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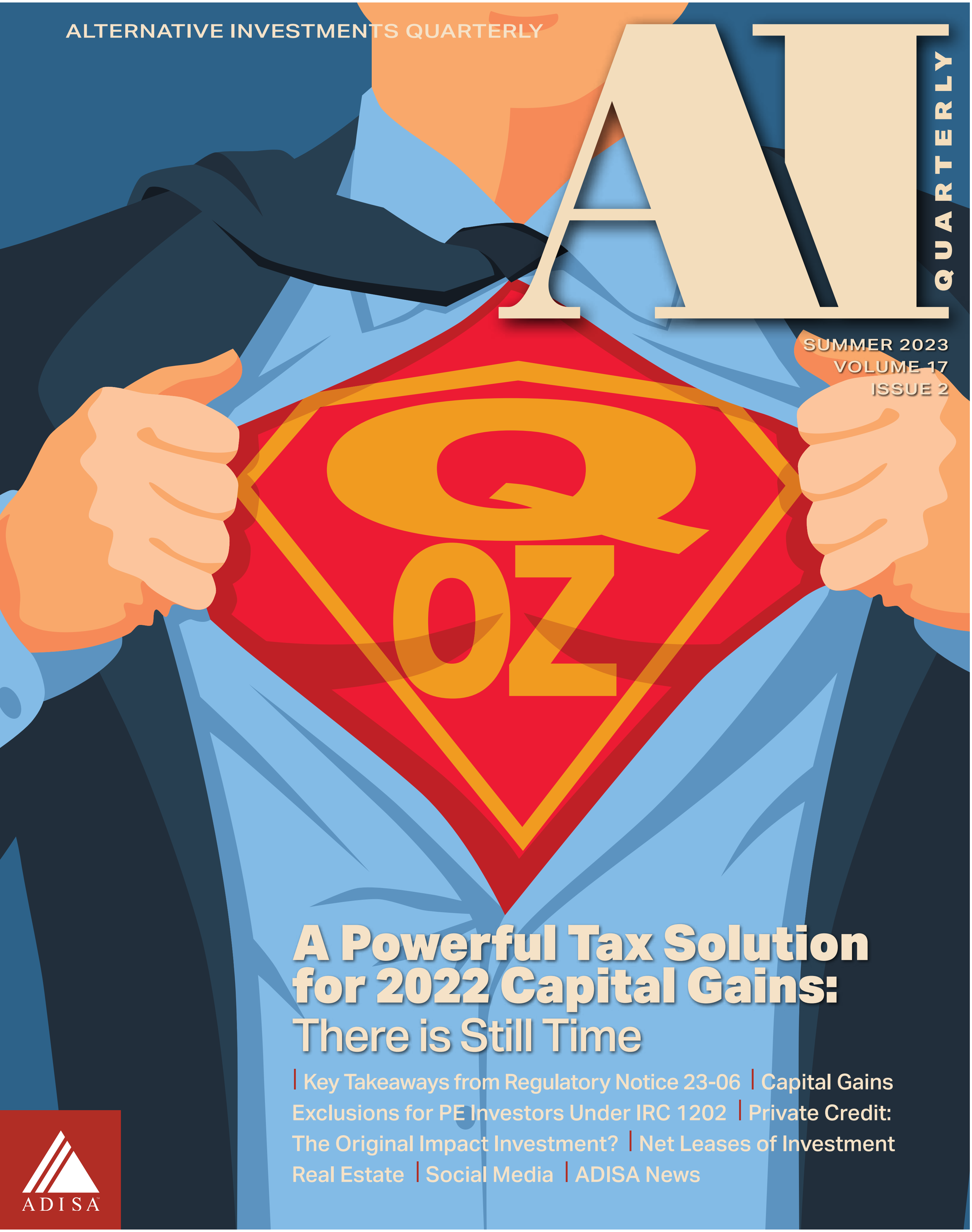

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ADISA

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Executive Director's Letter

By John Harrison, *DBA*

Executive Director, ADISA

Every Season, Every Session

Before taking a look at ADISA's fantastic growth, we interrupt to bring an important announcement about this summer's event and our keynoter, Keith Black. Dr. Black will address the effects of artificial intelligence (the other "A.I.") on the investment space and alts. In speaking with him, I am both astonished and heartened by the news he will bring: the information explosion likely to result will blur the separation of public and private investing in several ways. Tune in (at our Research and Due Diligence Forum) to find out more.

We now return you back to our regularly-scheduled column describing ADISA's ongoing programming:

We're coming off a banner year and still climbing. Our events, publications, web presence, board, committees, advocacy work. and financial health continue to soar. That's all great and wonderful, and here's a quick primer under the hood as to why we are privileged to serve this industry so well.

We understand what a trade association is supposed to do. We are essentially subsidized by the US taxpayer (as are all tax-exempt groups) to enable a particular segment of industry, and we do not generate profits that can inure to individuals. In other words, we're in it for the good of the group, and no one "owns" ADISA except ADISA members. Our members elect a board of directors to govern the organization in accordance with state law and our legally recognized policies. None of those folks gets paid for their efforts, by the way. It's a volunteer endeavor.

That's' the way it officially works, and the way it unofficially or casually works is even more impressive: this spirit of goodness for the group permeates our processes with checks and balances. We strive to make sure all carry their own weight and no individual runs off with the show. We work to measure the needs of about 5,000 individual members and close to 1,000 separate companies as they connect with each other to move their businesses forward. These companies depend on us to make needed business and political connections while we provide important education at the same time.

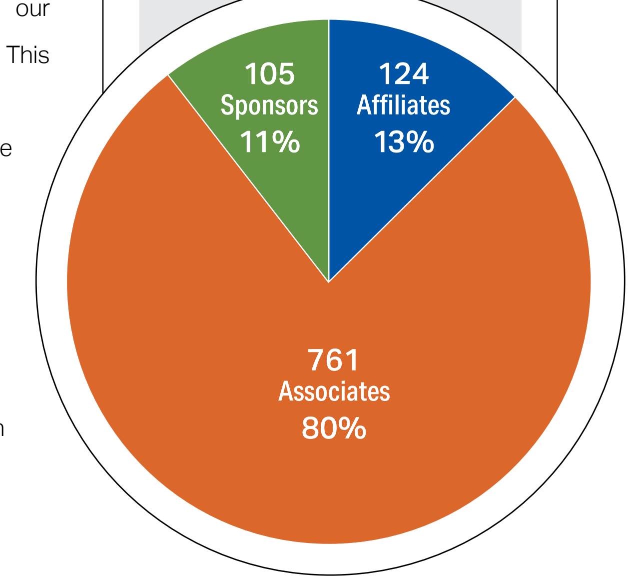
To keep expanding such success stories, we also must have a way of bringing in new companies. We do this by special invitations and passes for new firms to our marketplace. Just like the clustering of car dealerships benefits consumers, the more investment product brought to our gatherings the greater the exposure and education to our members. This prospers everyone involved.

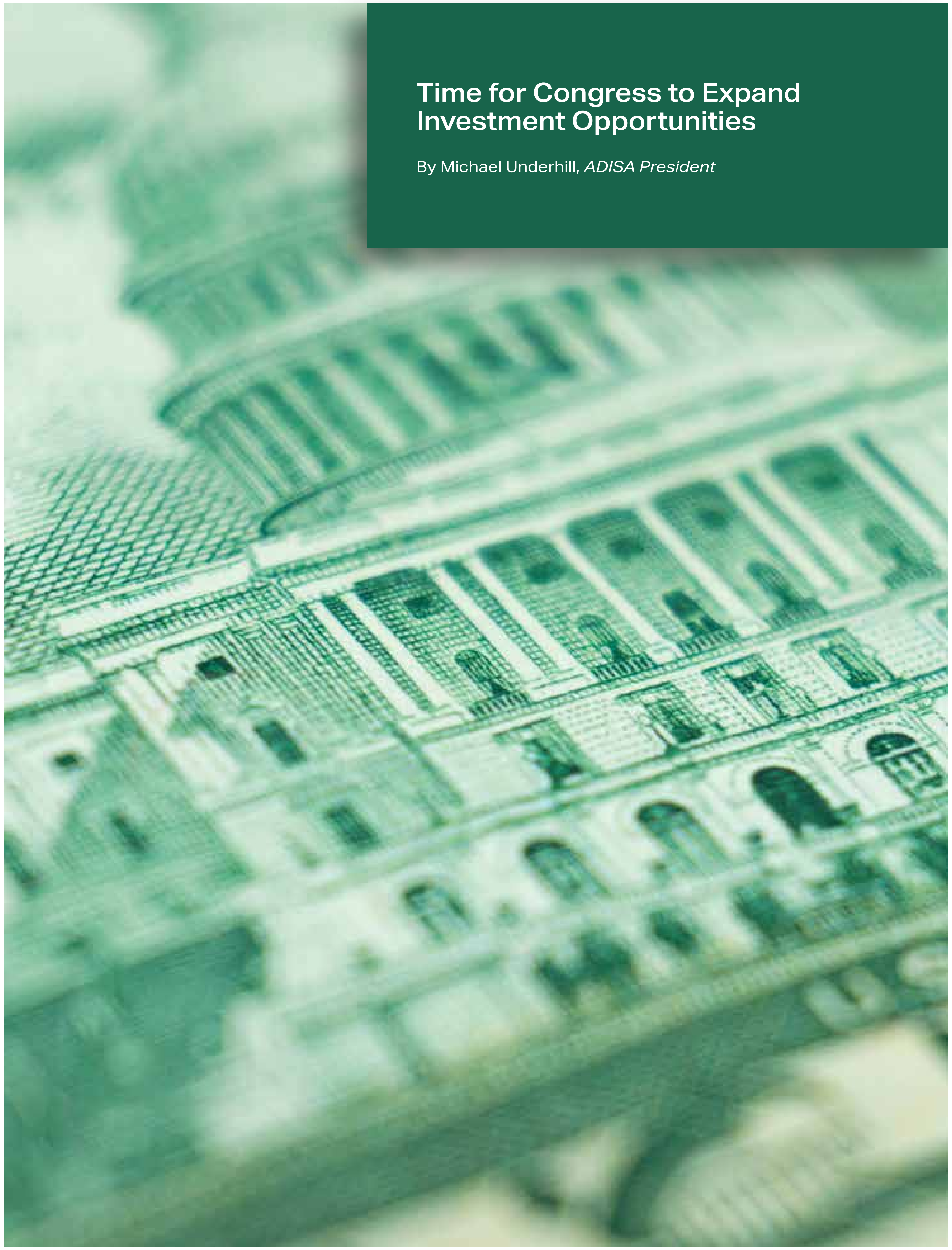
Every year ADISA undergoes an independent audit to make sure our finances and processes stay in such good shape. In preparation for that audit, we make sure our events categorize each attendee and member properly. It's no easy exercise, and we're constantly working at it. ADISA's Board of Directors quarterly reviews our staff operations, committee work, advocacy efforts, and, of course, event programming. Like our constituent companies, we have a lot going on every season—and every session.

