quinn emanuel
quinn emanuel urquhart & sullivan, llp

Continuation Funds Come of Age

Process, Conflicts, and the First Wave of Disputes

Continuation funds have evolved from a crisis-era workaround into a dominant segment of the GP-led secondaries market.[1] They are emerging as a standard part of the toolkit because their structure solves a real problem. A sponsor can hold one or more promising assets beyond the original fund term, provide legacy investors with liquidity, and offer new investors exposure to identified assets with an operating history. Yet the same feature that makes the transaction efficient creates its central challenge: the sponsor influences both sides of the sale.[2]

Continuation transactions by their nature present potential conflicts. The sponsor controls the asset, manages both vehicles, and often can shape the valuation, disclosures, and choices presented to investors. That does not mean the structure is improper; well-executed continuation vehicles can create substantial value. But they may not provide the same price discovery as a full third-party sale, and instead rely on procedural safeguards to make the transaction tantamount to an arm's length deal. The objective is therefore not to eliminate the conflict, but to expose and manage it through robust disclosure, credible valuation support, meaningful investor choice, and documented approvals. Recent enforcement and litigation show what can happen when investors dispute whether those safeguards were meaningful.

---

1 *See* Kobi Kastiel & Yaron Nili, The Rise of Private Equity Continuation Funds, 172 U. Pa. L. Rev. 1, 18–22 (2024) (explaining that challenging market conditions can constrain traditional exits; that continuation funds permit sponsors to retain assets, provide liquidity to legacy investors, and raise additional capital; and that continuation funds constitute the predominant form of GP-led secondary transaction).

2 See Matt Levine, *Buy Low, Sell to Yourself*, Bloomberg Opinion (Dec. 4, 2025, 7:10 PM UTC) (using a stylized carried-interest example and the allegations in the ADIC–EMG dispute to illustrate how continuation transactions may reset carry, create conflicting incentives over the transfer price, and permit different presentations of an asset to legacy and incoming investors).

I. Continuation Funds Move into the Mainstream

Traditional private-equity funds usually have a finite life of roughly eight to twelve years.[3] The sponsor acquires and develops assets, then seeks an exit through a sale, an initial public offering, or another liquidity event. That model works best when the fund term and the market cycle align. But that's not always the case.

Continuation funds emerged as one answer. A sponsor transfers one or more assets from an older fund into a new vehicle that it also manages. Existing investors can usually sell for cash or roll some or all of their interests into the new fund. New investors provide the capital needed to buy out sellers and, in many transactions, to support the company's next phase of growth.

The structure can serve each constituency. The sponsor can retain an asset it knows well, deploy fresh capital, and pursue growth it believes remains unrealized. Selling investors receive liquidity, while investors that elect to roll retain exposure to future upside. New investors can diligence a seeded asset or portfolio rather than commit to a blind pool.

Continuation funds can be particularly useful when the investment horizon of the legacy fund no longer matches the expected growth trajectory of the assets.[4] A sponsor may believe that substantial value remains to be created even though the legacy fund has reached the point at which investors expect distributions. The pressure is not limited to the fund's stated term: sponsors seeking to raise successor funds may also need to demonstrate realizations and improve distributed-to-paid-in capital, or DPI.[5] A continuation transaction can provide that liquidity while bringing in investors willing to underwrite the next phase of ownership and allowing the sponsor to continue executing its strategy. The resulting price may be supported by bids from secondary investors, valuation analysis, a fairness opinion, or some combination of those measures. But potential objectors may claim that without a full sale process, the continuation transaction cannot reveal what the asset would command in an open-market sale.

The structure can be used for a single portfolio company or a group of assets. A single-asset vehicle may preserve exposure to a company with a long runway for growth. A multi-asset vehicle can offer incoming investors diversification, reduce asset-specific risk, and make the transaction easier to place with secondary buyers.[6]

These advantages have pushed the structure into the mainstream. Fund-manager-led secondary transactions reached approximately $106 billion in 2025, up from $70 billion in 2024, and continuation vehicles accounted for most of that activity.[7] The growth reflects more than market stress. Sponsors increasingly use continuation funds for performing companies that have further

---

[3] Institutional Ltd. Partners Ass'n, *ILPA Model Limited Partnership Agreement (Whole of Fund Version): Term Sheet Summary* 2 (2020), https://ilpa.org/wp-content/uploads/2020/07/ILPA-Model-LPA-Term-Sheet-WOF-Version.pdf

[4] Interview with Private Equity Professional (July 25, 2026) (notes on file with author).

