# Retail Capital in Private Markets: Key ILPA Takeaways

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Following changes announced by the US Securities and Exchange Commission (SEC) in August 2025, the Institutional Limited Partners Association (ILPA) has recently published an analysis underscoring a structural shift as US retail capital accelerates into private markets through semi-liquid, evergreen vehicles. ILPA points out that these products differ materially from traditional institutional drawdown funds in terms of governance, liquidity, valuation, investment allocation and fees, which frame the considerations discussed in this article. For clients involved with asset management (particularly managers launching retail products, sponsors allocating deals across vehicles, and companies transacting with funds), these differences create distinct legal, regulatory and execution risks that require proactive planning.

## What Is Changing and Why It Matters

In August 2025, the SEC changed its longstanding guidance to require retail closed-end funds to limit their investment in private funds (funds relying on exemptions in Sections 3(c)(1) or 3(c)(7) of the US Investment Company Act of 1940 Act (the 40 Act)) to 15 percent of their net assets.

Retail vehicles, commonly structured as funds registered as investment companies under the 40 Act, non-traded business development companies (BDCs) and non-traded real estate investment trusts (REITs), are fully funded, perpetual and offer periodic redemption windows. They increasingly invest alongside private funds in the same portfolio assets, which raises questions on allocation, entry/exit timing, fees and information flow. They also require more deals, more frequent valuations and a liquid sleeve to fund redemptions, which can influence portfolio construction and transaction strategy, especially in stressed markets.

Growth is being propelled by broader retail eligibility, streamlined exemptive co-investment relief (regulatory permission for affiliated funds co-investing) and access via defined contribution (DC) pension schemes. With greater visibility comes headline and reputation risk for Managers around redemptions, valuations and fees.

## Legal and Regulatory Considerations

These retail vehicles have detailed investment, liquidity, leverage and disclosure rules, overseen by independent boards that approve advisory contracts, valuation frameworks and compliance. Co-investing with affiliated funds usually requires exemptions and clear policies to ensure fair allocation, manage follow-ons and handle timing mismatches. Valuations are set more frequently and formally, with net asset value (NAV) directly influencing subscriptions, redemptions, fees and performance.

In order to address potential co-investments with these retail vehicles, private fund documents may need updating to reflect allocation policies, conflicts, warehousing and broken-deal fees (which may not be borne by retail vehicles), fee step-downs and time-and-attention provisions. Managers should also establish clear lines on compliance responsibility, cost allocation and information sharing between retail boards and Limited Partner Advisory Committees (LPACs). When funds invest in the same assets, different duties and incentives can create tension on exits, capital structure and continuation vehicles.

## Practical Impacts on Transactions and Operations

Obligations to provide liquidity may accelerate exits or lead to the negotiation of staged exits, greater use of secondary market trades and liquid sleeves (readily saleable assets), and tighter cash management — all of which impact deal certainty and pricing. More frequent valuations add complexity to earn-outs, performance fees and inter-fund transfers. Higher all-in fees and different carried interest (carry) triggers may influence deal selection and hold periods. Expect closer scrutiny of NAV practices, especially on secondaries and mark-ups, and aim for consistent valuation methods across retail vehicles and private funds.

Specific legal, regulatory and compliance costs associated with retail vehicles should be allocated solely to such vehicles and not to any institutional vehicles. Managers should consider setting clear protocols for subscription credit facility (subscription line) repayments, warehousing, co-investment allocations and broken-deal fees to reduce disputes and ease audits.

## Action Points for Managers

- Refresh limited partnership agreements (LPAs), conflicts policies and allocation frameworks to reflect retail participation, including caps, cross-vehicle allocation disclosure and safeguards against post-investment re-papering.
- Align information rights and escalation paths across boards, LPACs and investment committees for non-pro-rata decisions, valuation exceptions and liquidity-driven exits.
- Enhance the frequency of valuation and liquidity diligence required by portfolio companies, and reflect these dynamics in financing covenants, consent rights and sale processes.

- Prioritise investor education and plain-English disclosures on redemption limits, valuation sensitivity and fees to reduce litigation and reputational risk.

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