

# Continuation Funds

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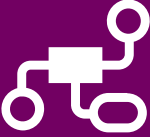
# Agenda




What is a  
Continuation  
Fund?




Why are they  
used?




General  
Structure of a  
Continuation  
Fund



Impacts on  
Carry and  
Management  
Fee



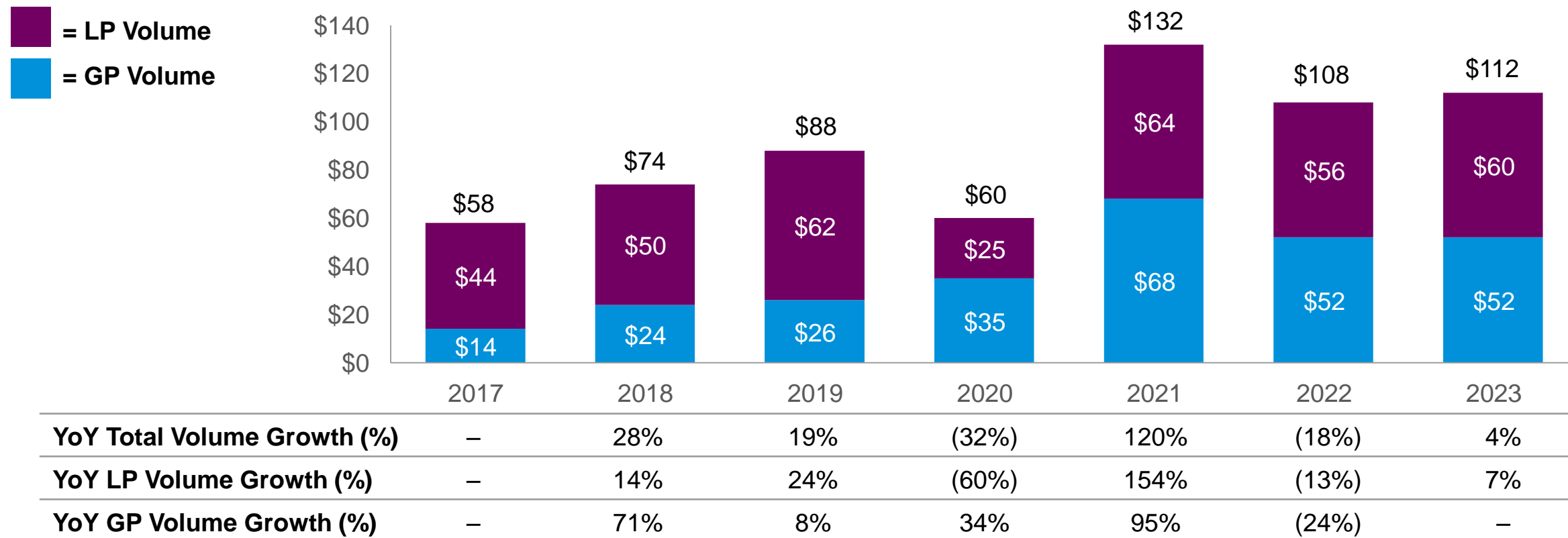
SEC and  
Regulatory  
