DALLAS BAR ASSOCIATION · SECURITIES SECTION

Private Market Liquidity in 2026

Secondaries, Continuation Vehicles and Tender Offer Strategies

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1.0 hour Texas CLE credit, 0.5 ethics

ROADMAP

What We Will Cover

I — Why Liquidity Became the Product — 7 min

The exit backlog, the size of the market, and the three channels liquidity now flows through.

II — GP-Led Secondaries and Continuation Vehicles — 14 min

Anatomy, the framework after the vacatur, a defensible process, and whose lawyer you are.

III — LP-Led Transfers and Fund-Level Liquidity — 6 min

Selling a fund interest, and the funds that promise their own liquidity.

IV — Company-Level Liquidity — 11 min

Private company tender offers, the 2026 exemptive order, and private share sales.

V — Practice Guidance and Professional Responsibility — 7 min

What to do differently by seat, and five checkpoints for any liquidity transaction.

VI — Takeaways and Discussion — 3 min

Three things to carry into the next deal, and questions.

THE QUESTION FOR EVERY SECTION ***Who is on both sides of this price?***

I

SECTION I

Why Liquidity Became the Product

The exit backlog, the size of the secondary market, and the three channels liquidity now flows through.

APPROXIMATELY 7 MINUTES · SLIDES 4 THROUGH 6

SECTION I · MARKET CONTEXT

The Exit Backlog

$220B to $240B

Global secondary volume in 2025, a record by every adviser's count, depending on who is counting

$118B to $121B

First half of 2026, a first-half record, with GP-led deals taking the majority of volume

~10%

vs. ~25%

Annual distributions to fund investors as a share of NAV, against the long-run average

~$20B

~83% GP-led

Credit secondaries in the first half of 2026, the fastest-growing corner of the market

Sources: Evercore, Jefferies, Lazard, Campbell Lutyens and William Blair 2025 surveys; Jefferies and Evercore H1 2026 reviews; Ropes & Gray secondaries updates.

PRACTICE POINT

The volume is not the story. The story is that the traditional exit has been replaced, in a fifth or more of cases, by a negotiated transaction in which someone who controls the information also helps set the price. That is a securities problem before it is a business one.

Three Channels, One Question

SECTION II

GP-Led Secondaries and Continuation Vehicles

The existing fund sells; a new vehicle managed by the same sponsor buys.

ON BOTH SIDES OF THE PRICE

The sponsor

PRIMARY REGIME

Advisers Act fiduciary duty, fund documents, ILPA guidance

SECTION III

Fund Interests and Fund-Level Liquidity

An investor sells its stake to another investor, or a semi-liquid fund buys back its own shares.

ON BOTH SIDES OF THE PRICE

The fund, which sets the NAV and buys at it

PRIMARY REGIME

Resale exemptions, ICA investor tests, Rules 13e-4 and 23c-3

SECTION IV

Company-Level Liquidity

Employees and early investors sell private company stock, often to the company itself.

ON BOTH SIDES OF THE PRICE

The company, which knows more than any seller

PRIMARY REGIME

Regulation 14E, Rule 10b-5, Rule 701, Section 12(g)

PRACTICE POINT

Ask the organizing question first in every engagement: who is on both sides of this price? The answer tells you where the conflict is, what disclosure is owed, and whether the room needs another lawyer.

Who Sits at the Table

SELLERS

- Pensions and endowments
- Sovereign wealth funds
- Funds of funds
- Employees and former employees
- Founders and early investors

BUYERS

- Dedicated secondary funds
- Evergreen and registered vehicles
- Sovereign and pension direct programs
- Crossover and growth investors

PROCESS PROVIDERS

- Secondary advisers
- Fairness opinion and valuation firms
- Platforms and trading systems
- Transfer agents and administrators

COUNSEL SEATS

- Sponsor and adviser counsel
- Existing fund counsel
- Continuation vehicle counsel
- Advisory committee counsel
- Company counsel
- Selling holders' counsel, if any

PRACTICE POINT

Count the lawyers. In most GP-led deals there are more parties than counsel, and in most employee tenders there are hundreds of sellers and no seller's counsel at all. Section V comes back to what that means.

