SEWARD & KISSEL LLP

Spring 2025

Interval Fund and Tender Offer Fund Opportunities

Interval funds and tender offer funds – closed-end funds registered under the Investment Company Act of 1940, as amended (the "1940 Act") – are gaining appeal among alternative and private fund managers seeking to access the retail and retirement markets. Morningstar, citing a market update from an alternative investment management and consulting firm, reported that the non-listed closed-end fund market hit a new record as of December 31, 2024, with 257 interval and tender offer funds holding $172 billion in net assets and $208 billion in total managed assets, including leverage. Interval funds totaled 124 and accounted for 60% of the total managed assets at $124.3 billion. The tender offer funds made up the remaining 40%, with $83.3 billion in total managed assets. In 2024, the market saw 50 new fund launches, compared to 28 in 2023, and a $37 billion increase in market-wide net assets. Interval funds and tender offer funds that offer exposure to private credit continue to multiply, providing retail investors access to alternative strategies that can provide diversification from traditional fixed-income and equity investments and potentially higher yields.

This summary outlines structural and operational features of interval funds and tender offer funds, and then discusses potential advantages of these funds and key considerations for managers.

Interval Funds

An interval fund is a closed-end fund (CEF) that offers to repurchase its shares at specified "periodic intervals" in accordance with Rule 23c-3 under the 1940 Act. Rule 23c-3 permits a CEF to repurchase its common stock from shareholders at periodic intervals pursuant to repurchase offers made to all shareholders, subject to certain conditions, including (among others) the following:

- ***Fundamental Policy***. The fund must adopt a fundamental policy stating that the fund will make repurchase offers at periodic intervals (either 3, 6 or 12 months), and stating certain information relating to the timing of the repurchase offers. The fundamental policy can only be changed by shareholder vote.
- ***Frequency of Repurchase Offers***. The fund must make repurchase offers every 3, 6 or 12 months in accordance with the fundamental policy. In addition, the fund may make a "discretionary" repurchase offer once every two years. The fund may also conduct tender offers pursuant to Rule 13e-4 under the Securities Exchange Act of 1934, as amended (the "Exchange Act").
- ***Repurchase Offer Amount***. The repurchase offer amount must range from 5–25% of outstanding shares, as determined by the board. The amount may vary for each repurchase offer.
- ***Repurchase Price***. The fund is required to repurchase its shares at net asset value (NAV).
- ***NAV Computation***. The fund must compute its NAV (i) at least weekly and (ii) daily on the five business days preceding a repurchase request deadline, in each case on such days and at such times as

determined by the board. Although not required, interval funds generally calculate NAV on a daily basis to permit shares to be continuously offered.

- ***Liquidity of Portfolio Assets***. From the time the fund sends a repurchase offer notice to shareholders until the date on which the fund determines the NAV applicable to the repurchase (repurchase pricing date), the fund must have liquid assets equal to 100% of the repurchase offer amount. In addition, the board must adopt written procedures reasonably designed to ensure that the fund's assets are sufficiently liquid so that the fund can comply with its fundamental policy and with the above-mentioned 100% liquidity requirement.
- ***Payment of Repurchase Proceeds***. The fund must pay the repurchase proceeds within seven days after the repurchase pricing date.

Tender Offer Funds

A tender offer fund is a CEF that repurchases its shares in accordance with Section 23(c)(2) of the 1940 Act. Section 23(c)(2) permits a CEF to repurchase its shares in a tender offer only after a reasonable opportunity to submit tenders is given to all shareholders. A tender offer fund is required to comply with Rules 13e-4 and 14e-1 under the Exchange Act. In some respects, a tender offer fund has more flexibility than an interval fund. Notwithstanding this flexibility and for market and other reasons, some tender offer funds adopt a policy to conduct scheduled, periodic tender offers of a certain amount.

- ***Fundamental Policy***. Not required.
- ***Frequency of Tender Offers***. At the board's discretion.*
- ***Tender Offer Amount***. At the board's discretion.*
- ***Repurchase Price***. At the board's discretion; typically at or close to NAV.*
- ***NAV Computation***. No requirement, except that NAV is computed in connection with offerings and repurchases – *i.e.*, funds that continuously offers shares compute NAV at the time of offerings (typically monthly or quarterly) and at the time of any share repurchases.
- ***Liquidity of Portfolio Assets***. No liquidity restrictions.
- ***Payment of Repurchase Proceeds***. The fund must pay the repurchase proceeds "promptly" in accordance with Rule 14e-1; however, there is no specific deadline. Many funds delay payment of repurchase proceeds, sometimes for several months, to allow for liquidations of portfolio holdings.