Considerations



Looking  
Forward

# Volume of Secondaries

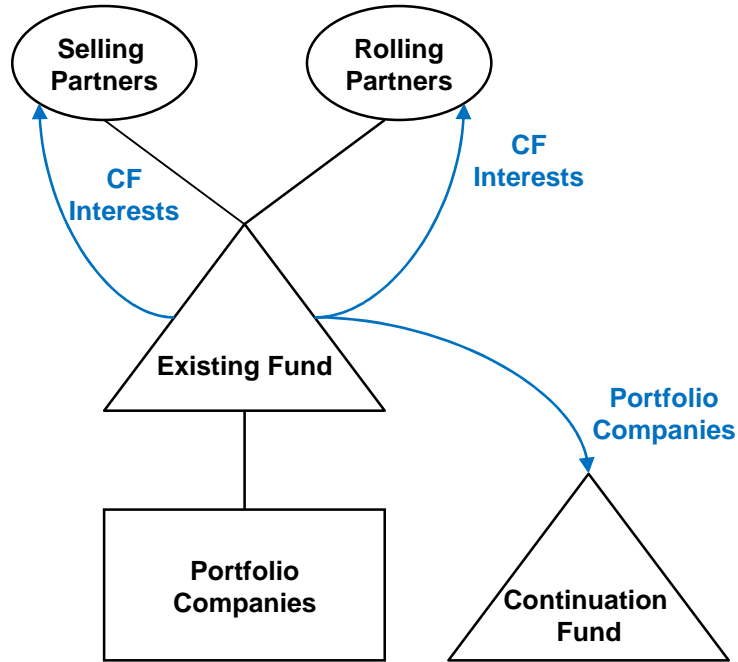
## Annual Transaction Volume (\$B)



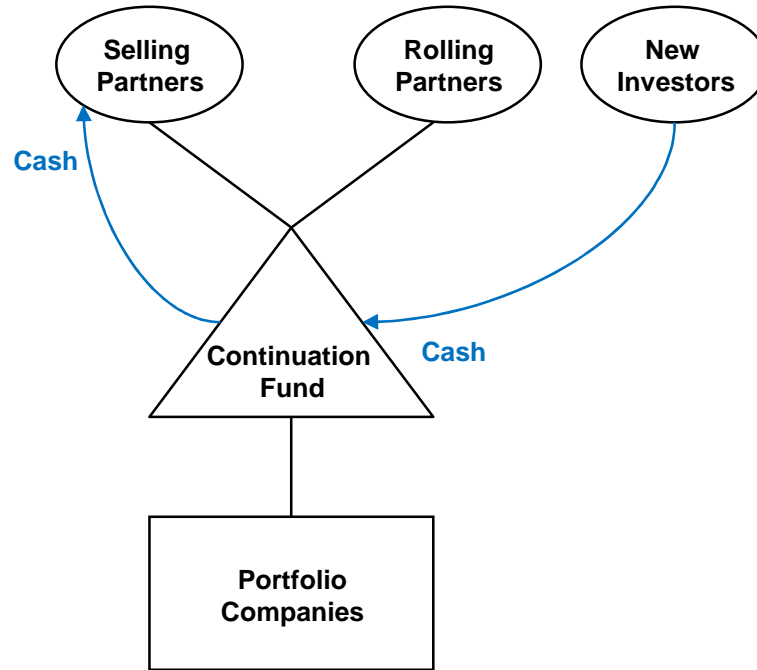
Source: Jefferies Secondaries Report, January 2024

# Continuation Fund Transaction Structure #1

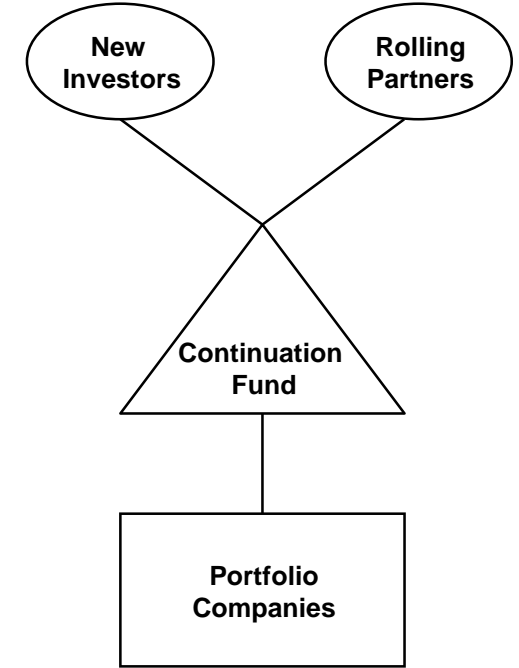
## Disguised Sale + Tax Deferred Rollover