[5] *See* Kobi Kastiel & Yaron Nili, The Rise of Private Equity Continuation Funds, 172 U. Pa. L. Rev. 1, 4, 42 (2024).

[6] Interview with Private Equity Professional (July 25, 2026) (notes on file with author).

[7] Evercore Private Capital Advisory, *2025 Secondary Market Highlights* 2–4 (Jan. 2026).

room to grow and may appreciate materially over the next several years—not simply for distressed assets trapped in aging or "zombie" funds.[8]

II. One Transaction, Several Interests

A continuation transaction brings together selling investors who generally want the highest available price and liquidity, incoming investors who want an attractive entry point, and any investors that elect to roll, who care about both the transfer price and the economics of the new vehicle. By design, the sponsor typically manages both sides of the transfer and may have economic interests in each. It may crystallize existing carried interest, establish a new carried-interest opportunity, continue earning management fees, and invest additional capital alongside the incoming investors.

The transfer price is therefore especially consequential. It determines the proceeds paid to selling investors and generally becomes the continuation vehicle's acquisition basis—the starting point from which the new vehicle's returns, and the sponsor's opportunity to earn a new round of carry, are measured.[9] The stated discount to the net asset value may not capture the full economics. Incoming investors may also negotiate a reference date that precedes closing and deferred funding terms, allowing them to price an asset at an earlier NAV but fund later after the asset has appreciated.

A competitive secondary process, third-party valuation analysis, LPAC review, and clear disclosure can discipline the transaction and create a record against which the sponsor's decisions may later be evaluated. These measures may not completely eliminate the conflict or converts the transaction into an arm's-length sale. Their function is to expose the potential conflicts, market test the sponsor's assumptions, and permit investors to decide with adequate information and sufficient time.

***Next Up, CV-Squared Transactions*:** The market is now testing a second generation of structures. In a CV-to-CV transaction, an asset held by one continuation vehicle moves into another. The commercial logic is familiar: the asset may still need time, capital, or a better exit market. The second vehicle can provide liquidity to investors whose time horizon has ended while allowing others to remain invested. The governance questions also repeat, and may compound. A second rollover requires another valuation, another allocation of fees and carry, and another decision about who receives which information. The structure remains relatively new, but it is likely to become more common as first-generation continuation funds mature.[10]

---

[8] Interview with Private Equity Professional (July 25, 2026) (notes on file with author). Kastiel and Nili at 17 (citing Madeleine Farman, *PE Zombie Funds Reinvented for 'Crown Jewel' Strategy* (Sept. 13, 2021), https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/pe-zombie-funds-reinvented-for-crown-jewel-strategy-66278877). *See generally* MSCI, Night of the Living Fund: The Rise of Zombie Private Equity (May 11, 2025) (explaining that zombie private-equity funds are rising because distributions remain low and assets are being held past their intended life cycle); Mark Maurer, *Private-Equity Assets Stuck in 'Zombie Funds' Are at a Record High*, Wall St. J. (July 21, 2026), https://www.wsj.com/finance/investing/private-equity-assets-stuck-in-zombie-funds-are-at-a-record-high-4dbd01be (reporting that the net asset value of U.S. private-equity assets held in funds at least ten years old reached a record $348.5 billion at the end of 2025—3.5 times the 2015 level—as higher borrowing costs and buyers' resistance to peak-era valuations slowed exits and left funds operating beyond their intended terms).

[9] Interview with Private Equity Professional (July 25, 2026) (notes on file with author).

[10] Preeti Singh, Accel-KKR Raises $1.9 Billion for Novel 'CV-Squared' Transaction, Bloomberg Law (Aug. 8, 2025, 11:00 AM), https://news.bloomberglaw.com/private-equity/accel-kkr-raises-1-9-billion-for-novel-cv-squared-transaction; Emily Lai, CV-Squared: What Are the Risks of PE's Latest Liquidity Solution?,

III. A Regulatory Framework in Transition: The 2023 Private-Fund Rules and Their Vacatur

Continuation-funds are not subject to a dedicated federal regulatory regime; they remain governed by the Advisers Act's general fiduciary and antifraud framework.

***Nat'l Ass'n of Priv. Fund Managers v. SEC*, 103 F.4th 1097(5th Cir. 2024):** The SEC's one attempt at direct regulation, the Private Fund Advisers rules adopted under the Advisers Act on August 23, 2023, would have required standardized quarterly statements, an annual audit for each private fund, and a fairness or valuation opinion for any adviser-led secondary transaction, plus restrictions on conflicted activities and side-letter transparency. The Fifth Circuit vacated it in full in June 2024.