Potential Advantages of Interval Funds and Tender Offer Funds for Shareholders

- **Access to Illiquid Strategies and Shareholder Liquidity.** Interval funds and tender offer funds provide access to illiquid and alternative investments and offer greater exposure to such investments than mutual funds, which are prohibited from investing more than 15% of their net assets in illiquid investments. While interval funds and tender offer funds offer limited liquidity, they generally provide shareholders greater liquidity than private funds, whose investors typically have limited opportunities, if any, to redeem their interests.
- ***1940 Act Protections***. Shareholders receive protections of the 1940 Act, including enhanced governance (*e.g.*, an independent board that oversees fund management and represents shareholders' interests); transparency (*e.g.*, periodic public reporting and disclosure of fund holdings and investment performance); and portfolio restrictions that limit risk (*e.g.*, limits on leverage and restrictions on affiliated transactions).
- ***Lower Eligibility Standards and Investment Minimums***. Unlike private funds, interval funds and tender offer funds are generally available to retail investors; they are not limited to investors that are

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* Although tender offer funds are not subject to regulatory requirements governing the frequency of tender offers, the tender offer amount or the repurchase price, many tender offer funds adopt policies regarding these terms.

"accredited investors" or "qualified purchasers." Interval funds and tender offer funds typically have low investment minimums, making them highly accessible to retail investors.

- ***Simpler Tax Reporting***. Interval fund and tender offer fund shareholders receive tax information on a Form 1099, whereas investors in private funds treated as partnerships receive tax information on a Schedule K-1. Schedule K-1 can be more complex, and typically arrives to investors later, than Form 1099.

Potential Advantages of Interval Funds and Tender Offer Funds for Managers

- ***Access to Retail and Retirement Markets***. Interval funds and tender offer funds enable managers to expand their investor base, as these funds can be offered to retail investors, whereas private funds generally can be offered only to "accredited investors" and "qualified purchasers." Retail investors can invest in interval funds and tender offer funds through intermediaries' "supermarket" platforms and other distribution channels. In addition, retirement plans subject to the Employee Retirement Income Security Act of 1974 (ERISA) and individual retirement accounts (IRAs) may have more flexibility to invest in interval funds and tender offer funds than in private funds.
- ***Marketing Opportunities***. Interval funds and tender offer funds are not subject to the advertising restrictions that apply to private funds, and therefore give managers an opportunity to advertise to the general public, which can increase brand awareness. For example, many of these funds have a website with information about the fund (*e.g.*, prospectus, fact sheets, shareholder reports and portfolio holdings) and about the manager (*e.g.*, personnel, strategy, philosophy).
- ***Investment Strategy Flexibility***. Managers of interval funds and tender offer funds have strategy flexibility similar to that of private fund managers. Interval funds and tender offer funds do not offer daily liquidity to investors (unlike mutual funds) but instead offer limited liquidity at predetermined (and thus predictable) periods. Consequently, managers of interval funds and tender offer funds can invest a significant amount of fund assets in alternative and illiquid investments such as private credit, real estate credit, high-yield, distressed credit and private equity.

Converting a Private Fund to an Interval Fund or Tender Offer Fund

Managers have converted existing private funds into interval funds or tender offer funds. This approach typically eliminates the need to raise seed capital, and the manager can use the private fund's performance track record when marketing the new fund, subject to certain conditions.[1] A manager contemplating such a conversion should consider whether the private fund's investment strategy and portfolio holdings would be suitable for the interval fund or tender offer fund structure. In addition, conversions should be structured to minimize tax implications for the private fund investors, and to comply with SEC staff no-action relief addressing concerns underlying the affiliated transaction prohibitions of Section 17(a) of the 1940 Act.[2]

