

A GUIDE TO U.S. STRUCTURES AND TAX CONSIDERATIONS



In the U.S., alternative asset managers have four primary options for fund structures that streamline access to a broader range of investors, including retail investors. These options have existed for several decades, but the democratization of alternatives is driving uptake. For individual investors, accessibility typically depends on whether the vehicle is listed or traded, the liquidity it offers and the associated tax considerations.

Some funds specifically target accredited or qualified investors (often to allow for more flexibility with performance fees), while others are available to true “retail” investors. Although most funds have the option to offer investor subscriptions daily, many decide to limit subscriptions to monthly. Investor redemptions and repurchases are typically more limited, as described below.

LISTING, TRADING AND REGULATION

Except for traded Business Development Companies (BDCs) and traded Real Estate Investment Trusts (REITs), alternative fund structures in the U.S. are only available through financial advisors, broker-dealers or fund sponsors. As a result, distribution targets accredited or retail investors who meet specific suitability requirements.

Interval Funds and Tender Offers are closed-end funds subject to the regulations and requirements of the Investment Company Act of 1940 (40 Act), including disclosure, reporting and liquidity provisions. BDCs operate under a specialized framework that extends 40 Act provisions. Non-traded REITs are subject to the Securities Act of 1933 and the Securities Exchange Act of 1934, but not the 40 Act.

Business Development Company (BDC)

Definition: Special investment vehicles that facilitate debt and equity capital formation for small and middle-market companies

Typical Use: Private credit (senior secured, mezzanine, unsecured and distressed debt) and occasionally equity stakes

Investor Liquidity: Traded BDCs offer daily liquidity via public exchanges; non-traded BDCs provide limited liquidity through occasional redemption programs (which may be limited or suspended) or at the fund’s end.

Typical Financial and Regulatory Reporting Requirements: 10-K, 10-Q and related.¹

Interval Fund

Definition: A closed-end fund offering liquidity at regular intervals through scheduled share repurchase offers, investing in less liquid assets

Typical Use: Alternative asset classes, including private equity, hedge funds, real estate, commodities and infrastructure. Also used for alternative fund of fund investment strategies, including secondary funds.

Investor Liquidity: Provide periodic liquidity through predictably scheduled repurchase offers, typically quarterly, allowing investors to redeem a portion of their shares at NAV

Typical Financial and Regulatory Reporting Requirements: N-PORT, N-CEN, N-CSR and related.¹

Tender Offers

Definition: A closed-end fund offering liquidity at undetermined intervals through share repurchase offers, investing in less liquid assets

Typical Use: Alternative asset classes, including private equity, hedge funds, real estate, commodities and infrastructure. Also used for alternative fund of fund investment strategies, including secondary funds.

Investor Liquidity: Periodic tender offers (typically at least once per year) as outlined in the fund's prospectus, allowing investors to sell shares back to the fund at NAV

Typical Financial and Regulatory Reporting Requirements: N-PORT, N-CEN, N-CSR and related.¹

Non-Traded Real Estate Investment Trusts (REITs)

Definition: A real estate investment trust not listed on exchanges that owns income-producing properties and other real estate assets

Typical Use: Real estate, including properties and related assets such as loans or asset-backed securities

Investor Liquidity: Limited, with structured share redemption programs, often with restrictions on timing and amount, and may suspend redemptions during market stress

Typical Financial and Regulatory Reporting Requirements: 10-K, 10-Q and related.¹

WHEN IS A CLOSED-END FUND NOT A CLOSED-END FUND?

By regulation, a "closed-end fund" is one that has non-daily redemptions;¹ however in the "typical" alternative assets space for institutional investors "closed-end" means a pure private equity fund with subsequent closes and a set subscription period.

U.S. INVESTOR TAX CONSIDERATIONS

The two primary tax forms associated with these investments are Form 1099-DIV to report dividend income and Schedule K-1 to report partnership income. The forms have implications for both alternative asset managers and investors.

Funds often hire service providers (third-party administrators, tax firms or accounting firms) to manage these reporting requirements. Outsourcing to service providers offers access to specialized expertise, facilitates compliance with regulatory requirements and can be more efficient and scalable compared to in-house management.