John P. Harrison, ***DBA, CAE***
ADISA Executive Director

Member Firms

2018	744
2019	828
2020	884
2021	924
2023Q2	990





Time for Congress to Expand Investment Opportunities

By Michael Underhill, *ADISA President*

The U.S. House of Representatives, in a rare demonstration of bipartisan amity, overwhelming passed three bills this summer that would expand access to private capital markets by broadening the definition of accredited investor: the Fair Investment Opportunities for Professional Experts Act, the Accredited Investor Definition Review Act, and the Equal Opportunity for All Investors Act.

The bills now await action in the U.S. Senate.

The overwhelming support in the House for an expanded accredited investor definition sets up an interesting showdown with SEC chairman Gary Gensler, whose agency under his leadership is widely expected to propose an update this year to the financial thresholds in the accredited investor definition that would further restrict access to private investment opportunities.

By law, investment in private markets is restricted to those Americans who meet the narrow definition of "accredited investor," which generally only allows Americans with a net worth of at least $1 million or annual income in excess of $200,000. The value of an investor's primary residence, where most American's net worth can be found, was excluded from the accredited investor definition in 2011, which barred access to private securities from millions of Americans.

The private markets provide the largest access to capital to innovative companies whose funding is largely derived from the very pool of accredited investors that the SEC is expected to seek to limit. According to SEC reports, nearly $4.5 trillion was raised in the private markets between July 1, 2021 and June 2022. Initial public offerings among publicly traded companies accounted for just $126 billion during the same period. Clearly, private securities offerings are the essential fuel to the American economy and are key to our continued economic health and competitive edge. Tightening the accredited investor definition would strangle the flow of essential capital to the economy and the innovative companies that rely on it.

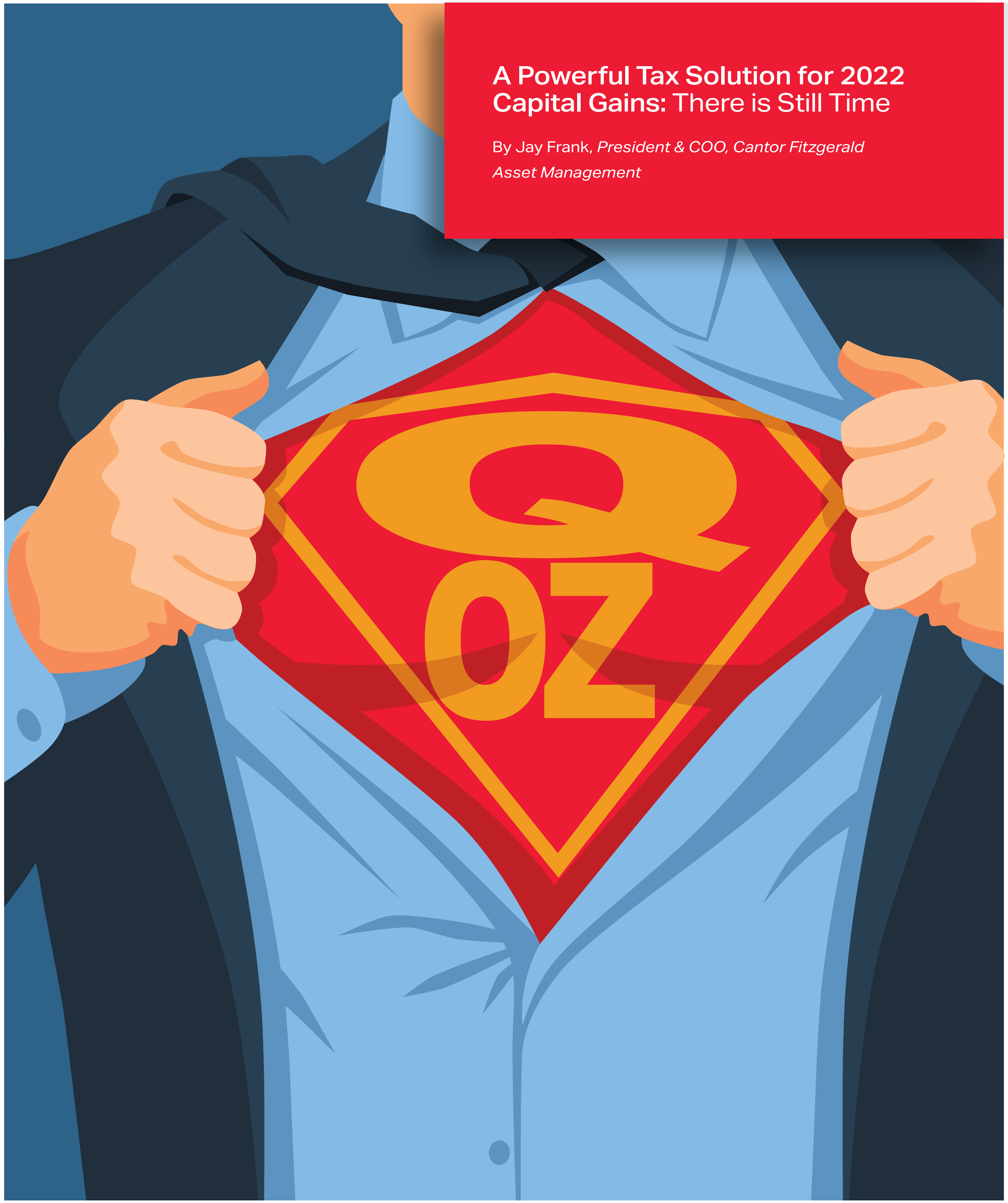
Opportunity and innovation are two of the most inspiring attributes of America, yet Gensler's animosity to the private markets and expressed desire to further restrict access fly in the face of these historic national underpinnings. Instead, investment opportunities that lead to generational wealth creation and national economic growth should be made available to all Americans, not restricted by an arbitrary financial calculation that limits such opportunity and the flow of capital to private firms that fuel our national economy.

To be blunt, the accredited investor definition, which is tied primarily to wealth, is an arbitrary and unfair hurdle to wealth creation. It allows the rich to get richer, while restricting the ability of middle- and lower-income Americans to climb the financial ladder. This paternalistic approach that limits a person's ability to govern their own investing decisions is objectionable on multiple levels and is antithetical to the underpinnings of our nation—in the "land of opportunity," our governmental institutions should not work to thwart opportunity.

Since the Securities Act of 1933, the government has supported arbitrary regulations to "protect" people from large monetary losses by restricting their investment in higher-yield assets. However, preventing investors from such opportunities isn't necessarily protection, and it can rob younger companies from much needed capital. Restricting investment bars investors from building wealth. While government-imposed restrictions serve to curb risk, by the same token, it limits reward.

The SEC and other government entities need to temper the concept that middle- and lower-income people require continual protection from investment risk. Americans are more than capable of determining their own levels of investment risk. Blocking investment opportunities simply because people aren't rich enough by some arbitrary threshold smacks of paternalism, while blocking key opportunities for Americans to build wealth.

ADISA urges the Senate to move in concert with their colleagues in the House to broaden the accredited investor definition and provide greater investment opportunities that allow for wealth creation. ▲



A Powerful Tax Solution for 2022 Capital Gains: There is Still Time

By Jay Frank, *President & COO, Cantor Fitzgerald Asset Management*

Cantor Fitzgerald, with over 12,500 employees, is a leading global financial services firm at the forefront of financial and technological innovation and has been a proven and resilient leader for 78 years. Cantor Fitzgerald is a preeminent investment bank serving more than 5,000 institutional clients around the world, recognized for its strengths in fixed income and equity capital markets, investment banking, prime brokerage, commercial real estate and infrastructure. Cantor Fitzgerald is one of the 25 primary dealers authorized to transact business with the Federal Reserve Bank of New York.

Individuals with sizeable capital gains are looking for proactive solutions to address their taxable event. **The Qualified Opportunity Zone Program ("QOZ Program")** made available under the 2017 Tax Cuts and Jobs Act is a tax advantaged investment opportunity continuing to attract significant capital from high net worth and institutional investors. The QOZ Program was created to encourage investment in designated communities across the U.S. by providing certain tax incentives in return for committing long-term capital to these communities through investment vehicles known as Qualified Opportunity Funds ("QOFs"). The program allows investors with K-1 partnership gains and Section 1231 property as far back as January 1, 2022, and in some limited situations, gains from blown 1031 exchanges back to July 6, 2021, to still participate in the QOZ Program.