II

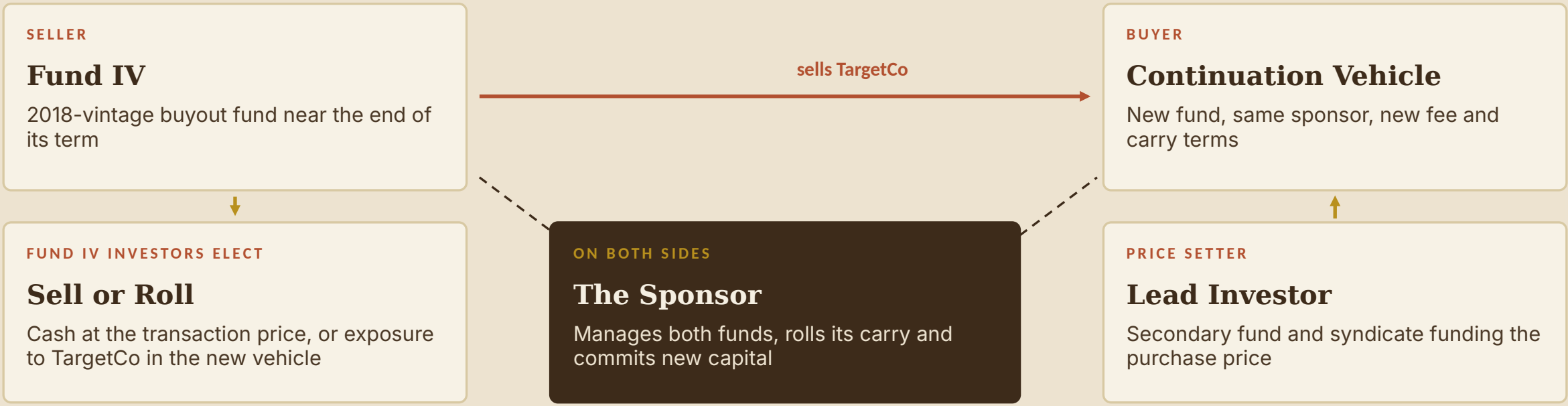
SECTION II

GP-Led Secondaries and Continuation Vehicles

Anatomy, the framework after the vacatur, a defensible process, and whose lawyer you are.

APPROXIMATELY 14 MINUTES · SLIDES 8 THROUGH 12

Anatomy of a Continuation Vehicle



VARIANTS

- Single-asset vehicle
- Multi-asset vehicle
- Strip sale
- Tender offer for fund interests
- Vehicle formed from a prior vehicle

PRACTICE POINT

The sponsor is the seller's fiduciary, the buyer's manager, and an investor in the buyer. Every structural feature of the deal either manages that fact or makes it worse.

The Sponsor on Both Sides: What Governs Now

WHAT WAS VACATED

The 2023 Private Fund Adviser Rules

Including the mandatory fairness or valuation opinion for adviser-led secondaries, the quarterly statement rule and the audit rule.

National Association of Private Fund Managers v. SEC (5th Cir. June 5, 2024): vacated in their entirety.

WHAT STILL GOVERNS

Advisers Act Section 206: a non-waivable fiduciary duty of care and loyalty; full and fair disclosure; informed consent

Rule 206(4)-8: antifraud protection for investors in pooled vehicles

The fund agreement: advisory committee consent mechanics and conflict provisions

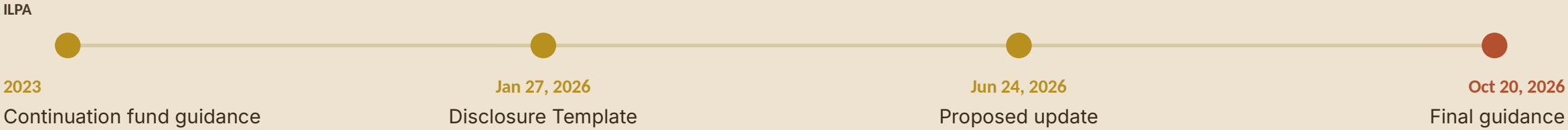
Delaware law: the agreement can shape fiduciary duties, but the implied covenant survives (6 Del. C. §17-1101(d))

Form PF Section 6: event reports for adviser-led secondaries, still in effect; the SEC proposed eliminating them in April 2026

PRACTICE POINT

Losing the rule did not lose the duty. The vacatur removed a checklist, not the obligation the checklist was written to satisfy. Process now has to do the work a regulation would have done, and counsel is the one who designs the process.