Form 1099-DIV

- Includes ordinary dividends, qualified dividends and capital gains distributions
- Typically used by BDCs, interval and tender offer funds that elect to be treated as regulated investment companies (RICs) under Subchapter M of the Internal Revenue Code
- Can include ordinary dividends (income), qualified dividends (capital gains), and distributions (return of capital)

Schedule K-1

- Reflects each investor's share of the fund's income, deductions and credits
- Used when BDCs and interval funds have been structured as partnerships
- Potentially more attractive in fund of fund and secondary fund strategies
- Treated as pass-through income

- Requires calculation, tracking and record-keeping of dividend payments
- Form 1099 Reporting typically available in February and is in line with typical direct investment reporting expectations. This reporting may be preferred by retail or retail-like investors who are used to receiving Form 1099 reporting from other registered funds.
- May require more detailed tax reporting or additional state tax filings if the partnership operates in multiple states
- Requires comprehensive and accurately allocated records of all income, expenses, gains, losses, deductions and credits at the fund level
- Schedule K-1 Reporting may not be available until September and requires more complex tax returns, potentially with additional requirements. This reporting may be preferred by more sophisticated investors who already invest in partnerships, receive K-1's, and understand the complexities of investment partnership tax reporting.

¹ Nothing herein should be considered regulatory and/or tax reporting advice or guidance.

Disclaimer

bny.com

BNY, BNY Mellon and Bank of New York Mellon are the corporate brands of The Bank of New York Mellon Corporation and may be used to reference the corporation as a whole and/or its various subsidiaries generally. This material does not constitute a recommendation by BNY of any kind. The information herein is not intended to provide tax, legal, investment, accounting, financial or other professional advice on any matter, and should not be used or relied upon as such. The views expressed within this material are those of the contributors and not necessarily those of BNY. BNY has not independently verified the information contained in this material and makes no representation as to the accuracy, completeness, timeliness, merchantability or fitness for a specific purpose of the information provided in this material. BNY assumes no direct or consequential liability for any errors in or reliance upon this material. The Bank of New York Mellon, a banking corporation organized pursuant to the laws of the State of New York, whose registered office is at 240 Greenwich St, NY, NY 10286, USA. The Bank of New York Mellon is supervised and regulated by the New York State Department of Financial Services and the US Federal Reserve and is authorized by the Prudential Regulation Authority (PRA) (Firm Reference Number: 122467).

The Bank of New York Mellon operates in the UK through its London branch (UK companies house numbers FC005522 and BR000818) at BNY Mellon Centre, 160 Queen Victoria Street, London, EC4V 4LA and is subject to regulation by the Financial Conduct Authority (FCA) at 12 Endeavour Square, London, E20 1JN, UK and limited regulation by the PRA at The Bank of England, Threadneedle St, London, EC2R 8AH, UK. Details about the extent of our regulation by the PRA are available from us on request.

BNY Mellon Fund Services (Ireland) Designated Activity Company is registered with Company No 218007, having its registered office at One Dockland Central, Guild Street, IFSC, Dublin 1, Ireland. It is regulated by the Central Bank of Ireland.

The Bank of New York Mellon operates in Germany through its Frankfurt am Main branch (registered in Germany with Registration No. HRB 12731) at Friedrich-Ebert-Anlage 49, 60327 Frankfurt am Main, Germany. It is under the supervision of the German Central Bank and the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, Marie-Curie-Str. 24-28, 60439 Frankfurt, Germany) under registration number 10100253.

The Bank of New York Mellon SA/NV, a Belgian public limited liability company, with company number 0806.743.159, whose registered office is at Boulevard Anspachlaan 1, B-1000 Brussels, Belgium, authorised and regulated as a significant credit institution by the European Central Bank (ECB), under the prudential supervision of the National Bank of Belgium (NBB) and under the supervision of the Belgian Financial Services and Markets Authority (FSMA) for conduct of business rules, a subsidiary of The Bank of New York Mellon.

The Bank of New York Mellon SA/NV operates in Ireland through its Dublin branch at Riverside II, Sir John Rogerson's Quay Grand Canal Dock, Dublin 2, D02KV60, Ireland and is registered with the Companies Registration Office in Ireland No. 907126 & with VAT No. IE 9578054E. The Bank of New York Mellon SA/NV, Dublin Branch is subject to additional regulation by the Central Bank of Ireland for Depository Services and for conduct of business rules.

The Bank of New York Mellon SA/NV is trading in Germany as The Bank of New York Mellon SA/NV, Asset Servicing, Niederlassung Frankfurt am Main, and has its registered office at MesseTurm, Friedrich-Ebert-Anlage 49, 60327 Frankfurt am Main, Germany. It is subject to limited additional regulation by the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, Marie-Curie-Str. 24-28, 60439 Frankfurt, Germany) under registration number 122721.