What are Qualified Opportunity Zones ("QOZs")? QOZs are designated census tracts throughout the United States that have been selected by state governors and certified by the U.S. Department of Treasury for inclusion in the QOZ Program. Each state governor was allowed to nominate up to 25 percent of the state's qualifying census tracts for inclusion in the QOZ Program. In total, there are over 8,700 QOZs spread across all 50 states, D.C., and several U.S. territories.

Investors, which can be individuals and certain entities, may receive a combination of potential tax benefits when short and/or long-term capital gains are invested in a QOF and held for the required timeframe. A QOF is an investment vehicle organized as either a partnership or corporation that **invests at least 90% of its assets in Qualified Opportunity Zone Property ("QOZ Property").** QOZ Property includes a wide variety of real estate and new or existing businesses, including commercial real estate, housing,

Investors, which can be individuals and certain entities, may receive a combination of potential tax benefits when short and/or long-term capital gains are invested in a QOF and held for the required timeframe.

The Qualified Opportunity Zone Program ("QOZ Program") made available under the 2017 Tax Cuts and Jobs Act is a tax advantaged investment opportunity continuing to attract significant capital from high net worth and institutional investors. The QOZ Program was created to encourage investment in designated communities across the U.S. by providing certain tax incentives in return for committing long-term capital to these communities through investment vehicles known as Qualified Opportunity Funds ("QOFs").

infrastructure, and start-up businesses located in QOZs. QOFs can hold single or multiple assets. The investments made by QOFs are intended to drive economic growth and job creation in the communities in which the investments are made.

The potential tax benefits apply to federal income taxes and are available in most states (see specific guidelines for appropriate state of residence). **The primary tax benefits fall into two categories: Deferral and Elimination.**

1. *Deferral:* If a taxpayer invests the capital gain from the sale of a qualifying asset into a QOF **within the qualifying timeframe,** taxes on such proceeds may be deferred until the earlier of December 31, 2026 or when the QOF investment is sold.
2. *Elimination:* Investors who hold their QOF investment for at least ten years pay no tax on its appreciation upon sale due to a step-up in basis, regardless of the size of the potential profit, as far out as 2047. In addition, the step-up in basis eliminates any depreciation recapture tax that would otherwise be owed upon sale.

What gains are eligible? Amongst other requirements, a gain is eligible for deferral if it is from the sale or exchange of property with an unrelated party (not more than 20 percent common ownership) and the gain is treated as a capital gain (short-term or long-term) for federal income tax purposes, including gains from:

- Stocks, bonds, options, hedge funds
- Primary and secondary residences, vacation property
- Businesses, machinery, commercial buildings and other investment property
- Land, livestock, art, wine, automobiles, crypto currency

The period to invest gains into a QOF and be eligible for the applicable tax benefits is generally 180 days from the date the gain would be realized for federal income tax purposes. However, certain gains qualify for additional time.

K-1 Partnership Gains and Section 1231 Property Gains

The **final regulations** issued in December of 2019 provides additional flexibility for Section 1231 Property (real property used in a trade or business) and K-1 partnership gains. The final regulations together with IRS Notice 2021-10 now provide that **Section 1231 property gains and K-1 partnership gains (assuming a calendar-year partnership) realized on or after January 1, 2022, have until September 11, 2023 to complete an investment in a QOF that is eligible for QOZ Program tax benefits.**

What next? Investors who have filed 2022 tax returns or paid taxes on 2022 gains may still be able to complete a QOF Investment. In addition, investors with blown 1031 real estate exchanges as far back as July 6, 2021, may also still be eligible to participate. Due to the complexities of the QOZ Program, individuals considering an investment in a QOF should consult a qualified professional for financial, tax, and legal advice. ▲

Key Takeaways From Regulatory Notice 23-08 ("RN 23-08")

By David Sengstock, *Mick Law*

Thirteen years ago, FINRA issued Regulatory Notice 10-22 ("RN 10-22"), wherein it reminded its members of their obligations to conduct reasonable investigations of the issuers and the securities they recommend in private offerings made under Regulation D ("Reg D").

As times change, so do the recommendations of FINRA as to the best practices when conducting effective due diligence on both issuers and their products sold under Reg D. RN 23-08 highlights a member's critical role, when recommending private placements, *"in performing reasonable investigations under the reasonable basis obligations of Reg BI, the suitability rule and caselaw interpreting the antifraud provisions of the federal securities laws."* RN 23-08 also examines *"member obligations applicable to private placement activity irrespective of whether recommendations are involved"* (e.g. filing requirements, duty to investigate and acts upon "red flags"). As stated in RN 23-08, FINRA members may consider the information in RN 23-08 in *"developing new, or modifying existing, practices that are reasonably designed to achieve compliance with relevant regulatory obligations based on the member's size and business model."*

KEY Takeaway 1

Reasonable Basis Obligations And What Constitutes a "Reasonable Investigation" Are Both Case Specific

Both FINRA's reasonable basis obligation and the SEC's Reg BI care obligation require that the member undertake reasonable diligence, care and skill to understand the nature of the recommended security or investment strategy involving a security, as well as the potential risks, rewards and costs of the recommended security or investment strategy. Reg BI also requires that the member have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers based on that understanding.

What constitutes a reasonable investigation is case specific. The amount and nature of the investigation required depends, among other factors, *"upon the nature of the recommendation, the role of the broker in the transaction, its knowledge of and relationship to the issuer, and the size and stability of the issuer."* A newer, less established issuer may require a more thorough investigation. As always, the presence of "red flags" should alert the member to conduct further inquiry.

RN 10-22 explained that a member should conduct a reasonable investigation of: (i) the issuer and its management; (ii) the business prospects of the issuer; (iii) the assets held by or to be acquired by the issuer; (iv) the claims being made; and (v) the intended use of proceeds of the offering. Along with the above, RN 23-08 recommends that members should also consider addressing, where relevant:

- The regulatory and litigation history of the issuer and its management, including the criminal, disciplinary, regulatory, and litigation history associated with the issuer, its management, and any affiliate that may be materially involved in the issuer's business, as well as the issuer's compliance with the bad actor provisions under Rule 506(d)–(e);
- New material developments, including events that are or should be reasonably known to the member during an offering, for example, when there are ongoing legal proceedings or regulatory inquiries involving the issuer;
- Transactions or payments between an issuer and the issuer's affiliates involving offering proceeds, including the terms of the transaction between the related parties and whether an arrangement presents a material conflict of interest for the issuer and, if so, the sufficiency of disclosure; and
- Representations of past performance of the issuer, its sponsor, or its manager to identify any such representations that may be misleading or exclusively selected based on positive results (or "cherry-picking"). This is particularly important when the representations pertain to specific prior issuances.

KEY Takeaway 2

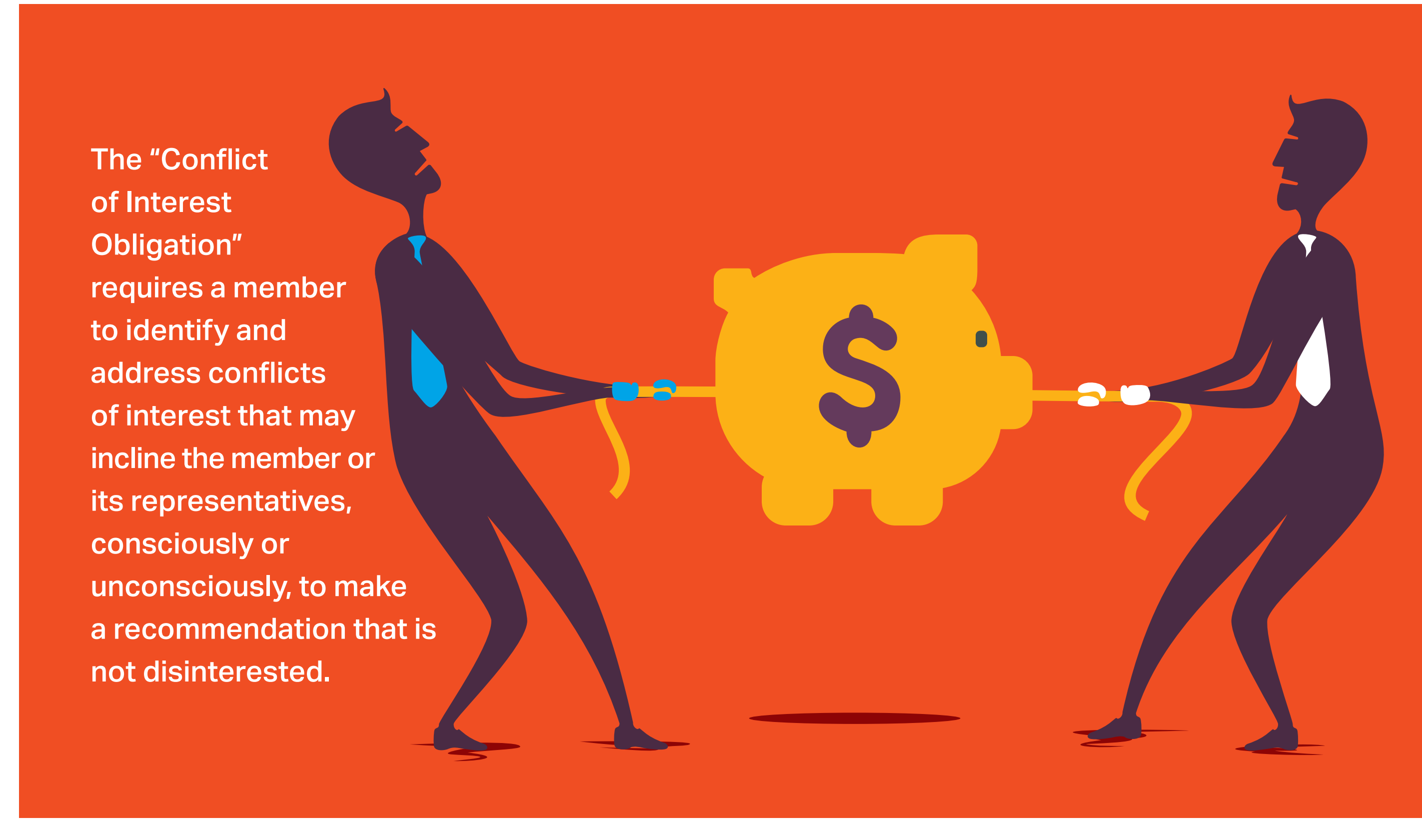
Complex Products Require Heightened Scrutiny

Members and their financial professionals generally should apply heightened scrutiny to whether a risky or complex product is in the retail customer's best interest. Among the relevant considerations when recommending such a product is whether the retail customer "has an identified, investor-specific trading objective that is consistent with the product's description in its prospectus or offering documents, and/or has the ability to withstand heightened risk of financial loss." In addition, a member should consider "reasonably available alternatives" offered by the member as part of having a "reasonable basis to believe" that the recommendation is in the best interest of the retail customer. For complex products (including private placements), this involves considering whether lower risk or less complex options can achieve the same investment objectives.