What a Defensible Process Looks Like in 2026



1 Evidenced rationale

Why a continuation vehicle rather than a sale, IPO, strip sale or distribution in kind.

2 Real price discovery

A competitive process plus a fairness opinion, with an anonymized summary of final bids.

3 An informed committee

Early engagement, independent advisers paid by the fund, a session without the sponsor.

4 Time and information parity

One data room for investors and buyers; elections timed from a complete package.

5 Real choices

Sell, roll, roll with top-up or split; remain in place or explain; no overall fee or carry increase.

6 Sponsor alignment

Full carry rollover absent explanation; disclose de-risking; costs follow who benefits.

PRACTICE POINT

ILPA guidance is not law. It is the yardstick an advisory committee, an arbitrator and an SEC examiner will all reach for, which makes every departure something to explain in writing before the deal, not after.

Where It Goes Wrong

PRIVATE LITIGATION

Delaware Chancery

- Filed Dec. 3, 2025: sovereign fund investor seeks injunction in aid of arbitration (C.A. No. 2025-1389-NAC)
- Alleged: committee told no IPO or sale exit; buyers shown IPO upside
- About 20 minutes for committee questions
- 3 of 43 committee members approved
- No option to roll on existing terms

SEC ENFORCEMENT

Signals and settled cases

- 2023 settled action, $1.6 million: assets moved between funds without disclosure, consent or an exit option
- 2026: Enforcement Director flags liquidity, fees, valuations and conflicts
- June 2026 press reports of an inquiry focused on continuation vehicles

EXAMINATIONS

Fiscal 2026 priorities

- Private funds folded into broader themes
- Private credit and extended lock-ups
- Side-by-side conflicts and new funds
- June 9, 2026 risk alert on economic conflicts of interest

The Chancery matter consists of allegations only; no findings have been made.

PRACTICE POINT

Every allegation in the Chancery complaint is a process failure counsel could have seen in real time: inconsistent narratives, compressed time, a thin vote and a missing option.

Whose Lawyer Are You in a Continuation Vehicle?

THE SEATS

WANTS A HIGH PRICE	WANTS A LOW PRICE
Fund IV (seller)	Continuation vehicle
Selling investors	Lead investor

Sponsor and adviser

Rolling investors	Advisory committee

Common pattern: one firm for the sponsor, Fund IV and the continuation vehicle.

TEXAS DISCIPLINARY RULES

1.06 Conflicts: materially adverse or adversely limited representation needs a reasonable belief and consent after full disclosure (MR 1.7)

1.12 The organization is the client, not its investors or principals (MR 1.13)

4.03 Do not imply disinterest to unrepresented persons; correct misunderstandings (MR 4.3)

1.08(e) Conditions on accepting payment from someone other than the client (MR 1.8(f))

PRACTICE POINT

Settle the client map before the first draft circulates. If the existing fund and the continuation vehicle are both your clients, you represent seller and buyer in a related-party sale, and the consent you need is your own clients', not only the committee's.

III

SECTION III

LP-Led Transfers and Fund-Level Liquidity

Selling a fund interest, and the funds that promise their own liquidity.

