November 2025

FUNDamentals

FUNDamentals – November 2025

FUNDamentals is a periodic digest of news and information specifically for investment funds and investment advisers. In this issue, we highlight some industry trends, 401(k) access to alternative assets, fund liquidity trends (LPs acting as lenders, secondaries, and continuation funds), developments with “reverse CFIUS,” crypto, digital assets and tokenization, and the delay or withdrawal of new AML and other rules affecting private funds.

PODCASTS

Don’t forget to check out our private equity-focused podcast series *PE Pathways*. Recent episodes explore carried interest and upper-tier PE structures, a conversation with former Securities and Exchange Commission (SEC) Chief Economist Dr. Jessica Wachter on investment management rulemaking, private equity trends in U.S. energy, and the current state of play in navigating distressed middle-market M&A.

TRENDS

The pause in new PE deals during the second quarter appears to have eased, with sponsors getting more comfortable with the current business environment and where it is going. Technology deals lead the pack, with B2B holding its own. Carve-outs are also increasingly popular options as large corporations shed non-core assets. Add-ons continue to represent the substantial majority of buyout transaction volume. Sponsor-to-sponsor exits, and sponsor-to-continuation fund exits, lead the pack. Dry powder has started to decline, but not by much given the continued struggles over exits. In the direct lending market, PIK loans continue to gain in popularity. Overall, U.S. PE fund returns have continued to hover a bit below 10% per year, with growth equity funds maintaining a small lead over buyout funds. Exit activity is still low compared to historical norms, with PE managers seemingly focused on selectively selling their strongest assets. This lackluster exit activity (and related lackluster distributions to LPs) has continued to affect fundraising, with institutional LPs trending towards greater allocations to known managers. Middle-market funds ($100 million to $5 billion in capital) appear to be suffering the most from this trend. Private credit funds appear to be doing acceptably well in fundraising, with deployment and quality deal flow the larger issue for such funds. Semi-liquid, evergreen funds continue to remain popular, particularly among LPs with smaller allocation-size ranges such as family offices and high-net-worth individuals, where periodic access to liquidity is more of a requirement.

FUNDRAISING

Sources of Capital - 401(k) Plan Access to Alternative Assets

In August, President Donald Trump signed an executive order titled "Democratizing Access to Alternative Assets for 401(k) Investors," directing the Department of Labor (DOL) and other federal agencies to work together to facilitate greater access to private equity and other alternative assets for participants in 401(k) and other defined-contribution retirement plans. The executive order marks a significant shift in federal policy, signaling a more favorable regulatory environment for alternative asset inclusion in defined-contribution plans.

The executive order directs the DOL and other federal agencies to further the administration's policy to provide every American preparing for retirement with "access to funds that include investments in alternative assets when the relevant plan fiduciary determines that such access provides an appropriate opportunity for plan participants and beneficiaries to enhance the net risk-adjusted returns on their retirement assets." The executive order specifically defines "alternative assets" to include private market investments (including private equity, venture capital and other financial instruments not traded on public exchanges) real estate, digital assets (cryptocurrency), private credit, commodities, interests in projects financing infrastructure projects, and certain lifetime income investment strategies.

The executive order directs the DOL to reexamine its guidance on the inclusion of alternative assets in 401(k) plans and to propose rules, regulations, and other guidance clarifying the duties a fiduciary owes to plan participants under ERISA when deciding to make available to plan participants an asset allocation fund that include investments in alternative assets. In carrying out these directives, the executive order states that the DOL should prioritize actions that may curb ERISA litigation that constrain fiduciaries' ability to apply their best judgment in offering investment opportunities to plan participants.

The executive order does not itself change any existing law regarding the types of investments that may be offered in 401(k) plans. Private fund sponsors who wish to tap into the 401(k) market will need to consider the impact of ERISA's fiduciary requirements and prohibited transaction rules, and address liquidity, transparency, and fee concerns that are unique to the 401(k) market. It remains to be seen whether the DOL and other federal agencies can work together to issue new guidance that will pave the way for more alternative asset investments in 401(k) plans.

For more information, see Retirement Revolution: Expanding Access to Private Credit in 401(k)s . To access the executive order, click here - Democratizing Access to Alternative Assets for 401(k) Investors, Executive Order (August 7, 2025).

What Are "Reasonable Steps" to Verify Accredited Investor Status Under 506(c)?