KEY Takeaway 3

Reg BI's Component Obligations Of Disclosure, Conflict of Interest And Compliance Are In Addition To Its Care Obligations

The "Disclosure Obligation" requires a member, prior to or at the time of the recommendation, to provide the retail customer, in writing, full and fair disclosure of all material facts relating to the scope and terms of the relationship with the retail customer and all material facts relating to conflicts of interest that are associated with the recommendation. Material facts relating to the scope and terms of the relationship with the retail customer that must be disclosed include, but are not limited to: (i) "the capacity in which



the broker-dealer is acting; (ii) the material fees and costs that apply to the retail customer's transactions, holdings and accounts; and (iii) the type and scope of services provided to the retail customer, including any material limitations on the securities or investment strategies involving securities that may be recommended to the retail customer. Importantly, disclosure of conflicts of interests alone does not satisfy the obligation to act in the retail customer's best interest."

The "Conflict of Interest Obligation" requires a member to identify and address conflicts of interest that may incline the member or its representatives, consciously or unconsciously, to make a recommendation that is not disinterested. The member must: (i) identify and disclose, or eliminate, all conflicts of interest associated with recommendations; (ii) identify and mitigate any conflicts of interest associated with recommendations that create an incentive for the member's representatives to place their interest or the interest of the member ahead of the retail customer's interest; (iii) identify and disclose any material limitations (e.g., a limited product menu) placed on the securities or investment strategies involving securities that may be recommended to a retail customer and any conflicts of interest associated with such limitations and prevent such limitations and associated conflicts of interest from causing the member or representative to make recommendations that place the interest of the member or the representative ahead of the retail customer's interest; and (iv) identify and eliminate sales contests, sales quotas, bonuses and non-cash compensation that are based on the sale of specific securities or specific types of securities within a limited period of time. Extra consideration should be given when members recommend to retail customers private placements of securities issued by an affiliated company or by a company that may share a close relationship with the member.

Finally, under the "Compliance Obligation," a broker-dealer must establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI. SEC staff guidance suggests, among other things, "that firms should consider developing procedures outlining the due diligence process for complex or risky financial products to help ensure that these products are assessed by qualified and experienced firm personnel, and should consider establishing procedures requiring appropriate training and supervision to help ensure financial professionals understand the features, risks and costs of a complex financial product". The guidance further suggests that "members should consider documenting the process and reasoning behind particular recommendations of complex or risky products, including consideration of less complex alternatives, and how it fits within the retail customer's broader goals or strategy."

KEY Takeaway 4

Look For Misleading Information In PPMs Or Other Offering Documents

If a PPM or other offering document presents information that is not fair and balanced or that is misleading, then the member that assisted in its preparation may be found to have violated FINRA Rule 2210. Sales literature concerning a private placement that a member distributes generally constitutes a communication by that member with the public, whether or not the member assisted in its preparation.

KEY Takeaway 5

Continued Importance Of Member Documentation And Supervision

A member's process for conducting a reasonable investigation of a private placement should include attention to the unique facts and circumstances of the offering. Maintaining an updated due diligence file, for example, when recommending securities in follow-on offerings by the same issuer or sponsor in order to have a reasonable basis to recommend the current offering. Consistent with previous guidance in RN 10-22, members often retain records documenting both the process and results of the updated investigation. To maintain adequate supervision of its private placement reasonable investigations under FINRA Rule 3110, or to meet the requirements of Reg BI's Compliance Obligation, members' procedures might include: (i) ensuring a checklist is reasonably designed to address the private placement, requirements for filing and related documentation, assignment of staff responsible for performing functions and tasks, and evidence of supervisory approval for the reasonable investigation process; (ii) assigning responsibility for the member's private placement reasonable investigation and compliance with filing requirements to a specific individual or team and conducting targeted, in-depth training about the firms' policies, process and filing requirements; (iii) creating a system that alerts responsible individual(s) and supervisor(s) about upcoming and missed filing deadlines; (iv) requiring documentation of the process, completeness, and results of its investigations and retention of documents collected through due diligence; (v) implementing standards for the reasonable investigation process that specifically address certain types of offerings sold by the member; and (vi) taking steps to ensure that the member's sale of an offering does not precede the completion of its reasonable investigation.

A member's process for conducting a reasonable investigation of a private placement should include attention to the unique facts and circumstances of the offering. Maintaining an updated due diligence file, for example, when recommending securities in follow-on offerings by the same issuer or sponsor in order to have a reasonable basis to recommend the current offering.

In conclusion, the position of Mick Law has always been to consider and report any facts and circumstances germane to RN 23-08's stated "additional" considerations, as well as those stated in RN 10- 22, within our sponsor and/or offering level due diligence opinions. In many cases, issuers will update their Mick Law sponsor opinion every 24 months with many issuers, as part of their internal best practices, updating annually based on new financial reports, changes in performance, and business plan modifications. Many issuers we review also syndicate new offerings on a no less than annual basis which allows our firm to provide updates related to RN 23-08's additional considerations. Of course, every opinion we produce contains a litigation, disciplinary and regulatory section that would cover RN 23-08's considerations on such as stated above. RN 23-08's additional considerations highlights the need for you to push for annual, if not semiannual, updates to those offerings still in the fund raising stage. We believe that as a law firm, our obligations and duties to you, as our client, along with the qualifications and expertise of our attorneys, paralegals, real estate underwriters and engineers, significantly outweigh what others can provide in the third-party due diligence space. ▲

Capital Gains Exclusion for PE Investors Under IRC 1202: How it Works and Where it Makes Sense

By Bradford Updike, *LLM, JD, Mick Law, PC*
Justin Reich, *JD, Seedbrite Ventures, LLC*
David Cohen, *JD, Seedbrite Ventures, LLC*

Mick Law P.C. is a specialty firm comprised of full-time and of-counsel attorneys who each possess a concentrated area of expertise and in-depth knowledge. In addition to their law school credentials, the attorneys also have professional and educational credentials, including MBAs, LLMs, and securities industry licenses. While providing a broad range of legal services to our valued clients, the firm focuses on two principal areas of practice: broker-dealer and register investment adviser representation and real estate finance.

Seedbrite Ventures partners exclusively with independent broker-dealers and register investment advisors to provide their accredited investors with direct access to venture-backed portfolio companies, sourced by leading professional venture managers.

As transactional advisers and taxpayers, we are all aware of the most prominent capital gains deferral and exclusion provisions offered by the Internal Revenue Code of 1986, as amended ("**Code**" or "**IRC**"), which include like kind exchanges of real estate (IRC 1031), programs that invest capital into blighted business areas known as Qualified Opportunity Zones (IRC

Despite these well-known tax provisions, however; there is a provision of the Code that many have not heard of, which is IRC 1202. **This provision offers a significant income tax break to investors who invest in qualified stock of certain venture capital ("VC") and early-stage businesses.** This article will discuss certain income tax consequences associated with IRC 1202(c), which provides income tax forgiveness on long-term capital gains realized from investments in qualified small business stock ("**QSBS**").

Historical Background

IRC 1202 was introduced as part of the Small Business Job Protection Act of 1996. The primary objective of this provision was to encourage investment in small businesses. The provision offers tax incentives to investors who hold QSBS for a specific period. The initial version of IRC 1202 allowed investors to exclude 50% of the gain from the sale of QSBS held for more than five years. However, the provision has undergone several changes over the years.

In 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act modified IRC 1202 to allow investors to exclude 100% of the gain from the sale of QSBS held for more than five years. This change was made to encourage investments in small businesses during the Great Recession. The 100% exclusion was further extended in 2015 under the Protecting Americans from Tax Hikes (PATH) Act, which made the provision permanent.

> IRC 1202 was introduced as part of the Small Business Job Protection Act of 1996. The primary objective of this provision was to encourage investment in small businesses.

How IRC 1202 Works

Investors who hold QSBS for more than five years can exclude a portion of their gains from the sale of the stock. The amount of the exclusion depends on the date the stock was acquired.

IRC 1202 provides a tax incentive for investors who invest in QSBS. QSBS is stock issued by a domestic C corporation that meets certain requirements. The issuing company must have gross assets of less than $50 million at the time of issuance, and at least 80% of its assets must be used in an active trade or business. Investors who hold QSBS for more than five years can exclude a portion of their gains from the sale of the stock. The amount of the exclusion depends on the date the stock was acquired. For stock acquired after September 27, 2010, investors can exclude 100% of their gains from the sale of QSBS held for more than five years. For stock acquired before that date, the exclusion is 50%.

