

**Morgan Lewis**

# **GLOBAL SPONSOR FORUM**

**Semiquid Funds: Evergreen Structures  
and Liquidity Solutions**

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# Presenters



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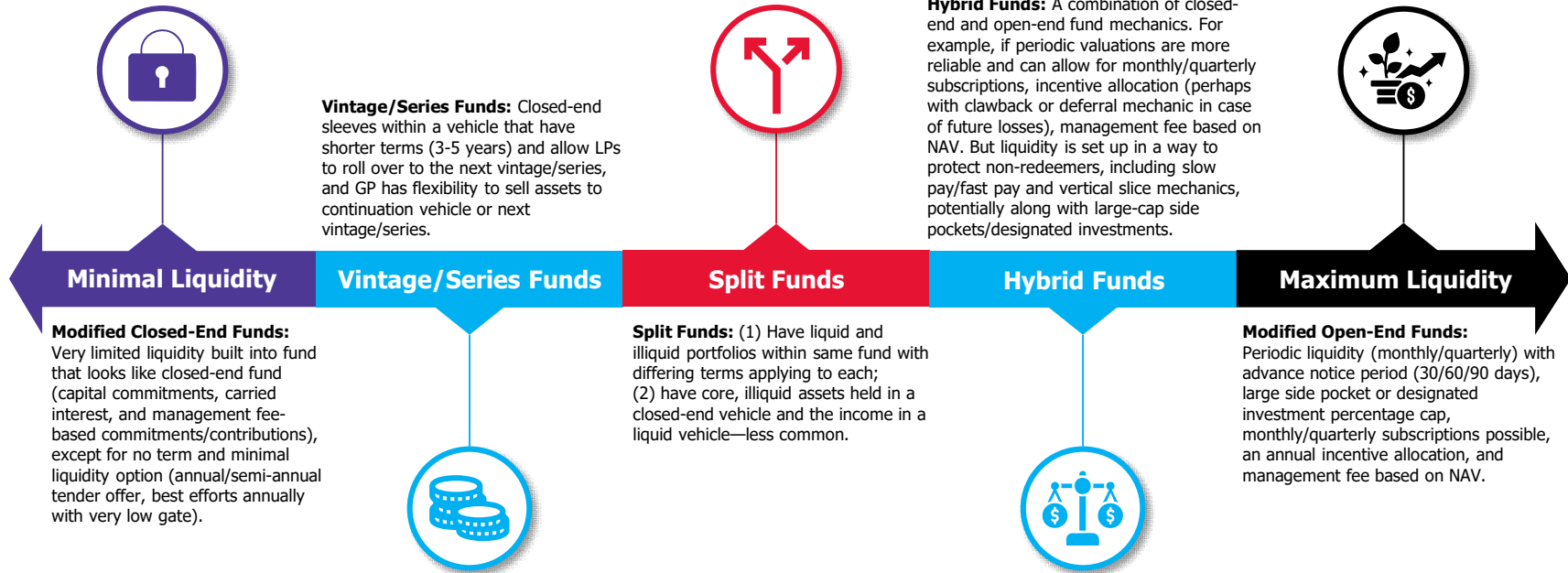


# Evergreen Private Fund Structures

Morgan Lewis

# Evergreen Private Fund Structures

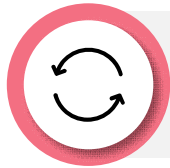
Evergreen private funds and their terms generally fall along a continuum of liquidity:



\* Keep in mind that some evergreen structures, such as interval funds and collective investment trusts, have regulation-mandated terms and considerations.

# Evergreen Private Fund Structures

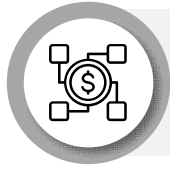
Big Picture Points:



Referred to interchangeably as evergreen or hybrid



Used in a number of strategies (but in particular, credit and real estate)



Offers investors a more diverse pool of assets, which was traditionally not available



While gaining in popularity, still typically used by more established managers



# Valuation ►

## Liquidity & Compensation



### **Core issue is valuation—how reliable and easily obtained are valuations of the fund’s assets?**

- This then drives the two core questions that need to be answered as part of fund design:\*

**1** How will investors get their money back?

**AND**

**2** How will the sponsor (and its people) get paid performance-based compensation?

\* Valuation is also relevant for other purposes, including to determine how an investor will participate in the existing portfolio, if applicable.

# Liquidity: How will investors get their money back?

Sponsor needs to model how long it would take to provide 100% liquidity to an investor that is withdrawing in full.