Key Considerations

Interval Funds vs. Tender Offer Funds. Alternative and private fund managers contemplating the registered fund space will find that both the interval fund and tender offer fund structures can accommodate a variety of investment strategies, including strategies that involve leverage and significant amounts of illiquid investments (*e.g.*, private credit, real estate credit, high-yield, distressed credit and private equity). Because both interval funds and tender offer funds are governed by the 1940 Act, they are generally subject to the same requirements, including those relating to registration and disclosure, fund governance, custody and restrictions on affiliated transactions. However, there are certain key differences between the regulatory requirements applicable to interval funds and tender offer funds, particularly with respect to the frequency of repurchase/tender offers, frequency of NAV computations, portfolio liquidity and timing of payment of repurchase proceeds. Managers should pay particular attention to these differences when considering which structure would be most suitable. For example, because tender offer funds generally have more flexibility than interval funds with respect to portfolio liquidity, they may be able to invest in a wider range of asset classes.

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[1] *See, e.g.*, Growth Stock Outlook Trust, SEC No-Action Letter (Apr. 15, 1986); Nicholas-Applegate Mutual Funds, SEC No-Action Letter (Aug. 6, 1996).

[2] *See* GuideStone Financial, et. al., SEC No-Action Letter (Dec. 27, 2006).

Tender offer funds, however, must comply with Exchange Act tender offer rules, which are generally viewed as more onerous than the Rule 23c-3 requirements applicable to interval funds. The table on the following page highlights some key differences between interval funds and tender offer funds.

Investments in Private Funds. Although both interval funds and tender offer funds may be offered to retail investors (provided that fund shares are registered under the Securities Act of 1933, as amended), a manager should consider the fund's proposed investment strategy and anticipated portfolio holdings in light of its target investor base and note that under an SEC staff position, if a CEF invests more than 15% of its assets in private funds, it must limit the offering and sale of its shares to "accredited investors."

Valuation of Portfolio Holdings. A manager that intends to employ a strategy focused on illiquid holdings should consider the frequency of NAV computations.[3] If a fund offers its shares daily, it would have to compute its NAV daily, which would require daily valuations of portfolio holdings.

Multiple Share Classes. As the 1940 Act restricts a CEF's ability to offer multiple share classes having different expense structures, an interval fund or tender offer fund may obtain SEC exemptive relief permitting it to offer multiple share classes having different expense structures (*e.g.*, based on the offering of fund shares through separate distribution channels).

Co-Investments. As the 1940 Act prohibits certain transactions between a registered fund and its affiliates (*e.g.*, other funds managed by the same manager), an interval fund or tender offer fund may obtain SEC exemptive relief permitting it to invest alongside affiliated funds (including private funds).

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3 *See* "Frequency of NAV Computation" in the table on page 5.

KEY DIFFERENCES BETWEEN INTERVAL FUNDS AND TENDER OFFER FUNDS		
	Interval Fund	Tender Offer Fund
Fundamental Policy on Periodic Repurchases	Must adopt a fundamental policy stating (among other things) that the fund will make repurchase offers at periodic intervals and specifying the interval, which must be either 3, 6 or 12 months.	No requirement
Frequency of Repurchases	Intervals of 3, 6 or 12 months *(see fundamental policy above)*	At board's discretion
Portfolio Liquidity Requirement	Must have liquid assets equal to 100% of repurchase offer amount from the time the fund sends a repurchase offer notice to shareholders until the repurchase pricing date.	No requirement
Leverage	Asset coverage limitations of 300% for debt and 200% for preferred stock. Any senior security or other debt contracted by an interval fund must mature or provide for the redemption or call of the securities (or repayment of the indebtedness) prior to the next repurchase pricing date.	Asset coverage limitations of 300% for debt and 200% for preferred stock.
Frequency of NAV Computation	NAV must be computed at least weekly (except daily on the five business days preceding a repurchase request deadline), and when investors purchase shares.	No requirement, except that NAV is computed in connection with offerings and repurchases.
Repurchase Amount	Must range from 5%–25% of outstanding shares.	At board's discretion
Repurchase Price	Shares must be repurchased at NAV.	At board's discretion; typically at or close to NAV
SEC Filings for Repurchase/Tender Offers	Form N-23c-3	Schedule TO
Timing of Payment of Repurchase Proceeds	Must pay the repurchase proceeds within 7 days after the date on the fund determines the NAV applicable to the repurchase.	Must pay repurchase proceeds "promptly"; however, there is no specific deadline – payment can be delayed.