There is also a cap on the amount of gain that can be excluded. The cap is the greater of $10 million or 10 times the taxpayer's basis in the QSBS. This means that if an investor holds QSBS with a basis of $1 million for more than five years and sells the stock for $20 million, the maximum amount of gain that can be excluded is $10 million.

Despite the compelling tax incentive for QSBS issuing companies, please note that there are several rules that must be strictly followed to qualify for the capital gains forgiveness. These requirements are set forth within the following paragraphs.[1]

1. **Stock is not QSBS unless acquired from a C corporation through an original issuance and sold while the issuer is a C corporation.** Although this requirement seems straightforward, it can present exit complications in cases where a buyer requires an exit transaction to be structured as an asset sale. As such, and while we are aware of VC oriented private equity programs out there seeking to differentiate themselves through QSBS focused investments,[2] please note that it is possible that some or many of the portfolio companies' exits from such programs will fall outside of this requirement.

2. **Any stockholder, other than a C corporation, can qualify for claiming IRC 1202's benefits, including individuals, trusts, partnerships, and S corporations so long as they are the recipient of the QSBS during its initial issuance.**

3. **QSBS must be acquired directly from the subject corporation for cash, property, or services.** Property contributed for QSBS may include intellectual property contributed by the founders. Property (non-cash consideration) is also deemed to be contributed by equity owners upon the conversion of a limited liability company to a corporation, or upon an exchange of membership interests for QSBS. Stock issued by a corporation as a grant to an employee or director also qualifies as QSBS, so long as the stock is vested when issued or the recipient makes an IRC 83(b) election. On a related note, QSBS transferred upon the death of the stockholder, or transferred as a gift during the stockholder's life, retains its status as QSBS in the hands of the recipient.

4. **QSBS can be voting or nonvoting common or preferred stock.** Nonvested stock (subject to substantial risk of forfeiture under IRC 83) is not treated as "stock" until it vests unless the recipient makes an IRC 83(b) election. Also, stock options and warrants do not qualify as stock for federal income tax purposes.

5. **If QSBS is sold before a stockholder achieves a five-year-holding period, it is possible to reinvest the proceeds in replacement QSBS under IRC 1045.** QSBS can also be exchanged for QSBS or non-QSBS as part of an IRC 351 nonrecognition exchange or in an IRC 368 reorganization. *The holding period for QSBS starts on the date of issuance.*

6. **Subject to certain limited exceptions, QSBS must be acquired through an original issuance and sold by the original stockholder.** The exceptions to this rule include (i) gifts made during the original stockholder's life, (ii) a transfer upon such stockholder's death, or (iii) a distribution by a partnership to a partner.

As a result of the original issue requirement, note that S-Corporation stock will not automatically convert to QSBS if its election is terminated and it becomes a C-Corporation as a result. Thus, to get the advantage of the QSBS capital gain exclusion, the converted S-Corporation would need to issue new stock to its shareholders for cash, services, or other property (or the S-Corporation would contribute assets to a newly formed C-Corporation in an IRC 351 transaction in exchange for QSBS and hold such shares for its shareholders until a sale is effectuated).

7. **For an issuance of stock to qualify as QSBS, the $50 million gross assets test must be passed immediately after issuance.** For purposes of satisfying this rule, "**gross assets**" include cash plus the adjusted income tax basis of other assets on the subject corporation's balance sheet.

8. **The "active trade or business requirement" has several components.** First, the issuer of the QSBS must be a C-Corporation both when the stock is issued and when it is sold. Second, at least 80% (by value) of the corporation's assets must be used in trades or businesses. Third, not more than 10% (by value) of the corporation's assets can consist of stock or securities in corporations which are not subsidiaries. Finally, not more than 10% (by value) of the corporation's assets can consist of real estate not used in the active conduct of a trade or business. The corporation must have also satisfied these requirements for "substantially all" of the QSBS' holding period (i.e., which has been suggested as 80-90% of such holding period).

9. **The 80% Test requires the issuer's "trades or businesses" to be focused within certain sectors not precluded by the statute.** On this point, the 80% Test has two components. First, the corporation must be primarily engaged in one or more business activities that are not excluded businesses under IRC 1202(e)(3). Second, at least 80% of the corporation's assets (considering the assets of any majority-owned corporate subsidiaries) must be used in business activities that are qualified trade or business activities. IRC 1202(e)(3) defines "**qualified trade or business**" to be any trade or business **other than**:

- any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting,

Even if the corporation's principal activities qualify, it is still necessary to make sure that the corporation continuously satisfies the 80% Test. This requires monitoring whether at least 80% of the corporation's assets (by value) are used in qualified business activities, which exclude assets used in non-qualifying activities, investment assets, non-qualifying real estate, and cash not required for working capital needs. The activities of a majority-owned subsidiary are considered in administering the 80% Test.

athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees;

- any banking, insurance, financing, leasing, investing, or similar business;
- any farming business (including the business of raising or harvesting trees);
- any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A (e.g., oil/gas exploration), and
- any business of operating a hotel, motel, restaurant, or similar business.

In view of the many restrictions in place with respect to the disqualified business activities, it begs the question as to what types of businesses can qualify for the IRC 1202 capital gains exclusion. Despite the restrictions that apply to finance, oil/gas, banking, insurance, farming, real estate, and personal professional services, there are many sectors of the U.S. economy whose activities fall within the scope of permitted commerce. Among the permitted activities are manufacturing, technology, research and development, and software design and development.

Despite the restrictions that apply to finance, oil/gas, banking, insurance, farming, real estate, and personal professional services, there are many sectors of the U.S. economy whose activities fall within the scope of permitted commerce.

Addressing whether a corporation is engaging in an excluded activity is often the most significant issue associated with QSBS planning or with vetting the eligibility of a stockholder to claim the gain exclusion. Even if the corporation's principal activities qualify, it is still necessary to make sure that the corporation continuously satisfies the 80% Test. This requires monitoring whether at least 80% of the corporation's assets (by value) are used in qualified business activities, which exclude assets used in non-qualifying activities, investment assets, non-qualifying real estate, and cash not required for working capital needs. The activities of a majority-owned subsidiary are considered in administering the 80% Test.

How Wide is the Reach of IRC 1202?

Although IRC 1202 offers a significant tax break to QSBS investors, most retail investors don't have access to it. There are several reasons for this. First, IRC 1202 applies only to QSBS. Not all small businesses issue QSBS, and not all QSBS meet the requirements of IRC 1202. To be eligible for IRC 1202, a company must have gross assets of less than $50 million at the time of issuance, and at least 80% of its assets must be used in an active trade or business. Most broker-dealer or RIA retail investors are unlikely to directly come across QSBS opportunities that meet these requirements. Additionally, QSBS is not widely traded, as most QSBS is held by the founders and early investors of a company.

As a result of the above, it has been difficult for retail investors to acquire QSBS on an intelligent basis. Notwithstanding, we note that Seedbrite Ventures, LLC ("Seedbrite," Buffalo, New York) recently launched a $20 million private equity fund designed to take advantage of the income tax benefits associated with IRC 1202. The Seedbrite fund was designed to provide retail investors with diversified exposure to early stage opportunities, while also enabling them to achieve significant tax savings from the capital gains exclusion previously mentioned. Subject to cautious underwriting and due diligence, we believe that the economic climate is ripe for other private equity sponsors to follow suite in the future with similar structured offerings (i.e., due to the tax savings and the overall need for early-stage companies to access private capital in these times).

PE/VC Capital Raising Climate

Following a year of incredibly high deal count and volumes, Q3 2022 is when Momentum ended for the private equity ("**PE**") sector.[3] That state of declining interest rates and expanding valuations was shattered by the fastest Federal Reserve tightening cycle in 40-plus years. PE borrowing rates are now at twice the levels that they stood at the start of 2022 and are well into the double digits.

PE Activity – All Classes

Year	Deal Count	Deal Values
2019	6,019	$759 billion
2020	6,009	$683 billion
2021	9,120	$1.259 trillion
2022	8,897	$1.014 trillion

It took most of the year, but by August 2022, PE deal activity succumbed to higher interest rates and lower multiples driven by policy makers and public investors, respectively, months earlier.[4] Despite the downturn in PE transactional growth, *growth-oriented* private equity was able to parlay the competitive returns and fundraising from 2021 into strong deal activity in 2022. The strategy bucked the overall downtrend in PE deal activity by delivering a higher number of deals in 2022. The growth sector's share of the total PE deal flow stood at 19.7% at the end of 2022, up from 17.5% in 2021. *This better trend within the growth-oriented sector of PE could present significant opportunities for certain VC oriented programs seeking to leverage the tax benefits of QSBS in an effort to capture market share.*

Growth PE Activity

Year	Deal Count	Deal Values
2019	1,067	$59 billion
2020	1,138	$78 billion
2021	1,599	$130 billion
2022	1,479	$103 billion

IRC 1202/1045 Interplay

IRC 1045 complements IRC 1202, allowing taxpayers who haven't achieved a five-year holding period for their QSBS to roll otherwise taxable gain on the sale of their QSBS on a tax-deferred basis into replacement QSBS.[5] In doing so, IRC 1045 permits a taxpayer to defer otherwise taxable gain on the sale of QSBS held for at least six months by rolling the sales proceeds over into replacement QSBS. If the taxpayer successfully rolls over the sales proceeds under IRC 1045, the gain on the sale of the original QSBS will be deferred until the replacement QSBS is sold. This result applies whether the taxpayer qualifies for IRC 1202's gain exclusion on the sale of the replacement QSBS. The amount of gain deferred under IRC 1045 will be reduced if less than 100% of the proceeds from the sale of the original QSBS are rolled over into replacement QSBS.