The panel concluded that "[p]rivate funds are pooled investment vehicles that are (as implied) private, not part of the public securities market", and unlike mutual funds, "generally not accessible to non-professional investors." Op. at 2. The industry is substantial: the number of private funds grew from roughly 32,700 to 101,000, and their value from $9.8 trillion to $26.6 trillion, between 2012 and 2022. Op. at 3. The Investment Company Act and the Advisers Act are "sister statutes," enacted simultaneously as Titles I and II of the same 1940 legislation, op. at 19, yet "Congress clearly chose *not* to impose the same prescriptive framework on private funds," op. at 20, because "[i]nvestment vehicles that remain private and available only to highly sophisticated investors have historically been understood not to present the same dangers to the public markets." Op. at 17 (quoting *Goldstein v. SEC*, 451 F.3d 873, 875 (D.C. Cir. 2006)). For the same reason, an adviser's fiduciary duty runs to the fund itself, "not to the fund's investors." Op. at 4–5.

The SEC invoked two statutory hooks. On Section 211(h), added by Dodd-Frank, the panel began from the premise that "statutory terms are generally interpreted in accordance with their ordinary meaning," op. at 18, then held the SEC's own argument proved too much: Section 913 repeatedly addresses "retail customers"—at least thirty times—and the panel rejected the SEC's argument that Congress's use of "investors" in subsection (h) broadened the provision beyond its retail-customer context. The court was unpersuaded that Congress meant to switch terms "in the middle of a provision otherwise devoted" to retail investment, and thus, the Commission exceeded its statutory authority in relying on that section." Op. at 22.

On Section 206(4)'s antifraud rulemaking authority, the Commission relied on *United States v. O'Hagan*, 521 U.S. 642, 673 (1997), for the proposition that it may regulate acts "not themselves fraudulent" if "reasonably designed to prevent" fraud, op. at 22–23. The petitioners responded that a preventive rule must bear a sensible fit with the statutory text and a close nexus to the statute's antifraud purposes. The panel agreed, calling the SEC's antifraud rationale "pretextual," op. at 23: the agency "never explained how the Final Rule would prevent fraud," and its own data showed misconduct by approximately "0.05% of advisers." Op. at 23.

On the theory that inadequate disclosure is itself deceptive, the panel held a failure to disclose "cannot be deceptive" without a "duty to disclose," op. at 24, and that the duty runs to the fund, not each investor, since the Advisers Act "concerns itself with investment

PitchBook (July 11, 2025), https://pitchbook.com/news/articles/cv-squared-what-are-the-risks-of-pes-latest-liquidity-solution; Greg Norman et al., *Mainstream, Not Marginal: What's Next for Continuation Funds*, Skadden (Apr. 8, 2026), https://www.skadden.com/insights/publications/2026/04/insights-april-2026/mainstream-not-marginal.

advisers, who, as fiduciaries, have a duty to disclose material information to clients," op. at 24–25 (quoting *SEC v. Washington Inv. Network*, 475 F.3d 392, 404 (D.C. Cir. 2007)): "[i]f the person or entity controlling the fund is not an 'investment adviser' to each individual investor, then a fortiori each investor cannot be a 'client' of that person or entity." Op. at 25 (quoting *Goldstein v. SEC*, 451 F.3d 873, 880 (D.C. Cir. 2006)). Because the rulemaking was unauthorized under either provision, the court held "no part of it can stand." Op. at 25.

The decision removed the transaction-specific federal rule. It did not repeal the Advisers Act's existing antifraud, fiduciary, compliance, reporting, recordkeeping, or examination provisions. Any future enforcement theory must, however, fit within an existing statutory provision and account for the court's distinction between the fund as the adviser's client and the fund's individual investors.

In May 2026, the SEC's Enforcement Director said the agency remained "attuned to potential risks relating to liquidity, fees, valuations, and conflicts of interest" in private funds.[11] Reuters later reported that SEC staff were examining certain continuation vehicles, while emphasizing that scrutiny is not evidence of wrongdoing and does not necessarily lead to an enforcement action.[12]

IV. Enforcement and Private Disputes

- ***American Infrastructure Funds***: The SEC's 2023 settlement against American Infrastructure Funds, LLC illustrates the continuing reach of the Advisers Act's existing antifraud and fiduciary framework. According to the Commission, AIM transferred toll-bridge assets held by the GEN I Funds, which were nearing the end of their initial ten-year terms, into New American Bridges Fund, L.P. ("NABF"), a newly formed AIM-advised fund with a twelve-year term. In exchange for the transfer, the GEN I Funds, through the Bridge Portfolio Company, became an investor in NABF and received a limited-partner interest, along with a commitment to ownership of the majority of NABF's carried interest and any management fees AIM earned from NABF in excess of operating expenses. AIM separately stood to receive additional compensation from NABF while serving as adviser to both sides of the transaction.

