a regulated fund of private funds structure is one alternative that addresses these diversification concerns. It is worth noting that a current SEC staff position would preclude most retail investors from investing in any such regulated fund of private funds. As a result of the liquidity rule discussed above, any regulated fund of private funds would need to be structured as a closed-end fund. However, that SEC staff has historically required that offerings of registered closed-end funds that invest more than 15% of their assets in private funds be limited to accredited investors only. A number of industry commenters, including the Committee of the Business Law Section of the American Bar Association, encouraged the SEC staff to change its informal policy imposing the 15% limitation, and the Director of the Division of Investment Management recently suggested that the Staff was reconsidering that limitation. The law professor letter also fails to acknowledge that regulated funds are required to provide significant diversification to qualify for pass-through tax treatment.

We disagree with the law professor letter that a regulated fund of private funds could not be structured to ensure retail investors have access only to experienced asset managers and address layering of fees. As one industry participant commented, the Commission could consider limiting retail access to managers with a significant institutional investor base to ensure that investors are exposed to experienced managers only. As a result, retail investors in a regulated fund of private funds would have the ability to invest alongside institutional investors in the underlying private funds, allowing retail investors to achieve incentive alignment with institutional investors, and to benefit from the negotiation of terms of the private funds by sophisticated investors.

> *"We disagree with the law professor letter that a regulated fund of private funds could not be structured to ensure retail investors have access only to experienced asset managers and address layering of fees."*

And as discussed in our comment letter on the concept release, if the SEC were to allow for the creation of regulated funds of affiliated private funds, where the regulated fund invests in a multiple private funds affiliated with the regulated fund's investment adviser, the SEC could also impose certain restrictions to address duplicative fees, including a requirement that the regulated fund's board of directors only approve fund-level fees for services

that are in addition to and not duplicative of services at the underlying affiliated private fund level. This structure is common in the mutual fund of funds context. In addition to reduced fees, a regulated fund of affiliated private funds may also offer investors certain benefits unavailable to a fund that invests in unaffiliated private funds, including better alignment of interests between management of the regulated fund and underlying private funds and access to the best possible terms in respect of each investment (if the SEC conditioned any such relief on most-favored nation status on key terms).

Public Reporting and Independent Oversight Are Inherent Features of Regulated Funds

The legal framework of a regulated fund guarantees certain core investor protections and is designed to provide investors investment management services by a registered investment adviser who owes a fiduciary duty to its funds (including, notably, a fiduciary duty not to charge excessive compensation), subject to the oversight of an independent board of directors and, ultimately, the SEC. Regulated funds also are public reporting companies that publish quarterly reports that include a schedule of every investment held by the fund, along with the value attributed to each investment. Publicly traded regulated funds are further covered by the analyst community, who scrutinize these vehicles similar to the manner in which they analyze public operating companies.

Regulatory Restrictions Should Be Lifted to Enable Optimal Regulated Fund Structures

The law professor letter fails to appreciate that there are regulatory restrictions that currently prevent regulated funds that focus on private markets investments from being structured in the optimal way for retail investors. If the applicable regulatory restrictions were lifted, a regulated closed-end fund could offer all of the features that the law professor letter claims "cannot coexist in practice." Liquidity could be offered through a stock exchange listing or periodic repurchase offers. Diversification could be offered through fund of funds structures, and would be necessary to meet relevant requirements for pass-through tax treatment. The investing public would have significant transparency into the portfolio and performance of a fund managed by a registered investment adviser with oversight from independent directors. The SEC could also condition certain aspects of necessary relief to ensure that retail investors benefit from the negotiation of terms by institutional investors. It is difficult to imagine a better structure for retail investors to access private markets than through a regulated fund.