IRC 1045 acts as a companion to IRC 1202, allowing taxpayers who have rolled their sales proceeds over into replacement QSBS the opportunity to take advantage of IRC 1202's gain exclusion if all of IRC 1202's requirements are met when the replacement QSBS is sold. Additionally, IRC 1045 acts on a stand-alone basis to defer gain on the initial sale of the original QSBS. This gain deferral applies regardless of whether the ultimate sale of the replacement QSBS qualifies for the IRC 1202 gain exclusion. For your reference, please note that a stand-alone article regarding IRC 1045 will be published by our firm (and *AI Quarterly*) later this year.

Conclusion

Acknowledging that IRC 1031 compatible products and QOF/QOZ oriented funds have dominated the tax product alts space in recent years, we believe that the economic headwinds facing private real estate will no doubt motivate tax minded advisors to seek outsized tax efficient returns in sectors outside of commercial real estate (e.g., such as private equity, infrastructure, energy, and structured finance). Accordingly, this backdrop could present opportunities for certain PE sponsors to leverage IRC 1202 to capture market share for their early-stage PE/VC portfolio companies. ▲

If the taxpayer successfully rolls over the sales proceeds under IRC 1045, the gain on the sale of the original QSBS will be deferred until the replacement QSBS is sold. This result applies whether the taxpayer qualifies for IRC 1202's gain exclusion on the sale of the replacement QSBS.

1—See, Scott W. Wilson, A Section 1202 Walkthrough: The Qualified Small Business Stock Gain Exclusion (Sept. 2022) (providing a comprehensive overview of IRC 1202 and the requirements pertaining to QSBS gain deferrals).

2— Among certain VC and early-stage program sponsors that specialize in sourcing and acquiring QSBS are Seedbrite Ventures, LLC of Buffalo, New York, Areca Holdings Management, LLC of Miami, Florida, Impellent Ventures II, LLC of Rochester, New York, and Motivate Venture Capital LLC of Chicago, Illinois.

3— PitchBook, U.S. PE Breakdown 2022 Annual (Jan 12, 2023).

4— Private Equity 2022 Year in Review: Facing Macroeconomic Uncertainty, Private Equity Lands on Steady Ground, Cherry Bekaert LLP (2022) (providing commentary regarding headwinds facing PE capital raising at the year-end 2022).

5— Frost Brown Todd, Advanced Section 1045 Planning (Jan. 17, 2020).

Private Credit: The Original Impact Investment?

By Stephen Hester, *CFA , VP CommonGood Capital*

CommonGood Capital, seeking to generate competitive financial returns while creating lasting impact to benefit the common good, is a Florida-based financial services firm that provides advisors with access to private alternative investments, as well as, providing advisory services to impact businesses. CGC exists to help investors see and experience their portfolio as more than just a return on investment. Their investments are making a positive impact around the globe.

Prior to 2010, allocations to private credit in endowment or high-net worth client portfolios were rare. Today, strategies under this umbrella exceed $1.2 trillion in assets under management. Many average investors now have exposure through Business Development Companies, 1940 Act interval funds, private placements, or newer private vehicles managed by Wall Street firms such as Blackstone and Starwood.

AUM growth in recent years suggests the embrace of private credit may still be in its early chapters. AUM expansion in Europe and Asia, for example, is now outpacing North America. Given over half of current AUM is still based in North America, the potential globally is substantial.

Private credit's formal inception is widely considered to be the creation of the U.S. high-yield market in the late 1970s and early 1980s. What is less known, however, is that there was simultaneously a very different origin story developing in private credit on the other side of the world.

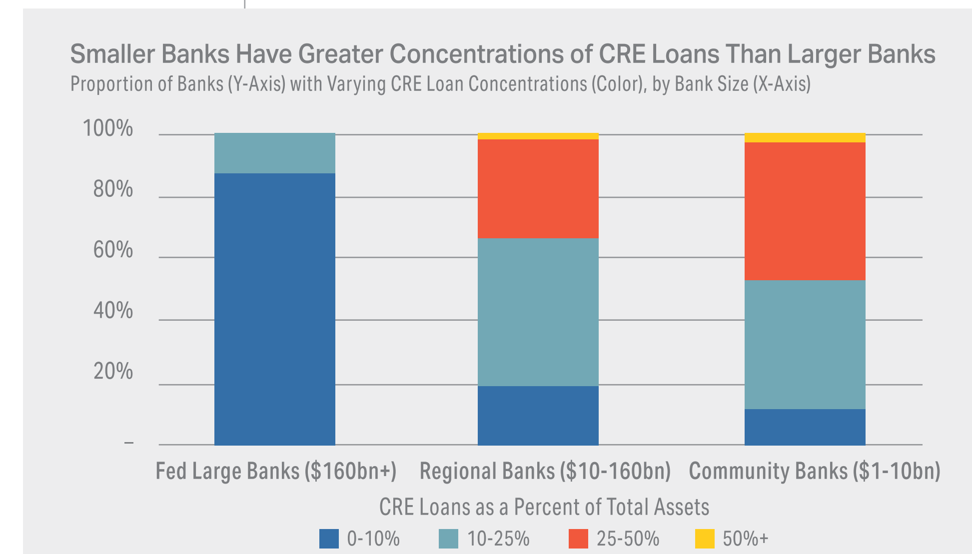
In both cases, private credit was formed to provide greater access to capital to more people and businesses that were otherwise overlooked or underbanked. Powerful actors in financial systems often have internal and external incentives to reduce credit exposure to individuals, small businesses, and private companies. In the U.S. and other nations, historical analysis shows this trend accelerates during crises. One could argue that is when a functioning and accessible financial system for the average citizen is needed most.

Expanding financial access is often referred to as *Financial Inclusion* in Impact Investing. One could argue that private credit embodies many of the core elements of Impact Investing. These tenets include financial returns, intentionality of impact, and measurement/reporting of goals. Each component works together to help to ensure transparency and accountability. Contrary to charity, Impact Investing must continuously attract capital through measurable results to meet the needs of investors, individuals, small businesses, and private corporations. This alignment is the foundation of healthy capital markets that can provide opportunity for all levels of society.

According to the *National Bureau of Economic Research* (NBER), in 2010, the year the Dodd-Frank Act passed, large banks originated 26% of smaller commercial and industrial loans. In 2018, Large banks originated 17% of the market, or a 38.5% decline in six years. NBER research states the main factor was reduced incentives by government for banks to make small loans. Many believe this cycle is currently repeating with the degradation of regional banks.

Smaller banks hold 4.4 times more exposure to U.S. commercial real estate than big banks as a percentage of assets. Regional banks in the U.S. are responsible for an outsized portion of commercial and real estate loans, which serve a greater percentage of small and medium-sized enterprises compared to other types of lending.

This isn't unique to the U.S. or modern times. For political and practical reasons, financial systems favor large transactions. Banks frequently absorb similar costs underwriting a $500,000 loan as a $5 million loan. Regulators would rather oversee five mega-banks, all with the capacity to pay large fines and better digest sweeping regulatory changes, than 1,000 community banks of varying scale and capitalizations. A single bank with a trillion dollars in deposits is more effective from a lobbying perspective than a collective of hundreds of lenders that see each other primarily as competition.



The first casualties of this system are individuals and small businesses perceived as less credit worthy. The less sophisticated and capitalized the borrower, the greater the disadvantage. Since the 1970s, private credit has expanded to fill many gaps in financial systems in the U.S. and globally. Its growth domestically and internationally, coupled with consistent financial performance, implies the industry rests on a strong footing.

Most investing in private credit is done for potentially favorable total returns, above-average current yields, and diversification benefits relative to traditional equity and bond portfolios., diversification. It's worth considering the critical role and Impact that private credit has in global capital markets, small businesses, and the lives of individuals. ▲

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This is taken from the Abstract to the white-paper: Private Credit: The Original Impact Investment?

Net Leases of Investment Real Estate: Not All They're Cracked Up to Be.

By Louis J. Rogers, *founder and co-chief executive officer of Capital Square*

Louis Rogers is the founder and co-CEO of Capital Square, one of the leading sponsors of DST program for Section 1031 exchanges and other tax-advantaged real estate investment programs

A wise man once said, "a net lease is the greatest ownership structure for real estate investments … until … until it isn't." What does that mean?

1. A Net Lease is a Passive Ownership Structure Frequently used for Investment Real Estate.

What is a Net Lease? Two basic types of leases are used for investment real estate: a net lease and a gross lease. Net leases are commonly used in connection with retail properties, many industrial and some office properties. With a net lease, the owner/landlord receives the rent net of expenses. The owner does not bear most property expenses—the tenant typically is responsible for expenses. In a customary triple net lease, the tenant is responsible for taxes, insurance, maintenance and repairs. There are many variations, such as absolute and double net, where the tenant bears more or less of the expenses.

With a net lease, the owner/landlord receives the rent net of expenses. The owner does not bear most property expenses—the tenant typically is responsible for expenses

Who Manages a Net Lease? In a net lease, the tenant manages their own real estate and operates within the premises. This means that a net lease is a passive ownership structure. Because the tenant manages their own real estate, there is very little for the owner/landlord to do, making net leases a passive ownership structure.

Passive Ownership Structure. A passive ownership structure can be very good for the owner, but it also can be very bad depending on the circumstances. Net leases usually operate perfectly well; in good times, the absence of management hassles is a benefit. But in bad times, there is very little the owner can do to correct the situation.

What Happens in Good and Bad Times with Net Leased Real Estate? Let's use the classic single-tenant net lease as an illustration. An investment-grade tenant, Walgreens, for example, leases 100% of the property for use as a pharmacy. In good times, the owner receives the rent and reimbursements as set forth in the lease, no more and no less. (Spoiler alert, in an apartment lease, the owner does much better in good times.)