    - The Commission found that the transaction "effectively locked up" the GEN I Funds' investors in the bridge investment for an additional eleven years. Although AIM notified the funds' advisory committee and limited partners of its plan to raise capital for additional bridge acquisitions through NABF, it did not fully disclose the extended duration, its additional compensation, or the conflicts created by its role as adviser to both the GEN I Funds and NABF. Nor did AIM give the GEN I Funds or their limited partners an opportunity to consent to or decline the transfer, an offer to liquidate their interests, or another means of exiting at the end of the GEN I Funds' initial terms. *Id.*

    - That conduct, together with AIM's other undisclosed dealings, supported the Commission's finding that AIM willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8. The order makes clear that willfulness in this context requires only that the adviser knew what it was doing—not that it

11 David Woodcock, Dir., Div. of Enf't, U.S. Sec. & Exch. Comm'n, Remarks at the MFA Legal & Compliance 2026 Conference (May 13, 2026), https://www.sec.gov/newsroom/speeches-statements/woodcock-remarks-mfa-legal-compliance-2026-conference-051326.

12 *US SEC Probes Popular Type of Private Equity Fund as It Steps Up Industry Scrutiny*, Reuters (June 24, 2026), https://www.reuters.com/legal/government/us-sec-probes-popular-type-private-equity-fund-it-steps-up-industry-scrutiny-2026-06-24.

intended to deceive investors or knew that its conduct violated the law. The underlying antifraud provisions likewise do not require scienter: Section 206(2) may be violated through simple negligence, and scienter is not required under Section 206(4) or Rule 206(4)-8. *Id.* at 6–7. The Commission imposed a cease-and-desist order, censured AIM, and required it to pay $373,368 in disgorgement, $72,092 in prejudgment interest, and a $1.2 million civil penalty. *Id.* at 7–8.

- Practical lesson: Liability under these provisions turns on the adequacy of the adviser's conduct and disclosures, not on proof that the sponsor intended to deceive investors or knew that its disclosures were legally deficient.

- ***ADIC v. EMG*:**[13] In December 2025, the Abu Dhabi Investment Council and related entities sought an injunction in aid of arbitration against The Energy & Minerals Group. The verified complaint alleged that EMG was trying to "force a conflicted sale" of fund assets into an EMG-sponsored vehicle "to reap a massive benefit for themselves at the expense of ADIC and the other investors."[14] The complaint challenged valuation, disclosure, and the advisory-board approval process. It alleged that EMG supplied different information to different board members and pursued a "divide-and-conquer strategy" after an initial vote failed. *Id.* The complaint's allegations include that: (1) when Advisory Board members asked EMG why it refused to let them discuss the CV Transaction with each other, EMG admitted: "we are the only ones that truly have the facts and all relevant and accurate information,"; (2) EMG told the Advisory Boards that Ascent's short inventory life justified a depressed price and that an IPO was "inactionable," while telling prospective CV investors in the same window that Ascent was a "premier asset with competitive advantages" with a far longer inventory life; (3) Only three of the funds' 43 Advisory Board members voted to approve the CV Transaction at the October 30 meeting, yet EMG later told investors it had secured "the requisite majority approval"; (4) John Raymond personally holding securities in Fund portfolio companies senior to the equity for which he owes fiduciary duties; (5) EMG claimed that transferring virtual-meeting hosting rights was "technologically impossible," used to block a private Advisory Board caucus; (6) and EMG relabeling its own "risked case" as a "base case" only after ADIC caught the discrepancy. Those were allegations, not findings. EMG disputed the claims and maintained that the transaction had been reviewed with advisers. The parties paused the transaction for arbitration. The Chancery action later ended without a public merits ruling, and EMG announced that the $1.5 billion vehicle closed in March 2026.