## Basic Liquidity Options:

- Tender Offer
- Matching Program
- Best Efforts
- Liquidity Windows (with notice, at certain intervals)
- Slow Pay/Fast Pay (including vertical slice mechanics)
- Periodic Liquidity/ Advance Notice Period

## Additional Liquidity Protections:

- Side Pockets/ Designated Investments (high percentage cap)
- Liquidating Accounts
- Lock-ups (soft or hard)
- Gates
- Suspension
- Long Advance Notice Periods
- Limited Redemption Dates

# Evergreen Private Fund Structures

## Incentive Compensation



### **How will the sponsor (and its people) get paid performance-based compensation?**

Sponsor needs to project when it will need payments of profits to compensate its people.

## Incentive Compensation Options and Features

- Fund-Level Carried Interest
- Current Income vs. Asset Sale Carried Interest
- Liquid Portfolio Incentive Allocation vs. Illiquid Portfolio Carried Interest
- Rolling Carried Interest Periods
- Investment-Level Carried Interest
- Annual Incentive Allocation
- Annual Incentive Allocation (Liquid Portion) + Carried Interest on Side Pockets/Designated Investments
- Investor Protections:
  - Clawback
  - Rolling Periods
  - Escrow
  - Deferral (Forfeiture or Offset Future Management Fee)

# Evergreen Private Fund Structures

## Management Fees



### How is the management fee calculated?

- Is NAV-based calculation appropriate at all times?
- Are valuation points aligned with NAV-based fee calculation dates?

## Management Fee Options and Issues

- Management Fee Base
  - NAV
  - Commitments
  - Invested capital (cost)
  - Lower of cost or NAV
  - Other combinations
- *What if withdrawal amount is moved to a withdrawal account?*
- If NAV-based, ensure valuation protocol applies to each management fee calculation date.

# Evergreen Private Fund Structures

- Periodic subscriptions; no finite offering period/ periodic need to fundraise
- Committed capital model vs. subscriptions on NAV model
  - No-offering period followed by periodic offering periods
- Expenses—modifications for ongoing offering and valuation
- No finite term/no need to liquidate assets at an inopportune time (or to transfer to a continuation vehicle)



## Other Terms

## Other Considerations

- Conflicts with managing closed-end/evergreen side by side
- Side letter and MFN process for ongoing offering
- Redlining sensitivity for existing investors
- Operational differences and higher costs to set up and run
- Confusion for (but also broader access to) investors with rigid buckets of capital
- Tax analysis is critical

# **SEMILIQUID EVERGREEN FUNDS IN FRANCE AND IN THE EUROPEAN UNION**

**Morgan Lewis**

## Retailization of private asset funds is the new trend in France and Europe

- Raising funds from institutional investors is more difficult in the current economic and financial environment.
- Raising funds from retail investors is an alternative, allowing them to invest their savings through life insurance contracts or pension savings plans (over €2 trillion in France) and giving them access to illiquid assets, which offer higher yields (due to their illiquid nature) than the liquid assets of traditional registered mutual funds.
- Track-record of the Paris IM team:
  - 4 partners and 8 associates.
  - have created more than 40% of semiliquid evergreen funds in 2025, placing our team among the top law firms in France in this market.

# Institutional Investors vs. Retail Investors

A “retail investor” should be understood as any investor who is not an “institutional investor,” i.e., a credit institution, an insurance or reinsurance company, an investment firm, an investment fund, or a corporate meeting certain size criteria (fulfilling 2 of the following 3 conditions: total assets of at least €20 million; turnover or revenue of at least €40 million; or net equity of at least €2 million).

Certain non-institutional investors can, upon request, opt-in to be treated as institutional investors.

This definition means, in particular, that HNWIs, family offices, or individuals are considered retail investors.

Retail investors are willing to invest in private asset funds that hold illiquid assets, provided they can request redemption of their investment at a specified frequency.

Hence, the concept of “semi-liquid evergreen funds,” where subscriptions and redemptions are accepted throughout the lifetime of the private asset fund (which can be up to 99 years).