In the case of bad news, the name-brand pharmacy "goes dark" by closing the store. The tenant is still obligated under the lease and continues to pay the rent, but the store is "dark." Going dark can have seriously negative ramifications for the owner. This can trigger a cash flow sweep by the owner's lender, depriving the owner of cash flow. It can also result in cancellation of necessary property and casualty insurance. And, finally, this is likely to result in serious erosion of value on a future sale. All of these are bad things that are completely outside the owner's control. And what can the owner do? Not much. Going dark is not prohibited in many retail leases, which means the owner has no recourse against the tenant.

Lease terms vary depending on property type and region. In some cases, going dark may violate the lease. If so, the owner may be able to terminate the lease and regain possession. But terminating the lease may result in loss of the rent and, as a practical matter, many tenants who have gone dark will be unable to pay the rent. In the Walgreen's example, this creditworthy tenant has substantial resources to continue paying the rent, but the same is not true with lesser tenants.

Unless the owner has substantial cash on hand, loss of the property to foreclosure may become a real possibility following a lease termination. So, when it comes to investing in a net lease, to quote a famous movie cop, "are you feeling lucky?"

Keep in mind that most owners need the rent to pay their debt service. Also, in terminating the net lease, the owner will become obligated to pay taxes, insurance, maintenance and repair costs that were the tenant's obligation under the lease. Thus, by terminating the lease, the owner may have no rent from the tenant and, at the same time, may have to pay debt services, taxes, insurance, maintenance and repair costs, all out of pocket. Unless the owner has substantial cash on hand, loss of the property to foreclosure may become a real possibility following a lease termination. So, when it comes to investing in a net lease, to quote a famous movie cop, "are you feeling lucky?"

Compare what Happens in Good and Bad Times with a Gross Lease of an Apartment Community. Let's say you own a 300-unit apartment community for the illustration below.

Owner pays Expenses. The owner/landlord is responsible for all expenses, hence the term "gross" lease. The cost of expenses is essentially built into the rent paid on an apartment lease and, because most apartment leases are of short duration, the owner typically can raise the rent to cover increases in operating expenses.

Active Management Structure. Unlike a passive net lease, apartment leases are very active. The owner can either self-manage or hire a third-party property manager.

Rolling Tenant Base. At any given time, new tenants are coming to the apartment community and old tenants are leaving. During good times, the rent goes up. During bad times, the landlord has several levers to pull. To maintain occupancy, the landlord has the ability to:

- cut the rent,
- offer concessions,
- provide gift cards and the like,
- upgrade amenities, and
- provide additional services.

Through exceptional management and expertise, the owner can improve their position in spite of challenging economic times. By contrast, the owner of a net leased property typically is stuck and can't do very much to improve their situation short of finding a new tenant and, even then, usually at substantial out-of-pocket expense after leasing commissions and tenant improvement costs plus downtime and free rent.

During the Great Recession, most apartment communities functioned reasonably well; rents were adjusted downward when needed to retain occupancy, and there were very few foreclosures. This was not the case with many net leased properties, especially office properties that were wiped out along with their owners.

2. Next, Bryan Mick's ice cube example.

Thus, as the lease melts down, so may the value of the property. So, it is said by famous due diligence officer, Bryan Mick, that a net lease is like an ice cube: *as the years pass toward expiration, a net lease melts down and has the potential to lose value.*

Net Leases Melt Down. A net lease has a fixed term of years and typically optional extensions that the tenant may exercise to extend the term of the lease. The option to extend is exercised (or not) by the tenant. The landlord/owner cannot count on optional extensions being exercised.

At the end of the lease term, the landlord/owner has no assurance that the tenant will renew. If the tenant does not renew, the property will be vacant and the rent will stop. In addition, the owner will have to re-tenant, usually at great expense after tenant improvement costs and leasing commissions. No rent may be received for a substantial period of downtime, and the replacement tenant may insist on a period of free rent.

Thus, as the lease melts down, so may the value of the property. So, it is said by famous due diligence officer, Bryan Mick, that a net lease is like an ice cube: *as the years pass toward expiration, a net lease melts down and has the potential to lose value.*

If all that were not bad enough, a buyer is highly unlikely to pay full price for a net lease with a short remaining lease term. The situation can become even more dire upon approaching the repayment date on the owner's loan, when a sale or refinance will be necessary to repay the debt.

Apartment Leases Roll On. Compare this to an apartment lease. Apartment leases are typically short term – commonly one year. This means that every year many leases will be renewed and many leases will be replaced with new tenants. Apartments are not 100% occupied or 100% vacant; they remain mostly occupied and roll through with new tenants as a part of the business plan. They bring full value on sale with a rolling rent roll. Compare this to a net leased investment with a short lease maturity that is unlikely to bring full price.

What About Rent Increases? Many net leases have fixed rent increases (so-called, "rent bumps"). It is typical to have either annual increases or increases over time. For example, 2% per year or 10% every five years. This tends to be satisfactory except in periods of rapid inflation.

In an apartment lease, the rent can be reset to market very quickly since net leases are of short duration (typically one year). So, in periods of rapid inflation, apartment rents go up quickly while net lease rent increases are fixed. In the period that recently passed with very high inflation, an apartment lease would be preferred over a net lease that lost value to inflation. Take the recently passed period of hyper (12%) inflation. How would the owner feel about a net lease with 10% rent increases every 5 years?

3. Compare Single and Multi-tenant Leases.

Another nuance: in a single tenant lease, there is only one tenant—you are 100% occupied or 100% vacant! If the single tenant fails, the investment is likely to fail.

In a multi-tenant investment, the owner/landlord has a cushion via the rent and reimbursements from a number of tenants. The same is true in multifamily properties, where there are a large number of tenants (300 tenants in our example) to provide a big cushion. This makes multifamily and multi-tenant properties less risky from a tenant standpoint because of the larger number of tenants paying rent and reimbursements. Again, to quote our movie cop, "are you feeling lucky?" with a property that is either 100% occupied or 100% vacant?

4. Conclusion. A gross leased multi-tenant apartment community may be preferable to a net leased investment in many cases.

After nearly 40 years as a real estate advisor and investor, the author concludes that a gross leased apartment community is preferable for many investors to a net leased investment. While circumstances will vary, this conclusion is an excellent rule of thumb to be used when analyzing alternative investment options. Gross apartment leases are not a panacea; they require expertise with the asset class and the willingness to actively manage or hire and oversee a property manager.

The analysis follows:

Net Leases. Economically, net leases tend to generate strong initial cash flow but less proceeds on sale as the lease loses term and approaches expiration. The result is typically the opposite in an apartment property (gross lease) that tends to generate less initial cash flow but increase cash flow steadily over time and, then, generates much greater proceeds on sale.

While most net leases operate without issues, when a net lease goes bad, it is very bad and harder to repair. Even with exceptional management expertise, frequently, there is very little that can be done to correct the situation.

While most net leases operate without issues, when a net lease goes bad, it is very bad and harder to repair. Even with exceptional management expertise, frequently, there is very little that can be done to correct the situation.

And single tenant properties are good until they are not; and, then, they go from 100% leased to 100% vacant! Multi-tenant properties provide a much greater cushion.

Gross Leases. Economically, gross leased apartment properties tend to start out lower in initial cash flow. But they typically build cash flow steadily over time as the leases are marked to market. And they tend to generate substantially greater proceeds on sale based in large part on the compounding of rent increases and growth in net operating income. Net leases typically produce the opposite results.

In addition, gross leased apartment communities have more optionality. During bad times, the landlord has several levers to pull to maintain occupancy. Through exceptional management, the owner can improve their economic position in spite of challenging economic times. The owner of a net lease is usually unable to pull many good levers during challenging times.

Also, annual leases mean that apartment rents can be adjusted frequently. In times of inflation, the rent goes up rapidly; in bad times, the rent can be adjusted downward to retain occupancy.

Economically, gross leased apartment properties tend to start out lower in initial cash flow. But they typically build cash flow steadily over time as the leases are marked to market. And they tend to generate substantially greater proceeds on sale based in large part on the compounding of rent increases and growth in net operating income. Net leases typically produce the opposite results.

Compare this to a net lease with fixed rental increases that are preestablished in the lease many years in advance. The rent set forth in the lease is the owner's best day—no more, no less; compared to an apartment lease that can go to market in good times and equal or exceed the rate of inflation.

And multi-tenant properties provide additional flexibility; new tenants come and go as a part of the business plan. Compare this to a single tenant property that can go from 100% leased to 100% vacant in a nanosecond!

Real World Illustration. The attributes of net vs. gross leases have a profound impact on the selection of investment programs. Let's analyze a real world example of a customary Delaware Statutory Trust, or DST, program for investors seeking tax deferral under Section 1031 on the sale of an investment property. Based on my personal experiences and observations over several decades, there tends to be a dividing line between investors who:

- need to live on distributions from the investment, and
- those who have less need for initial distributions, instead preferring growth of income and capital appreciation over initial cash flow.

There is a tendency to invest in *net leased programs* for investors who have greater need for immediate cash flow. Alternatively, many wealthier investors tend to invest in *multifamily programs with gross leases* because they favor growth of income and capital appreciation over initial cash flow.

This is not to critique different types of investors but to demonstrate that the attributes of net vs. gross leases have a real, tangible bearing on investment programs in the real world. It is a testament to the DST industry that different sponsors are able to tailor investment programs, and financial advisors are able to select desirable programs, that meet the needs of various types of investors .▲

This article describes the primary reasons why a gross lease of a multi-tenant apartment community may be preferable for many investors. Capital Square has sponsored over 135 investment offerings of over 160 individual properties comprised of both net leased investments and gross leased apartment communities. Our investment experience at Capital Square over the past eleven years supports the conclusions above. Circumstances will differ and investors should seek the guidance of qualified real estate and financial professionals before making an investment. It should go without saying: *caveat emptor*, let the buyer beware.

Social Media

By Damon Elder, *Spotlight Marketing Communications*

Spotlight Marketing Communications is a strategic partner for alternative investment firms, providing customized marketing solutions to help their clients stand out from the competition.