- ***Dailane v. H.I.G.*:** involves a cross-fund transfer that resembles a continuation transaction, although the parties did not necessarily use that label. Dailane Investments alleged that H.I.G. Capital and an executive participated in moving a portfolio company between affiliated H.I.G.-managed funds at an unfair price. The complaint described the action as one seeking recovery for "aiding and abetting a breach of fiduciary duty" in connection with the affiliated sale.[15] H.I.G.'s position, as reflected in the public record, relies in part on an independent fairness opinion and LPAC approval. No court has reached the merits. In October 2025, the district court dismissed H.I.G. Capital LLC as a defendant on jurisdictional grounds while claims against an individual defendant remained. H.I.G. and

---

[13] *Abu Dhabi Investment Council Co. PJSC v. Energy & Minerals Group LP C.A.* No. 2025-1389-NAC (Del. Ch.)

[14] Verified Complaint for Preliminary Injunction in Aid of Arbitration ¶ 1, *Abu Dhabi Inv. Council Co. PJSC v. Energy & Mins. Grp. LP*, C.A. No. 2025-1389-NAC (Del. Ch. Dec. 3, 2025).

[15] Prentice, Kopecki & Binnie, *supra* note 2; *The Energy & Minerals Group Closes on a $1.5 Billion Ascent Resources Continuation Vehicle*, Energy & Minerals Group (Mar. 25, 2026), https://emgtx.com/the-energy-minerals-group-closes-on-a-1-5-billion-ascent-resources-continuation-vehicle/; Complaint at 1, *Dailane Invs. Ltd. v. H.I.G. Capital, LLC*, No. 1:25-cv-20568-RKA (S.D. Fla. Feb. 6, 2025).

that defendant appealed. The Eleventh Circuit appeal was fully briefed in May 2026 and remains pending.[16] The case has therefore not yet established whether any of these safeguards, valuation advice, advisory-committee approval, and disclosure, failed.

Public lawsuits likely capture only part of the dispute landscape. Fund agreements often direct conflicts to arbitration. Analysis Group, for example, has disclosed its work in a confidential JAMS arbitration between private investment funds concerning continuation-fund practices, transfers and assignments, governance, and contractual obligations. The parties and outcome were not identified.[17]

V. The Role of Process and Disclosure

Continuation funds are likely to remain an important part of the exit market, even though their structure inherently creates potential conflicts. Their durability will therefore depend on whether potential conflicts are disclosed and managed in a manner that investors can evaluate and a regulator, arbitrator, or court can later reconstruct.

Industry standards are moving in that direction. ILPA's 2026 Continuation Fund Disclosure Template consolidates the information investors typically need for a roll-or-sell decision.[18] It creates a common starting point for comparing price, process, sponsor economics, conflicts, and election terms. Academic proposals go further. Professors Kobi Kastiel and Yaron Nili, cited throughout this article, recommend standardized summary disclosures, minimum review periods, broader investor participation in approvals, and greater use of a true status quo rollover. They also propose giving cash-out investors a role in selecting the fairness-opinion provider and allocating some transaction costs to the sponsor.[19]

Sponsors will continue to use continuation funds because the structure can create real value. Investors and regulators will continue to ask whether the price, disclosures, sponsor economics, and choices presented to investors were fair. Well-structured transactions address those questions before they become disputes by creating a contemporaneous record that the potential conflicts were understood, the valuation was tested, and investors had a meaningful choice.

***

16 *Docket, Dailane Invs. Ltd. v. H.I.G. Capital, LLC*, No. 25-14213 (11th Cir. docketed Dec. 1, 2025).

17 *Private Investment Fund Dispute Regarding a Continuation Fund*, Analysis Group, https://www.analysisgroup.com/insights/cases/private-investment-fund-dispute-regarding-a-continuation-fund/ (last visited July 25, 2026).

18 Institutional Limited Partners Ass'n, *Continuation Fund Disclosure Template* (Jan. 27, 2026), https://ilpa.org/resources-tools/resource-library/continuation-fund-disclosure-template/.

19 Kastiel & Nili, *supra* note 3, at 1656–66.

If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to reach out to:

Andrew Rossman
Partner
New York
andrewrossman@quinnemanuel.com, 212-849-7282

John Quinn
Partner
Los Angeles
johnquinn@quinnemanuel.com , 213-443-3200

Brian Timmons
Partner
Los Angeles
briantimmons@quinnemanuel.com, 213-443-3221

Paulina Slagter
Associate
Silicon Valley
paulinaslagter@quinnemanuel.com, 650-801-5000

To view more memoranda, please visit www.quinnemanuel.com/the-firm/publications/
To update information or unsubscribe, please email updates@quinnemanuel.com