Under the SEC's new guidance, advisers may now rely without independent investigation on high minimum investment amounts ($200,000 for individuals and $1 million for legal entities) and written representations from the investor that it is an accredited investor and its minimum investment amount is not financed by any third party for the specific purpose of making its investment. If the adviser has no actual knowledge of any facts that indicate otherwise, then it may reasonably conclude that it has satisfied the "reasonable steps" requirement under Rule 506(c). For more detailed information, see SEC

Broadens Guidance on Accredited Investor Verification and Recent SEC Corp/Fin Interpretations of Interest.

LIQUIDITY

Private Fund LPs as Lenders (Including NAV Lenders)

The trend of private fund LPs lending to funds in which they are LPs continues, as many institutional LPs continue to experience greater capacity on the debt side of their balance sheets. These new lending relationships are spanning traditional subscription line-of-credit financings to net asset value (NAV) facilities. There are still skeptics among the institutional LP base, however, particularly with respect to NAV facilities, with most appreciating the value of an additional asset-based lending tool for the GP's arsenal while at the same time feeling uncomfortable about a GP borrowing against an entire portfolio of assets.

For more information, see Private Credit Funds as Key Lenders in Subscription and NAV Lines and Evolving Dynamics in Subscription Line Lending: The Role of Private Credit Funds and Traditional Banks.

Secondaries and Continuation Funds

Overall, the current state of the secondaries market remains strong. Throughout 2025, we have seen a robust market as sponsors continue to look for viable exit opportunities and, if anything, that trend appears to be accelerating. Overall, the secondaries market continues to be viewed as a vital tool for portfolio management and liquidity management — for LPs as well as sponsors. Heading into 2026, we anticipate that there will be a lot of activity, particularly in sectors like industrials and healthcare in part because of the large number of policy changes coming from the current U.S. administration. In addition, there appears to be an increasing appetite for multi-asset continuation funds as well as GP-led secondaries.

For more on the current state of the continuation fund market, see The Evolving Continuation Vehicle.

TAX ROUND UP

Podcasts

Tax podcasts are now available at this link.

In particular, see the recent three-part series on REITs at The Tax Blueprint: Structuring Funds, Joint Ventures, and REITs. Episodes included "Key Advantages of Using REITs by Funds for Foreign Investors", "Key Advantages of Using REITs by Funds for Tax-Exempt Investors", and Key Advantages of Using REITS by Funds for US Individuals and GP Stakeholders."

Domestically Controlled REITS

In October, the Treasury Department and Internal Revenue Service issued taxpayer-friendly Proposed Regulations that would revoke the current "look-through rule" for domestic C corporation shareholders to determine whether a REIT is "domestically controlled". By revoking this rule and effectively reverting to prior law, the Proposed Regulations restore the ability of taxpayers to structure REIT investments to take advantage of the domestically controlled REIT exception to FIRPTA. For more detailed information, see Taxpayer Favorable Proposed Regulations Would Repeal the "Domestic Corporation Look-Through Rule" for Domestically Controlled REITs.

COMPLIANCE / REGULATORY / LEGISLATIVE UPDATES

Treasury's Outbound Investment Security Program ("Reverse CFIUS")

The Outbound Investment Security Program (OISP), sometimes called "reverse CFIUS," has been in effect since earlier this year. We're seeing some trends emerge in how fund managers are dealing with it and how the government is enforcing it. There are also strong signals that it's likely to expand in scope.

But first, a quick reminder of what the OISP does. As the moniker "reverse CFIUS" suggests, the OISP regulates outbound investment for national security purposes in a way that's analogous to CFIUS's role in the inbound investment context. But there are more differences than there are similarities between CFIUS and the OISP. The OISP is much narrower in scope, and only applies if there is: 1) a U.S.-linked investor, 2) a China-linked target, and 3) a target engaged in AI, semiconductors, quantum technologies, or supercomputers. But each of these elements is complex, and the OISP is broader than many have understood in its first few months in operation.

For example, using offshore fund structures may not cut off the OISP's jurisdiction. U.S. persons still have an obligation to cause their controlled foreign entities to comply with the OISP, U.S. persons are prohibited from "knowingly directing" prohibited transactions by foreign entities, and U.S. investors have compliance expectations when they participate in foreign funds.

Similarly, the OISP can reach investments outside of China. It covers investments in non-Chinese entities that are owned or controlled by Chinese persons, or that have equity or governance rights in a Chinese entity that constitutes a significant part of the non-Chinese entity's business.