- Existing Fund contributes assets to Continuation Fund and distributes CF interests to its partners
- Treatment of Existing Fund GP (and its members) to be assessed for each transaction



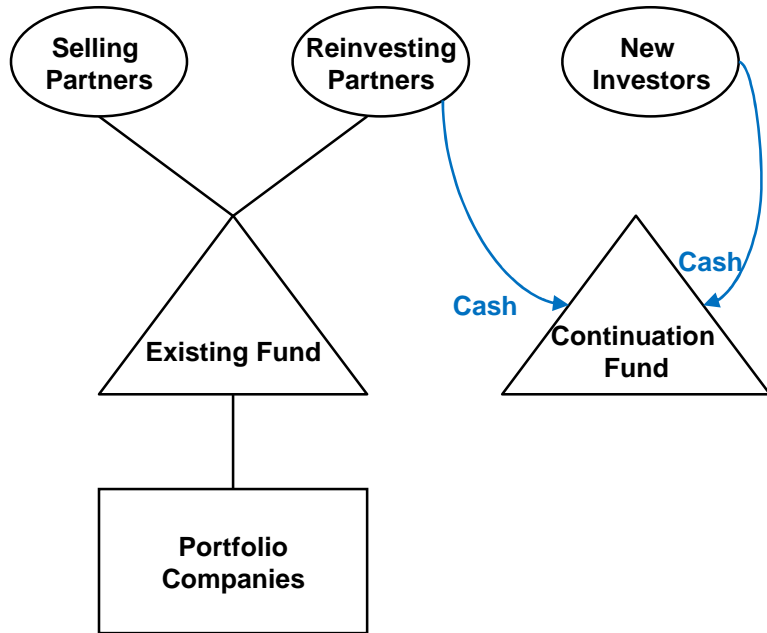
- New Investors contribute cash to CF and such cash is used to redeem Existing Fund partners that have elected to sell
- “Disguised sale” of CF interests by Selling Partners to New Investors for US tax purposes



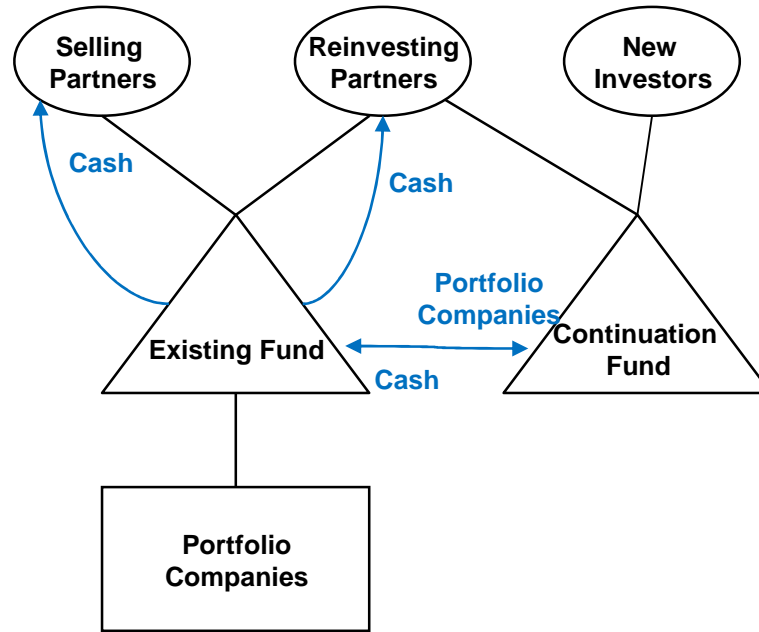
- Sellers (including Existing Fund GP if applicable) have been cashed out
- Existing Fund partners electing to “roll” retain their CF interests going forward and roll on a tax-deferred basis

