Attorney Burdon On How Trump 2.0 May Impact Closed-End Funds

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Chuck Jaffe, in this episode of The NAVigator podcast interviews Ken Burdon, a partner in the registered funds practice at Simpson Thacher and Bartlett. Ken discusses how the return of President Donald Trump might benefit closed-end funds. One key development he will be looking for is for the approval of new investment vehicles that give retail investors more access to private credit markets and other alternative assets that have been until now the domain of affluent investors and institutions. He notes that the first Trump Administration was generally in favor of making more investment opportunities available, and he thinks that will pick up in the new term, especially with the selection of Paul Atkins as a potential new SEC chairman. Burdon also talks about how activist investors might be impacted by the regime change.

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CHUCK JAFFE: Ken Burdon, a partner in the registered funds practice at Simpson Thacher and Bartlett is here, we're talking about how the closed-end fund business could be changing under the Trump administration, welcome to The NAVigator. This is The NAVigator, where we talk about all-weather active investing and plotting a course to financial success with the help of closed-end funds. The NAVigator is brought to you by the Active Investment Company Alliance, a unique industry organization representing the full spectrum of the closed-end fund business from users and investors to fund sponsors and creators, and yes, attorneys like my guest today. If you're looking for excellence beyond indexing, The NAVigator will point you in the right direction. And today we're discussing how the future of closed-end funds could be changing and what's achievable under Trump 2.0, the new presidential administration that takes office in January. We're having that discussion with Ken Burdon, he is a partner in the registered funds practice at Simpson Thacher and Bartlett, learn more about the firm at STBLaw.com, and learn more about closed-end funds, interval funds, and business-development companies at AICAlliance.org, that's the website for the Active Investment Company Alliance. Ken Burdon, welcome back to The NAVigator.

KEN BURDON: Well, thank you, Chuck. It's good to be back, I love being on your show here.

CHUCK JAFFE: We're not really having a political discussion here, so it's not about whether you like or dislike the results of the election, but for all the changes that people are talking about when it comes to what might happen with Trump 2.0, I really hadn't thought about what it was going to mean for the closed-end fund industry, but there are direct potential developments. So help us understand what's coming down the pike for closed-end funds as a result of the change in administrations.

KEN BURDON: Sure, Chuck, happy to, and thanks again for having me on. So just to lay a little bit of groundwork, I think we have to go back to Trump 1.0 too to kind of think about how Trump 2.0 might lay some groundwork for some benefits to closed-end funds. First I just want to note, we continue to be in the very early innings of what we talk about as the democratization of access to private markets, private markets being both private equity and private credit. By that I also mean the development and widespread use and acceptance of vehicles that expand the universe of private markets investors from a fundamentally institutional LP base, the warm-blooded humans. So who are those warm-blooded humans? That's what we like to call retail investors. I kind of use that term more broadly, some of these types of products I'm thinking about that provide that democratized access may be available only to high-net-worth individuals, some to what we call the mass affluent, and some to your ordinary investors who we typically think of as quote/unquote "retail", but the point is they're warm-blooded humans and not institutions. So the point is to help permit retail investors to have the opportunity to seek the same kinds of returns to exposures that institutional investors have been enjoying for decades now, and so we see that in the continued desire of wealth management divisions to allocate to private markets and drive product development in the space. So many are well underweight with what I've robustly heard described as a 10% target allocation, so product needs to be developed to fill that demand, and under the last Trump administration which was the Jay Clayton SEC, the agency at a senior level was broadly supportive of this concept of democratizing access to private markets. The idea being again that retail investors deserve the same opportunities to save and invest in the same fashion and with the same sponsors as institutional investors, and closed-end funds can help fill that gap.

CHUCK JAFFE: As for what could be changing, does Trump's pick for the new SEC chair matter? Or does it not matter because it's really more about the general this is how the Trump administration feels and what it wants to allow to happen?

KEN BURDON: Who is the SEC chair really matters, and I think it's really mattered over the course of the past four years. You've seen a particular approach to regulation, a particular approach to innovation in the industry, and I think that who Trump picks sets the tone for how the SEC is going to view the ability to help the industry provide the type of products through closed-end funds that investors are demanding. This trend gains steam under the Clayton SEC, and it's really grown at an incredible rate over the last five years, and really has the potential to kick into overdrive with an SEC that's fundamentally supportive of this democratization trend at a policy level. And so as we know, president elect Trump has named Paul Atkins as his pick to lead the SEC, Chairman Atkins will be broadly supportive of helping to pull the right levers to support the continued growth and demand for these private market strategies to be offered in a closed-end fund wrapper and in an investor-friendly and investor-protective manner.