The Bank of New York Mellon SA/NV operates in Poland as The Bank of New York Mellon SA/NV (Joint-stock Company) Branch in Poland with Statistical Number 524311310, whose registered office is at Sucha 2, 50-086 Wrocław, Poland. The Bank of New York Mellon SA/NV (Joint-stock Company) Branch in Poland is a non-contracting branch.

The Bank of New York Mellon SA/NV operates in the Netherlands through its Amsterdam branch at Tribes SOM2 Building, Claude Debussylaan 7, 1082 MC Amsterdam, the Netherlands. The Bank of New York Mellon SA/NV, Amsterdam Branch is subject to limited additional supervision by the Dutch Central Bank ("De Nederlandsche Bank" or "DNB") on integrity issues only (registration number 34363596). DNB holds office at Westeinde 1, 1017 ZN Amsterdam, the Netherlands.

The Bank of New York Mellon SA/NV operates in Luxembourg through its Luxembourg branch at 2-4 rue Eugene Ruppert, Vertigo Building – Polaris, L- 2453, Luxembourg. The Bank of New York Mellon SA/NV, Luxembourg Branch is subject to limited additional regulation by the Commission de Surveillance du Secteur Financier at 283, route d'Arlon, L-1150 Luxembourg for conduct of business rules, and in its role as UCITS/AIF depositary and central administration agent.

The Bank of New York Mellon SA/NV operates in France through its Paris branch at 7 Rue Scribe, Paris, Paris 75009, France. The Bank of New York Mellon SA/NV, Paris Branch is subject to limited additional regulation by Secrétariat Général de l'Autorité de Contrôle Prudenciel et Première Direction du Contrôle de Banques (DCB 1), Service 2, 61, Rue Taitbout, 75436 Paris Cedex 09, France (registration number (SIREN) Nr. 538 228 420 RCS Paris - CIB 13733).

The Bank of New York Mellon SA/NV operates in Italy through its Milan branch at Via Mike Bongiorno no. 13, Diamantino building, 5th floor, Milan, 20124, Italy. The Bank of New York Mellon SA/NV, Milan Branch is subject to limited additional regulation by Banca d'Italia - Sede di Milano at Divisione Supervisione Banche, Via Cordusio no. 5, 20123 Milano, Italy (registration number 03351).

The Bank of New York Mellon SA/NV operates in Denmark as The Bank of New York Mellon SA/NV, Copenhagen Branch, filial af The Bank of New York Mellon SA/NV, Belgien, and has its registered office at Tuborg Boulevard 12, 3. DK-2900 Hellerup, Denmark. It is subject to limited additional regulation by the Danish Financial Supervisory Authority (Finanstilsynet, Århusgade 110, 2100 København Ø).

The Bank of New York Mellon SA/NV operates in Spain through its Madrid branch with registered office at Calle José Abascal 45, Planta 4ª, 28003, Madrid, and enrolled on the Reg. Mercantil de Madrid, Tomo 41019, folio 185 (M-727448). The Bank of New York Mellon, Sucursal en España is registered with Banco de España (registration number 1573).

The Bank of New York Mellon (International) Limited is registered in England & Wales with Company No. 03236121 with its Registered Office at BNY Mellon Centre, 160 Queen Victoria Street, London EC4V 4LA. The Bank of New York Mellon (International) Limited is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.

Regulatory information in relation to the above BNY entities operating out of Europe can be accessed at the following website: <https://www.bnymellon.com/RID>.

For clients located in Switzerland: The information provided herein does not constitute an offer of financial instrument or an offer to provide financial service in Switzerland pursuant to or within the meaning of the Swiss Financial Services Act ("FinSA") and its implementing ordinance. This is solely an advertisement pursuant to or within the meaning of FinSA and its implementing ordinance. Please be informed that The Bank of New York Mellon and The Bank of New York Mellon SA/NV are entering into the OTC derivative transactions as a counterparty, i.e., acting for its own account or for the account of one of its affiliates. As a result, where you enter into any OTC derivative transactions with us, you will not be considered a "client" (within the meaning of the FinSA) and you will not benefit from the protections otherwise afforded to clients under FinSA.