# Continuation Fund Transaction Structure #2

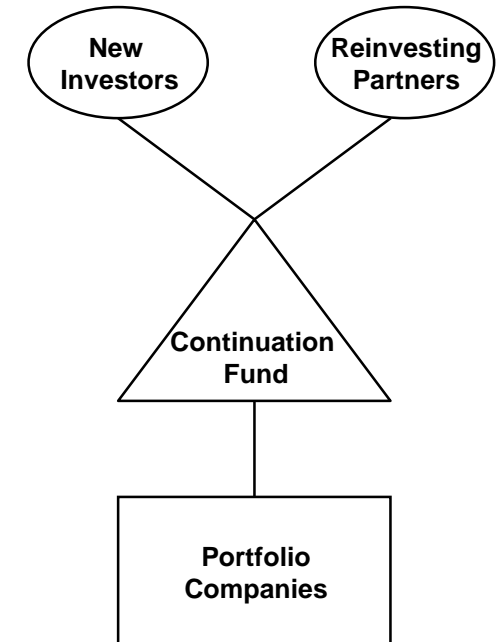
## Fully Taxable Sale with After-Tax Reinvestment



- New Investors and Existing Fund partners electing to “reinvest” contribute cash to the CF for CF Interests
- Treatment of Existing Fund GP (and its members) to be assessed for each transaction



- CF uses such cash to purchase included assets directly from Existing Fund
- Existing Fund distributes such cash to all of its partners
- Fully taxable sale for all Existing Fund partners for US tax purposes



- Sellers (including Existing Fund GP if applicable) have been cashed out
- Existing Fund partners electing to “reinvest” do so on an after-tax basis (i.e., no tax deferred rollover)

# Tax Considerations

## Whether the Continuation Fund is a “continuation” of the Existing Fund under Code §708

### Structure #1 (tax deferred roll):

Treatment of transaction as partnership division

- Which partnership is the continuation? Form of division—assets up vs. assets over

US tax deferral on contribution of assets to CF—application of Code §721(b)

- Is Continuation Fund an “investment company” immediately after?

### Structure #2 (fully taxable sale):

Potential recast as a partnership division?

Round-tripping of Reinvesting Partner cash

Loss recognition—Code §267

# Tax Considerations

## **FIRPTA and Code §1446(f) (“ECI”) withholding**

If CF holds ECI or FIRPTA assets, non-US Selling or Reinvesting Partners subject to US withholding on sale proceeds

Secondary withholding obligation for ECI withholding also imposed on the Continuation Fund effective Jan. 1, 2023 (if buyer fails to withhold)

Certificates can be used to eliminate withholding

- US sellers can provide IRS Form W-9
- Non-US sellers can provide no/de-minimis ECI certificates (depending on the facts)
- Continuation Fund can provide non-FIRPTA / non-ECI certificates (depending on the facts)

Evaluate which certificates can be provided or if withholding will apply and include relevant language in transaction agreement

# Tax Considerations

## **Basis step-up**

Code §754 election and ensuring elections are pushed down to relevant subsidiaries

CF often agrees to make a Code §754 election at the CF level and at controlled flow-through entities owned by the CF

## **Pre-closing US tax audits**

CF often agrees to make a Code §6226 “push-out” election for tax audits relating to pre-closing tax periods

Relevant if CF is a “continuation” or if it owns underlying flow-through subsidiaries (e.g., holding companies)



# Tax Considerations

## Existing Fund GP's carried interest

Often “crystallized” and then can be sold for cash (alongside Selling LPs) or rolled into CF (alongside Rolling LPs)

Application of Code §1061

- Requires 3-year holding period for long-term capital gain treatment

## Continuation Fund GP's new carried interest

Taken on profits above transaction value—\$0 liquidation value at grant

- Code §83(b) elections for Continuation Fund GP members

In Structure #1, Continuation Fund typically “tacks” existing holding period in portfolio companies

- If 3+ years, new carry can get long-term capital gain on future sale by CF

# Questions?

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