CHUCK JAFFE: One of the big stories in closed-end funds has been activist strategies, and there has been different proposals, some of which people would say have been anti-shareholder, some of which have been anti-activist. However you want to define it, do you believe that the SEC and the new administration are going to be taking steps? And if so, is there an expectation on what happens to activism in this timeframe?

KEN BURDON: I think that one prong of helping to kickstart the private markets investing into a higher gear is going to be solving the activist issue for closed-end funds. The activist problem is an arbitrage problem for listed closed-end funds that trade at a discount. What we have to do is we have to rein that in because, look, private market investments are generally illiquid, and that can contribute to a discount which can contribute to activist issues for sponsors who worked to develop and launch a closed-end fund in that asset class, and in particular a listed closed-end fund in that asset class. Many of these strategies right now run in unlisted vehicles which are organized at tender-offer funds or interval funds, but I think as we move towards greater acceptance of retail exposure to private markets, I would hope and expect to see more private investments in more acceptable wrappers too like the listed closed-end funds. But to accomplish that, sponsors need to know they'll be able to execute on the strategy they offer, investors need to know they won't be forced into unwanted liquidity events, so I'm optimistic than an Atkins SEC will take a harder look at the tools in the SEC's toolbox and begin to scrutinize activist compliance with the Investment Company Act in the same way the SEC has always scrutinized traditional sponsors' compliance. There's a variety of ways that the SEC could get at that, but it takes a willingness to look at those tools and ask whether there's a trend in the market through the activism that is stifling innovation of the types of products that investors are looking for.

CHUCK JAFFE: Is there anything else specifically that you are hoping for or looking for or expecting to happen during Trump 2.0? You talked about what they've got in their toolbox, are there other tools you're expecting them to bring out that you wouldn't have expected had the election gone the other way?

KEN BURDON: Sure, I think there's a couples ways that the SEC could help support the development of closed-end fund product that provides retail investors access to private markets. So as many may know, many closed-end fund products with heavy investment in private markets or in private funds limit their investors to accredited investors, and like I said, our unlisted tender-offer funds or interval funds. For those that remain privately offered, because there are funds like this that limit to accredited investors but still register a public offering, but for those that remain privately offered, a focus on making the already committed general solicitation, so more broad marketing in a private offering work better would be incredibly beneficial to growing the asset base and providing greater access to these products for retail investors, in this case really the mass affluent. So today the compliance challenges with the current rule that permits general solicitation and private offerings has generally made sponsors shy away from using it, and I would be optimistic that an Atkins-led SEC may be more receptive to workshopping some improvements that still protect investors but also support greater capital formation. I think another thing to really look at too and focus on is a greater rationalization of how the retail focused products like these closed-end fund products can access private markets investments. One area that I think is ripe for reevaluation is the framework for a closed-end fund or a BDC to co-invest in deals where it sponsors other funds, whether those other funds are registered or private. So that meaningfully larger capital pool to draw from can facilitate deal flow to the retail products and provide its investors with the critical access they desire, and right now that framework for these types of joint investments is quite cumbersome and could use a re-evaluation as capital markets have continued to evolve. And again, it's an area where I think an Atkins-led SEC may be more receptive to having a discussion with the industry about it to find a way to help move that forward.

CHUCK JAFFE: Ken, really interesting. Of all the things I've been focused on when it comes to investing in the markets with the new Trump administration, I hadn't been focused on closed-end funds, but yeah, there's some interesting developments. We will be watching them, and I'm sure we'll have you back on The NAVigator down the line to talk about them again, but thanks so much for joining me today.

KEN BURDON: Thank you, Chuck. Pleasure to be here.

CHUCK JAFFE: The NAVigator is a joint production of the Active Investment Company Alliance and Money Life with Chuck Jaffe. And I am Chuck Jaffe, check out my show on your favorite podcast app or by going to MoneyLifeShow.com. Check out information on closed-end funds, interval funds, and business-development companies at AICAlliance.org, that's the website for the Active Investment Company Alliance. Thanks to my guest Ken Burdon, he's a partner in the registered funds practice at Simpson Thacher and Bartlett in Boston, the firm is online at STBLaw.com. The NAVigator podcast is new every Friday, and we will be here during the holiday weeks, but make sure you don't miss an episode by subscribing or following along on your favorite podcast app. We hope you have a great holiday and we will be back next Friday with more closed-end fund fun, but until then, happy investing and happy holidays!

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