# Most frequently used liquidity management tools (LMT)

- In order to meet investors' redemption requests, private asset funds use various **Liquidity Management Tools (LMT)**:
  - **Liquid assets:** A portion of the fund's assets is invested in liquid assets or in illiquid assets that generate predictable and recurring income (as in private credit or infrastructure funds).
  - **Lock-up period:** Investors are prohibited from requesting the redemption of their investment for a certain period after subscription, allowing the asset manager sufficient time to deploy newly invested capital.
  - **Notice period:** Investors must provide advance notice to the asset manager before a redemption date, giving the manager time to ensure sufficient liquid assets are available to satisfy redemption requests.
  - **Gates:** The asset manager may limit the amount redeemed on a given redemption date based on available liquid assets and new subscriptions, deferring any unsatisfied redemptions to the next redemption date.
  - **Borrowing:** The asset manager can use a committed liquidity line to meet redemption requests.
  - **Subscription/Redemption fees:** Subscription fees are typically used to remunerate fund distributors (particularly for retail investors). Redemption fees discourage overly frequent redemptions, with 2–5% being consistent with market practice.
- These tools can be combined to implement the redemption policy outlined in the fund documentation. There is no single approach to managing the liquidity of private asset funds; each fund adopts tools based on its investment strategy and the redemption frequency offered to investors.

**The French option: the  
private equity capital  
funds (*fonds commun de  
placement a risques* or  
*FCPR*)**

# The French option: the private equity capital funds (*fonds commun de placement a risques* or *FCPR*)

## General

- The FCPR is a fund licensed by the French market supervisory authority (*Autorité des marchés financiers* or AMF).
- It is eligible for French retail investors, either directly or indirectly through insurance companies, which allocate their investment in the fund to the retail investors' life insurance contracts and pension savings plans.
- It is dedicated to French retail and institutional investors. It does not benefit from a passport to be marketed to EU (non-French) retail investors.
- It benefits from a special tax regime for French individual investors: revenues and capital gains are **not taxed** if they are retained in a reserve for a five-year period rather than distributed.

# The French option: the private equity capital funds (*fonds commun de placement a risques* or *FCPR*)

## Composition of assets (to be respected within 2 years of the fund's creation):

- at least 50% of its assets shall be invested in shares or debt instruments giving access to capital issued by nonlisted companies (European or non-European)
- within the 50% quota, but with a maximum limit of 20%, shares of listed companies (European or within the European economic area) with a market capitalization of less than 500 million euros
- within the 50% quota, but with a maximum limit of 20%, debt instruments issued by nonlisted companies (European or non-European)
- within the 50% quota, but with a maximum limit of 15%, shareholders loans in nonlisted companies (European or non-European) held by the fund for at least 5% of its share capital
- without any limit, in other alternative investment funds (AIFs) investing directly or indirectly in shares or debt instruments giving access to capital issued by nonlisted companies (European or non-European), allowing therefore the creation of a "fund of funds"

# The French option: the private equity capital funds (*fonds commun de placement a risques* or *FCPR*)

## Diversification ratios (to be respected within 2 years of the fund's creation):

- Maximum 10% of the fund's assets in a single issuer.
- Maximum 35% of the fund's assets in shares of the same AIF.

## Concentration limits:

- Maximum 40% of the share capital and voting rights of a single issuer.

## Borrowing limits:

- Maximum 10% of the fund's assets (up to 30% temporarily to meet redemption requests).

## Evergreen:

- The fund's maturity cannot exceed 15 years (this legal limitation might be lifted under future legislation).
- New subscriptions are one way to meet redemption requests on the same redemption date.

# The French option: the private equity capital funds (*fonds commun de placement a risques* or *FCPR*)

## Liquidity offered to investors:

- Market practice is to offer liquidity **at least quarterly**, but the current trend is to offer liquidity more frequently (e.g., **bimonthly**).

## Liquidity management tools (LMT) most frequently used:

- **Liquid assets:** originally, the AMF position was that liquid assets must represent 30% of the fund's capital (reduced to 10% if subscribers are insurance companies that allocate their subscription to life insurance contracts for retail investors with a commitment letter from the insurance company not to request redemption of more than 10% over a one-year period); currently, the AMF position is to align the liquidity pocket to the ELTIF Regulation (i.e., depending on the combination of redemption frequency and notice period).
- **Gates:** depending on the redemption frequency, the gate must allow at least **2% of the fund's net assets to be redeemed per month or 5% per quarter** (liquidity pocket of 20% a year with redemption on a quarterly basis with a gate up to 5%).
- **Deferred redemptions:** unsatisfied redemption requests are carried forward to the next redemption date, **pari passu** with new requests (no priority is given to earlier requests).
- **Borrowing:** the fund may borrow up to 30% of its assets **temporarily** to satisfy redemption requests.