APPROXIMATELY 6 MINUTES · SLIDES 14 AND 15

Selling a Fund Interest

1	**Transfer provisions**	General partner consent, rights of first refusal, transfer windows, legal opinions
2	**Who may buy**	Accredited investor; qualified purchaser for a 3(c)(7) fund; every transferee counts toward the 3(c)(1) 100-owner limit (250 for qualifying venture funds)
3	**The resale exemption**	The seller is not the issuer: Section 4(a)(1) on "4(a)(1½)" principles, or Section 4(a)(7) where its conditions are met
4	**Tax and ERISA**	Publicly traded partnership safe harbors (IRC §7704; Treas. Reg. §1.7704-1: 100-partner and 2 percent transfer safe harbors); the 25 percent plan asset test
5	**Pricing mechanics**	Reference-date NAV, a discount or premium, and deferred payment in about a third of investor-led deals in H1 2026

PRACTICE POINT

A fund interest sale is a securities resale wrapped in a partnership consent. Build the timeline around the general partner's consent, because it is the one step neither party to the sale controls.

When the Fund Promises Its Own Liquidity

THE VEHICLES

- Non-traded BDCs: quarterly issuer tender offers under Rule 13e-4, usually capped at 5 percent
- Interval funds: Rule 23c-3 repurchase offers of 5 to 25 percent
- Tender offer funds
- Non-traded REITs

THE 2026 STRESS TEST

~12% vs. a 5% cap

Average Q1 2026 repurchase requests at the twelve largest non-traded BDCs; a little over half of requested dollars were paid.

- Blue Owl Credit Income: ~22% requested, 5% paid
- Blackstone Private Credit Fund: 7.9% paid with sponsor support
- BlackRock private credit fund: first cap breach in Q2

POLICY DIRECTION

SEC proposals of September 30, 2026

- Expand retail access through registered funds
- Broaden use of the interval fund structure
- Performance fees for accredited investors
- Comment request on credentials and a FINRA exam for accredited status

PRACTICE POINT

In a repurchase offer the fund is on both sides: it calculates the NAV and buys at it. A gate is not a failure. An undisclosed or mis-described gate is.

IV

SECTION IV

Company-Level Liquidity

Tender offers and private share sales: when a private company becomes the buyer of its own stock, and when its holders sell elsewhere.

APPROXIMATELY 11 MINUTES · SLIDES 17 THROUGH 19

Is It a Tender Offer, and Which Rules Apply?

1 Is it a tender offer?

No statutory definition. Courts weigh the Wellman v. Dickinson factors (widespread solicitation, substantial percentage, premium, firm terms, limited time, pressure to sell, publicity) and the Hanson Trust totality approach. A company-wide employee program almost always qualifies.

2 Regulation 14E applies

Even for non-reporting companies: Rule 14e-1 (20 business days; 10 more after a price or size change; prompt payment), 14e-2 (position on third-party offers), 14e-3 (trading), 14e-5 (no outside purchases), and Section 14(e). Rule 13e-4 applies only to reporting issuers.

3 The April 16, 2026 order

A non-reporting company's self-tender may run 10 business days if the company or a wholly owned subsidiary buys, for cash at a fixed price, with price or size changes noticed by 9:00 a.m. ET five business days before expiration, and other material changes by two.

PRACTICE POINT

The shorter clock is available only when the company itself buys, for cash, at a fixed price. Decide the structure first and the calendar second: a tender in which outside investors buy still runs twenty business days.

When the Company Is the Buyer

WHAT THE OFFER DOCUMENT COVERS

- How the price was set
- Latest 409A value and recent financing terms
- Capitalization and liquidation preferences
- Material developments: financing, acquisition interest, IPO work
- Risks and tax consequences
- Consistency with concurrent financing materials

Rule 10b-5: disclose or abstain. Section 14(e) antifraud.

THE SELLERS

Hundreds

of employees and former employees, almost never represented.

Founders and executives often sell alongside them, with more information and sometimes better allocations.

ETHICS ANCHORS

1.12	Company counsel represents the company, not selling employees or founders
4.03	No implied disinterest; correct misunderstandings; no advice beyond getting counsel
4.01	Truthful statements to third persons; with 8.04(a)(3)
1.02(c)	No assistance with conduct counsel knows is fraudulent

PRACTICE POINT

When the buyer knows more than the sellers, and the sellers are the buyer's own employees, the offer document is the whole of their protection. Draft it as though each employee will read it beside a plaintiff's lawyer, because some will.