When you think of social media, what comes to mind? Do you think of chatting with friends? Young people dancing to the latest trends? Or do you think about expanding your brand and reaching a whole new audience of potential partners and investors?

LinkedIn turned 20 years old this year and currently has more than 930 million members across 200 countries and regions.[1] Social media has come a long way since the early 2000's and, today, can be an essential method for increasing visibility and driving conversions. That being said, many professionals in the alternative investments industry still have questions when it comes to why they should utilize social media and what exactly the best practices may be.

Here we'll discuss the reasons to incorporate social media into your marketing strategy and how you can get started today.

Why Use Social Media?

Social media is an affordable tool to add to your marketing arsenal that offers several potential advantages:

Increase Visibility—LinkedIn is no longer just a recruitment platform for job seekers. According to research from Hootsuite, there are 36,000 newsletters from various business leaders on the platform and 40% of LinkedIn visitors engage organically with a page in a week. That's a lot of potential views for your brand or company.

Reach New Audiences & Build New Relationships—Similarly, LinkedIn can help you reach new audiences. One LinkedIn influencer's content was viewed over 75 million times in 2022.[3] While you may not reach that level, a LinkedIn ad has the potential to reach 14.6% of the world's population, allowing you to quickly, easily and affordably establish new relationships with people you may have otherwise never met.[2]

Establish Yourself As An Industry Leader—With social media, you can instantly post your thoughts and research on your area of expertise or the industry as a whole. You can post anything from recent acquisitions, new team members or longer blog posts. You also have the ability to engage with other industry experts and identify emerging trends.

Build Trust & Humanize Your Brand—According to the 2023 Edelman Trust Barometer, 63% of people buy or advocate for brands based on their beliefs and values.[4] Additional research shows that financial readers trust executives who are active on social media more than those who aren't by a ratio of 6 to 1.[5] People want to work with, and invest in, brands they like and trust. Social media allows you interact directly with potential investors and partners on a human level. By putting a tone and a face to your brand, you become more than a cold company. You have the ability to become a trusted friend.

How To Build Your Social Media Strategy

Getting started on social media doesn't have to be complex. By following a few best practices, you can easily begin to establish or improve your social media presence.

Know Your Audience—Before you get started, you must be aware of exactly who you are trying to connect with. Are you looking for other industry leaders? Potential investors? Possible employees? You can't be everything to everyone, so try to be authentic to yourself and the audience that you are seeking. This will help to build trust and potentially increase engagement.

Keep Your Posts Relevant—Is there a topic or concern that is currently affecting your industry? Social media can be a good place to address this, building trust and establishing yourself as a brand that is up-to-date on trends. Soon, your audience may start to see you as a leader in your sector.

Make Your Posts Visually Appealing & Easily Digestible—Adding a graphic or even a short video is a great way to catch your audience's eyes when they are scrolling. A graphic with icons or a short sentence is much easier to read than a block of text. You can—and should—include a call to action which may link to a longer piece, your website or another place where visitors can get more information.

Repurpose Existing Material—You probably already have some existing marketing pieces. An important stat from a brochure. An interesting take from a thought leadership piece. Some information on a new hire from a recent press release. These could all be repurposed as social media posts with links to the longer works.

Tag & Hashtag—Tagging people (using the @ symbol with their name) alerts those people to your post, while using hashtags (the # symbol with a common phrase) alerts people interested in those phrases. By using tags and hashtags, you help others to more easily see your posts and you may start a string of engagement.

Remember Compliance—As you know, the alternative investments space is heavily regulated and social media is no different than other marketing. Be sure to have a compliance process in place and archive everything in case you need it in the future.

Finally, remember it's called social media for a reason. Social media is a two-way street and you can't expect your presence to grow by simply posting content. You also need to engage with, reply, respond and share other brands' content. Those brands will often then share your content and, additionally, this is a great way for you to stay top-of-mind without creating new content of your own.

Social media may seem daunting at first, but with a strategic plan in place, you may find yourself taking advantage of its many benefits sooner than you think. ▲

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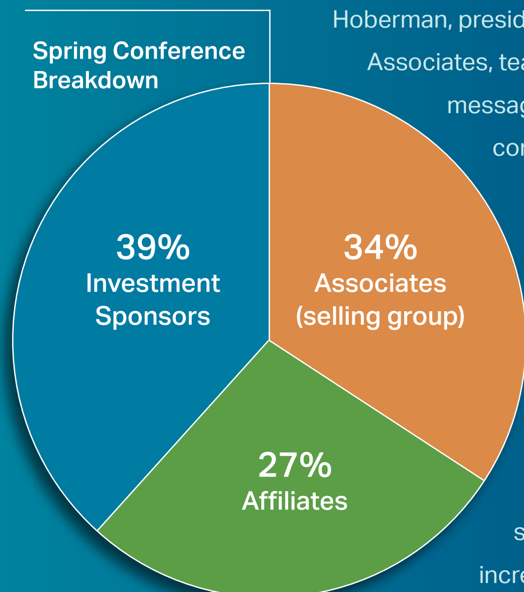
ADISA 2023
Spring Conference Wrap-Up

Record-Breaking Attendance

ADISA welcomed a record-breaking 700 industry professionals representing more than 300 companies to its 2023 Spring Conference, April 24-26 in San Diego.

The educational sessions focused on tax-advantaged investing, impact investing, Section 1031 exchanges, multifamily and single-family investing, due diligence and more.



Popular sessions included:

- DSTs, 1031s, 721s: What Advisors Need to Know
- To 506b or Not to 506b, That is the 506c Question
- Opportunity Zones: Maximizing the "Opportunity" Over the Next 3.5 Years

Award Winners

ADISA was pleased to announce and congratulate the winners of our 2022 Best Session Award. The award winners included Passco Companies' Stacy Stemen and Adriana Olsen, RK Properties' John Freeborn, Mick Law's David Sengstock and Capital Square's Whitson Huffman.

General Sessions

The conference kicked off with the Women's & Next Generation Luncheon led by featured speaker Judy Hoberman, president of Judy Hoberman & Associates, teaching women to amplify their message so they can speak with confidence and negotiate with authority.

Keynote speakers Collin Coggins and Garrett Brown, creators of the "Unsold Mindset," wrapped up Wednesday's conference by deconstructing everything we think we know about selling to show how anyone can achieve incredible results in their field, become the leader they wish they had, and find more purpose and fulfillment in their work.

Milken Institute Partnership

ADISA was proud to partner with the å Fellows Program and welcomed students from HBCUs. This augments the current student outreach program with Utah Valley University.

Thank you to 2023 Spring Conference Chair Christy Hutchison, Shopoff Realty Investments, 2023 Conference Planning Committee Chair Ann Moore, International Assets Advisory, and our Conference Planning Committee, who made the Spring Conference a success. ▲

ADISA 2023 ALTS RESEARCH + DUE DILIGENCE FORUM

JULY 25-26
THE GRAND AMERICA HOTEL
SALT LAKE CITY

ADISA Board member David Pittman, Cottonwood, is this year's chair of our Alts Research & Due Diligence Forum, July 25-26, at The Grand America, Salt Lake City. Designed for industry professionals who are employed with a Broker-Dealer, RIA, Family Office, Due Diligence firm and others that offer alternative investments in their business, this year's Alts Research & Due Diligence Forum promises to deliver the drilldown educational event of the year.

- Network with more than 200 industry professional
- Learn about today's issues and business opportunities
- Discover advanced due diligence techniques, processes, tools and resources to remain compliant and safe

Who Will Attend?

- Retail Broker-Dealers
- Registered Investment Advisors (RIAs)
- Family Offices
- Due Diligence Professionals
- Compliance Officers
- Sponsors
- Affiliates

Agenda-to-Date (as of 6/30/2023)

Tuesday, July 25

7:45-8:30 am
Breakfast & Exhibition

8:30-8:45 am
Welcome & Introductions

8:50-9:50 am
Opening Keynote
Artificial intelligence in investment management and its impact on due diligence. Keynote speaker: Keith Black, PhD, RIA Channel

9:50-10:20 am
Break & Exhibition

10:20-11:20 am
Alts in Advisory Accounts
Implications to the alts space of the continued transition of assets to advisory accounts.

11:30 am-12:30 pm
Understanding the Valuation Process
Common approaches and procedures used in valuing real estate portfolio assets and how to use these in ongoing due diligence.

12:30-2:00 pm
Lunch & Exhibition

2:00-3:00 pm
Private Equity Due Diligence
Exploration of different private equity strategies and structures and the appropriate due diligence methods needed.

3:00-3:30 pm
Break & Exhibition

3:30-4:45 pm
Applied Due Diligence in Action
This session focuses on big picture analysis and real time explanation of active sponsors in our space.

5:00-6:30 pm
Cocktail Reception & Exhibition

Wednesday, July 26

7:30-8:30 am
Breakfast & Exhibition

8:30-9:20 am
DST Updates
Review and exploration of latest DST trends.

9:30-10:20 am
Regulatory Updates
Detailed exploration of latest actions which affect the alternative space.

10:20-11:10 am
Current Market: Making the Case for Alternatives
Explanation and rationale for including alternatives in portfolios in today's changing economic environment.

11:15 am-12:05 pm
Applied Due Diligence in Action
This session focuses on big picture analysis and real time explanation of active sponsors in our space. ▲

ADISA
450 E. 96th Street, Suite 185
Indianapolis, IN 46240

ADISA SAVE the DATE

MORE INFO AT **adisa.org**

2023 Annual Conference & Trade Show
October 9-11
The Cosmopolitan of Las Vegas

2024 Spring Conference
April 15-17
Fairmont Chicago
Millenium Park

2024 Annual Conference & Trade Show
October 7-9
The Cosmopolitan of Las Vegas