The OISP can arise in normal deals and does not just cover obscure high-tech businesses. In particular, all sorts of companies these days develop AI systems that could potentially fall within the scope of the OISP, including making significant modifications to third-party models. In short, the OISP is broader than many assume, and gets very complex when you dig into these details.

So why does it matter? Well, as we've seen in recent years with CFIUS, Treasury is going to be proactive when it comes to enforcement of the OISP, monitoring the trade and financial press and using other sources (including classified intelligence) to identify noncompliance. U.S. investors have already found themselves on the receiving end of Treasury's outreach looking into potential violations. For fund managers that have made noncompliant investments, an array of consequences can result, including fines, imprisonment, and forced divestment. Even mistakes can lead to public enforcement action with monetary penalties and, perhaps more significant, reputational damage — investors or partners may scrutinize you more closely going forward if you have a prior violation of the OISP on the record.

Diligence and OISP clauses are also becoming normal features of cross-border transactions. So you need to have a baseline understanding to be able to manage the process well.

Where do things go from here? Well, love it or hate it, the OISP is likely to expand. The Trump team made clear that was their goal in the early days of this administration, when they were considering adding to the list of covered sectors biotechnology, hypersonics, aerospace, advanced manufacturing, directed energy, "and other areas implicated by the PRC's national Military-Civil Fusion strategy." They were also looking at closing some of the existing exemptions that can apply in certain cases for PE, VC, and other funds, as well as greenfields and other contexts.

These changes to the OISP haven't happened yet, but keep your ears to the ground. They could come in the form of executive action, or new legislation. The leading proposal on the Hill, the bipartisan Foreign Investment Guardrails to Help Thwart (FIGHT) China Act, would expand the OISP in a variety of ways. The EU, UK, and others, under U.S. pressure, are moving forward with similar regimes.

For more information, see Locke Lord QuickStudy: Final Rule Issued Regarding U.S. Outbound Investments in Certain Chinese National Security Technologies and Products.

Crypto, Digital Currency, Tokenization

To say that there is a lot going on in the world of crypto, digital currency and tokenization right now would be an understatement. See:

The Future of Bank-Fintech Collaborations in Digital Finance

Navigating the New Frontier of Digital Assets and Tokenization

Crypto's Capital Markets Revolution: Insights From GSR's Josh Riezman

Institutional Adoption, Tax Challenges, and What's Next for Crypto in the US — Insights from KPMG's Tony Tuths

Unlocking Crypto's Future: Insights From Coinbase's John D'Agostino

SEC and CFTC Staff Issue Joint Statement on Digital Asset Commodity Transactions

The SEC Withdraws a Slew of Proposed Rules…

Over the summer, the SEC formally withdrew several of its proposals for rules, including proposed rules on Predictive Data Analytics, Safeguarding (aka the new custody rule), Cybersecurity Risk Management; Enhanced Disclosures About Environmental, Social and Governance (ESG) Investment Practices; Outsourcing; Best Ex amendments, and more. If the SEC decides to pursue any of these topics in the future, it will issue new proposals. For more information, see our Q2 2025 Investment Management Update.

FinCEN Delays Investment Adviser AML Rule Until 2028, Signals Revisions to Scope

In July, FinCEN announced its intention to delay the effective date of the rule imposing anti-money laundering obligations on registered investment advisers and exempt reporting advisers from January 1, 2026, until January 1, 2028. The announcement also indicated that FinCEN is actively re-evaluating the scope and substance of the rule, raising the possibility of further modifications before implementation. For more information, see FUNDamentals – FinCEN Delays Investment Adviser AML Rule Until 2028, Signals Revisions to Scope.

Corporate Transparency Act – Where Does It Still Apply?

As noted in our prior issue, earlier this year FinCEN issued an interim final rule that removed the requirement for U.S. companies and U.S. persons to report beneficial ownership information (BOI) to FinCEN under the Corporate Transparency Act (CTA). The updated rule also included changes for entities formed outside of the U.S., but registered to do business in the U.S. There is a new exemption to the beneficial ownership reporting rules for "foreign pooled investment vehicles," including AIVs or feeder entities organized outside the U.S. Under the exemption for foreign pooled investment vehicles, if an entity is organized outside of the U.S. but is operated or advised by a bank, credit union, broker or dealer in securities, investment company or investment adviser, or venture capital fund adviser, the entity only needs to provide the BOI for non-U.S. persons who exercise "substantial control" over the entity. This means that a foreign pooled investment vehicle that is substantially controlled only by U.S. persons is also not required to file beneficial ownership reports.