Private Share Sales Outside a Tender

RESALE PATHS

Rule 144: one-year hold for a non-reporting issuer's restricted stock; impractical for affiliates. "4(a)(1½)" private resales. Section 4(a)(7): accredited buyers, no general solicitation, issuer information including two years of financials, class outstanding 90 days, bad actor exclusions.

COMPANY CONTROLS

Rights of first refusal, transfer consents, bylaw lock-ups and information covenants. More companies now refuse to recognize forward contracts and special purpose vehicle interests.

THE REGISTRATION TRIGGER

Section 12(g): more than $10 million in assets and 2,000 holders of record, or 500 non-accredited. Compensation plan securities are excluded (Rule 12g5-1(a)(8)); secondary buyers are counted.

INTERMEDIARIES

Platforms operate as registered broker-dealers or trading systems; Morgan Stanley acquired EquityZen in 2026. A vehicle formed to buy private stock is itself an offering, with fee and layering risk.

PRACTICE POINT

Every unmanaged secondary sale moves the cap table toward a registration trigger the company did not choose and a holder it did not vet. Make the transfer restrictions mean what they say before the platforms find the employees.

V

SECTION V

Practice Guidance and Professional Responsibility

What to do differently by seat, and five checkpoints for any liquidity transaction.

APPROXIMATELY 7 MINUTES · SLIDES 21 AND 22

Practice Points by Seat

SPONSOR AND FUND COUNSEL

- Adopt a written continuation vehicle policy
- Settle the client map and consents before the first draft
- Run price discovery a stranger would call competitive
- One data room, one narrative for every audience
- Use the ILPA template; explain each departure

INVESTOR AND COMMITTEE COUNSEL

- Independent committee advisers at fund expense
- Ask for the template, the valuation report and the valuer's engagement terms
- Time runs from a complete election package
- Side letters that carry over and address continuation vehicles
- Treat committee information as restricted

COMPANY COUNSEL

- Decide who the bidder is before the calendar
- One disclosure document, consistent with financing materials
- Separate company counsel from selling founders
- Information for employees, not advice
- Enforce ROFRs; watch holder counts and buyer lists

PRACTICE POINT

The common thread is role clarity. In each seat, the most expensive mistakes come from counsel being treated, or behaving, as though it represents someone it does not.

Five Professional Responsibility Checkpoints

1	**Who is my client?**	Fund, sponsor, continuation vehicle, company, founders: name each one	TDRPC 1.12 · MR 1.13
2	**Are my clients on opposite sides of this price?**	Related-party sales need a reasonable belief and informed consent; some conflicts cannot be consented to	TDRPC 1.06 · MR 1.7
3	**Who in this transaction has no lawyer?**	Selling investors and employees: correct misunderstandings; no advice beyond getting counsel	TDRPC 4.03 · MR 4.3
4	**Is what I am drafting true and consistent across audiences?**	Committee deck against buyer deck; tender memorandum against financing deck	TDRPC 4.01, 8.04(a)(3), 1.02(c)
5	**What do I know that I must protect, and cannot use?**	Committee information, material nonpublic information, tender plans	TDRPC 1.05 · Rules 10b-5, 14e-3

Rule 1.01 competence: this practice changed materially in 2026, with a new tender offer exemptive order, final ILPA guidance and SEC retail access proposals.

PRACTICE POINT

These five questions take ten minutes, and they map exactly onto the places where liquidity transactions turn into disputes.

THREE THINGS TO TAKE AWAY

Private Market Liquidity in 2026

1

Find the party on both sides of the price.

The sponsor in a continuation vehicle, the fund in its own repurchase offer, the company in its own tender. The conflict, the disclosure owed and the client map all follow from that answer.

2

After the vacatur, process is the protection.

No rule requires a fairness opinion or committee review time. ILPA guidance, the Advisers Act fiduciary framework and Delaware litigation now measure the process counsel designs and documents.

3

Your own seat is part of the analysis.

Who you represent, who has no lawyer, and whether your documents tell one consistent story are securities questions and ethics questions at the same time.

Questions & Discussion

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