M&A Transactions

Acquiror	Acquired or Target Company	Type of Transaction and Status
Anchorage Capital Group, an RIA with approximately $13.2 billion in assets under management	**Garrison Investment Group**, a middle market credit, distressed and asset based investor with approximately $1.2 billion in assets under management	Acquisition (terms not disclosed)
City of London Investment Group PLC ("CLIG"), with approximately $5 billion in funds under management	**Karpus Management, Inc.**, an RIA with approximately $3.5 billion in funds under management	Merger agreement under which CLIG will acquire the issued share capital of Karpus. The consideration will consist of up to 24,118,400 CLIG ordinary shares, which equates to $99.6 million. The purchase will be structured as a merger of a wholly-owned subsidiary of CLIG into Karpus, with Karpus becoming a wholly owned subsidiary of CLIG. (further terms not disclosed)
Clearlake Capital Group, L.P., a private investment firm with approximately $24 billion in assets under management post-acquisition	**WhiteStar Asset Management**, an investment management firm with approximately $6 billion of fee generating assets, from Pine Brook Capital Partners, an investment services firm that has approximately $3.6 billion in assets under management	Acquisition of majority interest (terms not disclosed)
Emigrant Partners, LLC, a capital and advisory services partner that, with an affiliate, is partnered with 16 firms that oversee approximately $50 billion in assets under advisement	**Parallel Advisors, LLC**, a financial planning and investment firm with approximately $3 billion in assets under management	Acquisition of minority interest (terms not disclosed)
Management team at Evanston Capital, an alternative investment management firm with approximately $3 billion in assets under management	**TA Associates**, a private equity firm that has raised approximately $33.5 billion in capital since inception	Management team acquired minority equity stake owned by private investment funds affiliated with TA Associates (terms not disclosed)
Franklin Resources, Inc. ("Franklin Templeton"), an investment management organization with approximately $580 billion in assets under management	**AdvisorEngine, Inc.**, a digital wealth platform and provider of technology and consulting services to more than 1,200 wealth management firms that manage over than $600 billion in assets	Acquisition (terms not disclosed)
J.P. Morgan Asset Management, a global asset manager for individuals, advisors, and institutions with $1.7 trillion in assets under management	**China International Fund Management Co. Ltd.**, a fund management company joint venture with $21.1 billion) in assets under management	Acquisition of majority stake. JPMAM to become the first foreign manager to take a majority stake in a fund management joint venture on mainland China, winning approval to take an additional 2% stake in CIFM, lifting its share to 51%. (terms not disclosed)

M&A Transactions *(continued)*

Acquiror	Acquired or Target Company	Type of Transaction and Status
LPL Financial LLC, a retail investment advisory firm and independent broker/dealer that has approximately $670 billion in advisory and brokerage assets	**E.I. Riley**, a broker-dealer and RIA with approximately $2 billion in assets under management	Acquisition structured as an asset purchase agreement that provides for both a payment at closing and potential contingent payments. LPL estimates a transaction multiple of ~6x post-synergy EBITDA.
LPL Financial LLC, a retail investment advisory firm and independent broker/dealer that has approximately $670 billion in advisory and brokerage assets	**Lucia Securities**, a broker-dealer and RIA with approximately $1.5 billion of client assets under management	Acquisition structured as an asset purchase agreement that provides for both a payment at closing and potential contingent payments. LPL estimates a transaction multiple of ~6x post-synergy EBITDA.
Management of **Mariner Investment Group, LLC**, an investment manager with approximately $10.8 billion in assets under management	**ORIX Corporation USA**, a diversified financial company and a subsidiary of ORIX Corporation, based in Japan. ORIX Corporation has more than $365 billion in assets under management.	Acquisition (terms not disclosed)
Mount Logan Capital Inc., an asset manager based in Canada that specializes in credit investment opportunities with a focus on opportunities in North America, and **Sierra Crest Investment Management LLC**, an affiliate of **BC Partners Advisors L.P.**, with approximately $4.5 billion in assets under management, as of December 31, 2019	**Resource America, Inc.**, an asset management company with approximately $4.3 billion in assets under management, as of May 18, 2020	Acquisition of certain assets financed with a combination of cash, equity and debt (further terms not disclosed)
NFP Corp., an insurance broker and consultant	**Fiduciary Investment Advisors**, an investment management firm that advises more than $95 billion in assets	Acquisition (terms not disclosed)
Portman Ridge Finance Corporation (“Portman Ridge”), an externally managed, non-diversified closed-end investment company that has elected to be regulated as a business development company	**Garrison Capital Inc. (“GARS”)**, an externally managed, non-diversified closed-end investment company that has elected to be regulated as a business development company	Merger agreement under which Portman Ridge will deliver to GARS stockholders a combination of (i) newly issued Portman Ridge shares valued at 100% of Portman Ridge’s net asset value per share and (ii) $19.1 million in cash. Additionally, **Sierra Crest Investment Management LLC**, Portman Ridge’s investment manager, agreed to pay $5.0 million in cash to GARS stockholders. GARS stockholders are expected to receive approximately 105% of GARS’ net asset value per share based on the March 31, 2020 net asset value per share of GARS’ and Portman Ridge’s stock and aggregate cash consideration.
Sumitomo Mitsui Banking, a financial institution with approximately ¥ 212.4 trillion in assets	**Ares Management**, an alternative investment manager with approximately $149 billion in assets under management	Acquisition of minority stake, 4.9%, for $384 million. Sumitomo will purchase 12.1 million common shares at $31.64 from Ares (further terms not disclosed)