BNY Mellon Saudi Financial Company is licensed and regulated by the Capital Market Authority, License number 20211-04, located in Alfaisaliah Tower, 18th Floor, King Fahad Road, P.O. Box 99936 Riyadh 11625, Kingdom of Saudi Arabia.

The Bank of New York Mellon, Singapore Branch, is subject to regulation by the Monetary Authority of Singapore. For recipients of this information located in Singapore: This material has not been reviewed by the Monetary Authority of Singapore.

The Bank of New York Mellon, Hong Kong Branch (a branch of a banking corporation organized and existing under the laws of the State of New York with limited liability), is subject to regulation by the Hong Kong Monetary Authority and the Securities & Futures Commission of Hong Kong.

The Bank of New York Mellon, Seoul Branch, is a licensed foreign bank branch in Korea and regulated by the Financial Services Commission and the Financial Supervisory Service. The Bank of New York Mellon, Seoul Branch, is subject to local regulation (e.g., the Banking Act, the Financial Investment Services and Capital Market Act, and the Foreign Exchange Transactions Act etc.).

The Bank of New York Mellon is regulated by the Australian Prudential Regulation Authority and also holds an Australian Financial Services Licence No. 527917 issued by the Australian Securities and Investments Commission to provide financial services to wholesale clients in Australia.

The Bank of New York Mellon has various other branches in the Asia-Pacific Region which are subject to regulation by the relevant local regulator in that jurisdiction.

The Bank of New York Mellon, Tokyo Branch, is a licensed foreign bank branch in Japan and regulated by the Financial Services Agency of Japan. The Bank of New York Mellon Trust (Japan), Ltd., is a licensed trust bank in Japan and regulated by the Financial Services Agency of Japan. The Bank of New York Mellon Securities Company Japan Ltd., is a registered type 1 financial instruments business operator in Japan and regulated by the Financial Services Agency of Japan.

The Bank of New York Mellon, DIFC Branch, regulated by the Dubai Financial Services Authority (DFSA) and located at DIFC, The Exchange Building 5 North, Level 6, Room 601, P.O. Box 506723, Dubai, UAE, on behalf of The Bank of New York Mellon, which is a wholly-owned subsidiary of The Bank of New York Mellon Corporation.

Past performance is not a guide to future performance of any instrument, transaction or financial structure and a loss of original capital may occur. Calls and communications with BNY may be recorded, for regulatory and other reasons.

Disclosures in relation to certain other BNY group entities can be accessed at the following website: <https://www.bnymellon.com/emea/en/disclaimers/eu-disclosures.html>.

This document and the statements contained herein, are not an offer or solicitation to buy or sell any products (including financial products) or services or to participate in any particular strategy mentioned and should not be construed as such. This material is intended for wholesale/professional clients (or the equivalent only), is not intended for use by retail clients and no other person should act upon it. Persons who do not have professional experience in matters relating to investments should not rely on this material. BNY will only provide the relevant investment services to investment professionals.

Not all products and services are offered in all countries.

If distributed in the UK, this material is a financial promotion. If distributed in the EU, this material is a marketing communication.

This material, which may be considered advertising, is for general information purposes only and is not intended to provide legal, tax, accounting, investment, financial or other professional advice on any matter. This material does not constitute a recommendation or advice by BNY of any kind. Use of our products and services is subject to various regulations and regulatory oversight. You should discuss this material with appropriate advisors in the context of your circumstances before acting in any manner on this material or agreeing to use any of the referenced products or services and make your own independent assessment (based on such advice) as to whether the referenced products or services are appropriate or suitable for you. This material may not be comprehensive or up to date and there is no undertaking as to the accuracy, timeliness, completeness or fitness for a particular purpose of information given. BNY will not be responsible for updating any information contained within this material and opinions and information contained herein are subject to change without notice. BNY assumes no direct or consequential liability for any errors in or reliance upon this material.

This material may not be distributed or used for the purpose of providing any referenced products or services or making any offers or solicitations in any jurisdiction or in any circumstances in which such products, services, offers or solicitations are unlawful or not authorized, or where there would be, by virtue of such distribution, new or additional registration requirements.

Any references to dollars are to US dollars unless specified otherwise.

This material may not be reproduced or disseminated in any form without the prior written permission of BNY. Trademarks, logos and other intellectual property marks belong to their respective owners.

The Bank of New York Mellon, member of the Federal Deposit Insurance Corporation (FDIC).

© 2024 The Bank of New York Mellon. All rights reserved.