As to what qualifies as "substantial control," the updated rule does not address positions advanced in the multi-firm white paper regarding the CTA and its specific application to private funds, so this remains a fact-specific analysis.

For more detailed information, see Practical Implications of the Interim Final Rule of BOI Reporting Under the CTA, and CTA Significantly Amended by Interim Final Rule.

Thank you to our Troutman Pepper Locke contributors:

- Saba Ashraf, Partner | Saba.Ashraf@troutman.com
- Lori A. Basilico, Partner | Lori.Basilico@troutman.com
- Akshay Belani, Partner | Akshay.Belani@troutman.com
- Tom Bohac, Partner | Tom.Bohac@troutman.com
- Stephanie Pindyck Costantino, Partner | Stephanie.Costantino@troutman.com
- Joseph V. Del Raso, Partner | Joseph.DelRaso@troutman.com
- Jay Dubow, Partner | Jay.Dubow@troutman.com
- Deborah J. Enea, Partner | Deborah.Enea@troutman.com
- Rob Evans, Partner | Rob.Evans@troutman.com
- John P. Falco, Partner | John.Falco@troutman.com
- John M. Ford, Partner | John.Ford@troutman.com
- Robert A. Friedel, Partner | Robert.Friedel@troutman.com
- Genna Garver, Partner | Genna.Garver@troutman.com
- Joshua S. Gelfand, Partner | Joshua.Gelfand@troutman.com
- Thomas Gray, Partner | Thomas.Gray@troutman.com
- Kristopher P. Henman, Partner | Kris.Henman@troutman.com
- Aresh Homayoun, Partner | Aresh.Homayoun@troutman.com
- Peter E. Jeydel, Partner | Peter.Jeydel@troutman.com
- P. Thao Le, Partner | Thao.Le@troutman.com
- Jeremy I. Levy, Partner | Jeremy.Levy@troutman.com
- Daniel W. McDonough, Partner | Daniel.McDonough@troutman.com
- Dave Meyers, Partner | Dave.Meyers@troutman.com
- Ben Mittman, Partner | Ben.Mittman@troutman.com
- Ethan G. Ostroff, Partner | Ethan.Ostroff@troutman.com
- Thomas D. Phelan, Partner | Thomas.Phelan@troutman.com
- Ghillaine Reid, Partner | Ghillaine.Reid@troutman.com
- Michael K. Renetzky, Partner | Michael.Renetzky@troutman.com
- Thomas M. Rose, Partner | Thomas.Rose@troutman.com
- Brian G. Rose, Partner | Brian.Rose@troutman.com

- Christopher A. Rossi, Partner | Christopher.Rossi@troutman.com
- Jenelle M. Simmons, Partner | Jennie.Simmons@troutman.com
- Paul A. Steffens, Partner | Paul.Steffens@troutman.com
- James W. Stevens, Partner | James.Stevens@troutman.com
- Jonathan W. Young, Partner | Jonathan.Young@troutman.com
- Stanley Keller, Counsel | Stanley.Keller@troutman.com
- Terrance James Reilly, Counsel | Terrance.Reilly@troutman.com
- Heather M. Stone, Counsel | Heather.Stone@troutman.com
- P. Thomas Bright, Associate | Thomas.Bright@troutman.com
- Joseph T. Cataldo, Associate | Joseph.Cataldo@troutman.com
- Thomas D. Dockery, Associate | Thomas.Dockery@troutman.com
- Theodore D. Edwards, Associate | Theodore.Edwards@troutman.com
- DeJuawn "DJ" Griffin, Associate | DJGriffin@troutman.com
- Ryan Last, Associate | Ryan.Last@troutman.com
- Carlin A. McCrory, Associate | Carlin.McCrory@troutman.com
- Ryan M. Michalko, Associate | Ryan.Michalko@troutman.com
- Matthew A. Ramsey, Associate | Matthew.Ramsey@troutman.com
- James L. Severs, Associate | James.Severs@troutman.com
- Taylor M. Williams, Associate | Taylor.Williams@troutman.com
- Barbara H. Grugan, Senior Regulatory Compliance Specialist | Barba.Grugan@troutman.com

If you have other topics you would like us to explore in future editions, please reach out to our November 2025 FUNDamentals editor Heather Stone at heather.stone@troutman.com