2nd Quarter 2020
Listed Closed-End Fund Initial Public Offerings

First Trust High Yield Opportunities 2027 Term Fund

Structure:	Diversified, closed-end management investment company
Investment Objectives/Policies:	The Fund's investment objective is to provide current income. Under normal market conditions, the Fund will seek to achieve its investment objective by investing at least 80% of its Managed Assets (as defined in the prospectus) in high yield debt securities of any maturity that are rated below investment grade at the time of purchase or unrated securities determined by the Advisor to be of comparable quality. Such securities include U.S. and non-U.S. corporate debt obligations and senior, secured floating rate loans. The Fund's investments may include securities of issuers located in countries considered to be emerging markets.
Investment Adviser:	First Trust Advisors L.P.
Lead Underwriter(s):	Morgan Stanley & Co. LLC

Angel Oak Dynamic Financial Strategies Income Term Trust

Structure:	Diversified, closed-end management investment company
Investment Objectives/Policies:	The Fund seeks current income with a secondary objective of total return. Under normal circumstances, the Fund will invest at least 80% of the value of its net assets plus the amount of any borrowings for investment purposes in securities of U.S. and non-U.S. financial institutions, which may include, but are not limited to, banks, thrifts, finance companies, BDCs that invest primarily in loans, commercial mortgage and REITs, brokerage and advisory firms, insurance companies and financial holding companies. In pursuing its investment objective, the Fund invests primarily in debt issued by financial institutions, including subordinated debt, unrated debt, senior debt and high yield securities. The Fund may also invest in common equity, preferred equity, convertible securities and warrants and trust-preferred securities of these institutions. The Fund will target investing at least 80% of the Fund's net assets plus the amount of any borrowings for investment purposes in debt issued by U.S. community banks and U.S. and non-U.S. non-bank financial institutions. Under normal circumstances, the Fund will invest at least 80% of the value of its net assets plus the amount of any borrowings for investment purposes in investments that are rated investment grade or, if unrated, judged to be of investment grade quality by the Fund's investment adviser.
Investment Adviser:	Angel Oak Capital Advisors, LLC
Lead Underwriters:	UBS Securities LLC, Wells Fargo Securities, LLC, Keefe, Bruyette & Woods, Inc., Oppenheimer & Co. Inc. and RBC Capital Markets, LLC

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Simpson Thacher's dynamic, long-standing Registered Funds Practice encompasses all aspects of the investment management business. Our practice focuses on alternative asset managers seeking to access retail investor channels, asset management mergers and acquisitions, and advising on cutting-edge regulatory policy and strategy matters.

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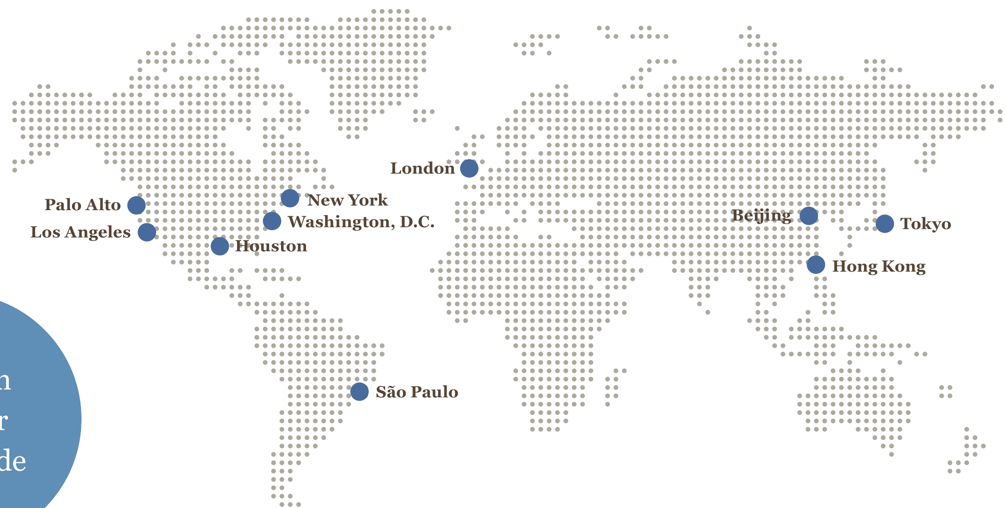

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