## AIFMD2

- A revised AIFM Directive (Directive (EU) 2024/927 of 13 March 2024) on Alternative Investment Fund Managers, which must be implemented by each EU Member State before 16 April 2026, requires any open-ended AIF to select at least 2 eligible LMTs among the following: suspension of redemptions, gating, extension of notice periods, swing pricing, dual pricing, anti-dilution levies, redemption fees, redemptions in kind or side pockets.

# **The EU option (ELTIF Regulation): the new road for the retailization of private asset funds across the European Union**

# The EU option (ELTIF Regulation): the new road for the retailization of private asset funds across the EU

ELTIF Regulation (initially adopted on 29 April 2015) has been significantly amended by EU Regulation dated 20 March 2023 and EU implementing regulation dated 19 July 2024.

ELTIF stands for “European Long-Term Investment Fund.”

As with any EU Regulation, the ELTIF Regulation applies directly in all 27 EU Member States, ensuring consistent implementation. It constitutes the positive law in each Member State, with no possibility for national “gold plating.”

The ELTIF Regulation does not create a new EU legal vehicle but relies on domestic legislation regarding AIFs. This means that an ELTIF must comply both with the rules of its state of establishment and the ELTIF Regulation.

# The EU option (ELTIF Regulation): the new road for the retailization of private asset funds across the EU

In France, most ELTIFs take the form of a specialized investment fund (*fonds professionnel spécialisé*, FPS). FPS is traditionally a fund for institutional investors, with no restrictions on investment strategy, diversification, or concentration limits—so only the constraints of the ELTIF Regulation apply.

A domestic AIF licensed by the market supervisory authority of its country of establishment (e.g., AMF in France, CSSF in Luxembourg) can be distributed to all EU retail investors (potentially 450 million people).

This is a major change for the EU investment management industry, allowing EU retail investors (directly or indirectly via insurance companies that allocate their ELTIF investment to life insurance contracts and pension savings plans) to access private asset funds that were previously restricted to institutional investors only.

# The EU option (ELTIF Regulation): the new road for the retailization of private asset funds across the EU

- **Requirements for ELTIFs indirectly distributed to retail investors via insurance companies:**
  - Must comply with the **composition and diversification rules, concentration limits, and borrowing limits** applicable to ELTIFs for retail investors. ELTIFs exclusively distributed to institutional investors are **not subject** to these rules.
  - Must be managed by an **EU-authorized asset manager** licensed to distribute AIFs to retail investors. If this is not the case, the ELTIF sponsor typically designates a licensed asset manager (acting as ManCo) while the sponsor remains delegate of the ELTIF's financial and risk management.

# The EU option (ELTIF Regulation): the new road for the retailization of private asset funds across the EU

- **At EU level, 240 ELTIFs have been licensed in the following countries:**

- 148 by the CSSF in Luxembourg (61%)
- 44 by the AMF in France (18%)
- 21 by the Central Bank of Ireland in Ireland (8.8%)
- 13 by the CONSOB in Italy (5.4%%)
- 7 by the CNMC in Spain (2.9%)

- **At EU level, out of those 240 ELTIFs:**

- 89 are dedicated to institutional and retail investors (37%)
- 65 are dedicated to institutional investors (27%)
- 57 are dedicated to retail investors (23.7%)

# The EU option (ELTIF Regulation): the new road for the retailization of private asset funds across the EU

- **At French level, 44 ELTIFs have been licensed:**
  - 3 real estate
  - 4 infrastructure
  - 6 multiassets
  - 13 private credit
  - approx. 15 private equity
- In addition, 12 applications are currently under review at the AMF.

# The EU option (ELTIF Regulation): the new road for the retailization of private asset funds across the EU

## General

- An ELTIF is a fund established in one of the 27 EU countries and licensed by the corresponding EU market supervisory authority (e.g., AMF for a French-established fund or CSSF for a Luxembourg-established fund).
- An ELTIF (licensed for retail investors) is eligible for **all EU retail investors**, not just French retail investors.
- Note, however, that French domestic legislation (“Loi Industrie Verte” dated 23 October 2023) restricts the placement of ELTIFs via French life insurance contracts or pension savings plans to ELTIFs established in France and licensed by the AMF.
- Many ELTIFs set up in other EU Member States (e.g., Luxembourg) have therefore created a French ELTIF solely to allow indirect access for French retail investors through life insurance contracts or pension savings plans.

# The EU option (ELTIF Regulation): the new road for the retailization of private asset funds across the EU

## Composition of assets (to be implemented within 5 years of ELTIF licensing, or half of its lifetime):

- Eligible assets: > 55% of capital
- Liquid assets: ≤ 45% of capital

## Liquid assets (per UCITS Directive):

- Transferable securities
- Money market instruments from top-tier issuers
- UCITS units, deposits, etc.

## Eligible assets:

- Equity or quasi-equity of eligible portfolio undertakings
- Debt instruments of eligible portfolio undertakings

- Loans to eligible portfolio undertakings
- EU AIFs invested in eligible assets (≤10% in sub-funds) → fund-of-funds strategy
- Another ELTIF (≤85% of assets) → master-feeder strategy
- Real assets
- EU STS securitizations (mortgages, corporate loans, leases, trade receivables)

## Eligible portfolio undertaking:

- Not a financial undertaking, unless <5 years old → fintech-friendly
- Not listed, or listed with market cap ≤ €1.5 billion
- Not in high-risk or noncooperative tax jurisdictions

# The EU option (ELTIF Regulation): the new road for the retailization of private asset funds across the EU

**Diversification ratios (for ELTIFs distributed to retail investors)** (to be implemented within 5 years of ELTIF licensing, or half of its lifetime):

- Maximum 20% of its capital in equity, quasi-equity, debt instruments, or loans in the same eligible portfolio undertaking
- Maximum 20% of its capital in a single real asset
- Maximum 20% of its capital in shares of an EU AIF managed by an EU asset manager invested in eligible assets and not investing more than 10% of its assets in sub-funds
- Minimum 85% of its capital in the master fund (in the case of a “feeder-master structure”)

**Concentration limits (for ELTIFs distributed to retail investors):**

- Maximum 30% of the share of an EU AIF managed by an EU asset manager invested in eligible assets (not applicable in case of a feeder-master structure)

**Borrowing limits (for ELTIFs distributed to retail investors):**

- Maximum 50% of net asset value, exclusively to finance new investments or pay costs and expenses that cannot be covered by the ELTIF's available liquidity
- Borrowing cannot be used to satisfy redemption requests

# The EU option (ELTIF Regulation): the new road for the retailization of private asset funds across the EU



## Evergreen



The maturity of an ELTIF can be up to 99 years if the domestic legislation applicable to the fund allows it (as is the case for the French FPS).



New subscriptions will be one of the ways to satisfy redemption requests made on the same redemption date



## Liquidity offered to investors



Market practice is to offer liquidity at least quarterly (liquidity pocket of 20% a year with redemption on a quarterly basis with a gate of up to 5%), but the current trend is to offer liquidity more frequently (e.g., bimonthly).

# The EU option (ELTIF Regulation): the new road for the retailization of private asset funds across the EU

## Liquidity management tools

- Liquidity management tools for an ELTIF are regulated by the ELTIF Regulation, which provides two possible methods:
  - Method 1: Based on the combination of the frequency of the redemption date and the notice period.
  - Method 2: Based on the combination of the frequency of the redemption date and the minimum percentage of liquid assets.
- Method 1 does not require a minimum pocket of liquid assets. Method 2 does require a minimum pocket of liquid assets, which increases with higher redemption frequency.
- Method 2 is rarely used in practice due to the rigidity of the pocket of liquid assets and potential negative impact on the yield offered to investors.
- Only Method 1 is considered below.

# The EU option (ELTIF Regulation): the new road for the retailization of private asset funds across the EU

## Liquidity management tools (LMT):

- **Liquid assets:** up to a maximum of 45% of capital. Market practice usually considers a pocket of liquid assets up to 20% of capital, it being provided that the ELTIF Regulation allows predictable cash flows over the next 12 months to be taken into account on a prudent basis. This provision allows ELTIFs with investment strategies primarily focused on private debt or infrastructure to reduce the pocket of liquid assets.
- **Lock-up period:** depends on the type of *prima facie* investors:
  - For retail investors, it is not customary to impose a lock-up period.
  - For French insurance companies, which allocate their investment in the ELTIF to retail investors' life insurance contracts, market practice often includes a lock-up period of up to 2 years.
  - Regardless of any lock-up period agreed between the insurance companies and the ELTIF, French insurance companies must satisfy redemption requests from their retail investors within 1 month. Any lock-up period between French insurance companies and the ELTIF thus creates a potential liquidity risk for French insurance companies if retail investors request redemptions to the French insurance companies during the lock-up period.

# The EU option (ELTIF Regulation): the new road for the retailization of private asset funds across the EU

## Liquidity management tools (LMT):

- **Gates:** determined by the combination of the frequency of the redemption date and the notice period. Examples for a redemption frequency over a 2 months period or less:
  - 16.7% if there is no notice period
  - 17.4% with a two-week notice period
  - 18.2% with a one-month notice period
- Example: If the liquid asset pocket is set at 20% of capital over a one-year period, for an ELTIF with bimonthly redemption dates and no notice period, the gate over the two-month period is  $16.7\% \times 20\% = 3.34\%$ , to be applied across the 4 redemption dates in the two-month period (i.e., 0.835% per redemption date).
- The asset manager cannot satisfy redemption requests above the predefined gate, even if the fund has sufficient liquidity.
- **Borrowing:** No borrowing is allowed to satisfy redemption requests.
- **Classes of interests:** If the ELTIF creates different classes of interests (e.g., to reflect different management fees for insurance companies, other institutional investors, and direct retail investors), notice periods, redemption frequency, and gates must be identical to ensure equal treatment of all investors.

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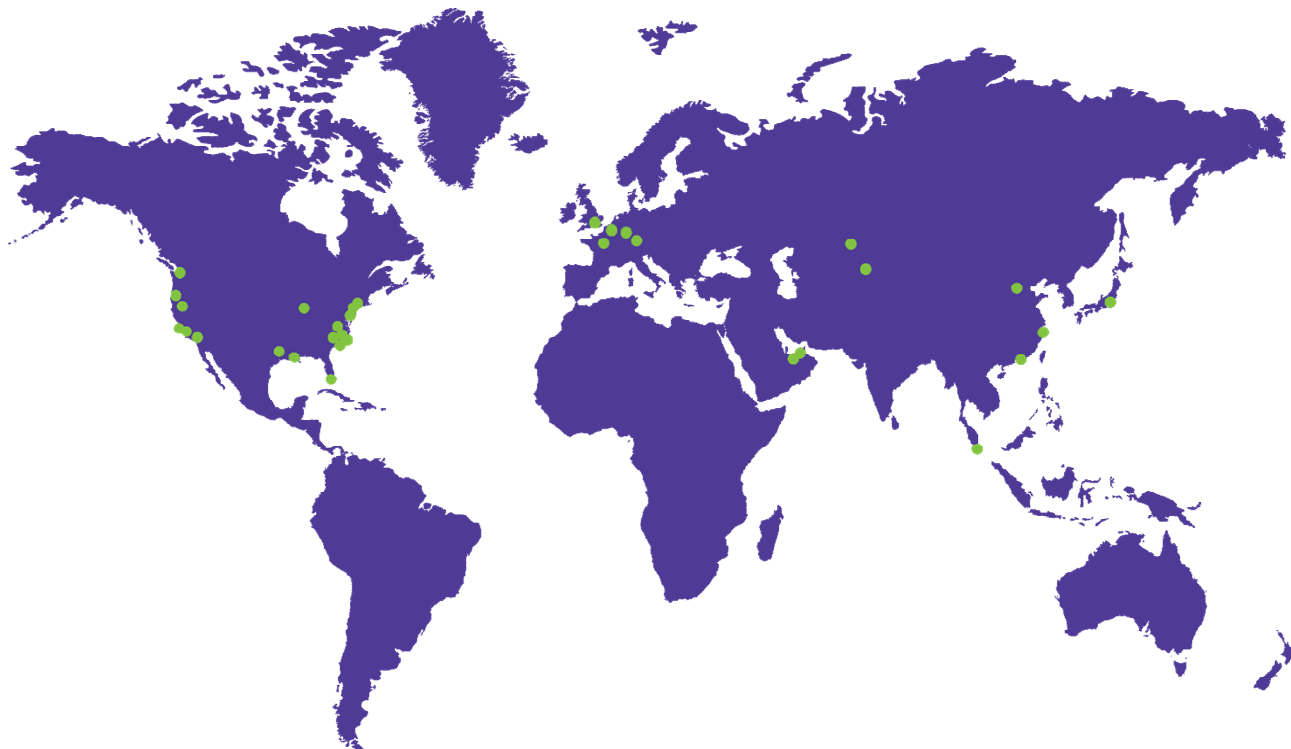
**Gilles** advises asset managers on the structuring and formation of private asset funds (private equity, private debt, infrastructure, fund of funds) in France and in Luxembourg and on their distribution to institutional investors, non-institutional investors (family offices, HNWI) and EU retail investors. He also advises the investors in their investment in private asset funds. He is specialized in the structuring/re-structuring of debt debt financings granted by private debt funds, in particular to Fintechs. Gilles speaks French and English and is fluent in German.

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