

## Emergency challenge to continuation fund deal lands in Delaware court

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The Delaware Court of Chancery pauses a proposed continuation fund transaction following a sovereign wealth fund's allegations that the sponsor engineered a conflicted, below-market sale at investors' expense.

On December 3, 2025, the Abu Dhabi Investment Council (ADIC), part of the approximately \$300 billion Mubadala investment group, initiated litigation in the Delaware Court of Chancery against affiliates of the Energy & Minerals Group (EMG) arising from EMG's proposed sale of a 30% stake in Ascent Resources to a continuation fund.<sup>1</sup> The complaint, filed under C.A. No. 2025-1389-NAC, sought injunctive relief in aid of arbitration and alleges that EMG engineered a conflicted, below-market sale that would disadvantage existing investors at the current time.

According to ADIC, the transaction, structured as a sale from one EMG-managed fund to another, would harm limited partners, confer substantial benefits on EMG insiders, and allow the manager to reset performance-fee economics on an asset that would be unlikely to generate carried interest if sold in a conventional exit or public offering at the current time.

Like many continuation fund transactions, EMG engaged a financial advisor to run a competitive process, sought approval of the limited partner advisory committee (LPAC) of the existing EMG fund for the transaction, obtained a fairness opinion with respect to the purchase price, and offered existing investors a "rollover" option and a "cash-out" option. Nevertheless, the complaint emphasizes a number of procedural concerns with the transaction, in particular alleging (i) a lack of adequate notice and information provided to LPAC members before they were asked to vote on the transaction, (ii) a failure to address requests from certain LPAC members to delay the vote and hold an in-camera session (*i.e.*, without EMG present), (iii) information asymmetry between the LPAC members relative to prospective investors in the continuation fund, resulting in the LPAC not being fully informed of all relevant facts, and (iv) a failure to conduct a process for alternative transactions such as a public offering or a merger despite having recently engaged in discussions about such transactions. In addition, despite the procurement of a fairness opinion on the price obtained in the continuation fund transaction, ADIC alleges that the fairness opinion was based on inaccurate assumptions provided by EMG with respect to a key metric of Ascent Resources, which led to an undervaluation of the company.

Although the governing fund documents require arbitration of disputes, ADIC sought, and EMG ultimately consented to, a temporary halt in Chancery Court. On December 4, the parties submitted, and the Court approved, a stipulation delaying the transaction until at least late February 2026 to allow review by an independent commercial arbiter. The matter now proceeds in a dual-track posture, with urgent equitable oversight by the Court occurring concurrently with the arbitration framework contemplated by the EMG funds' partnership agreements.

### Broader industry implications

This dispute arises amid a pronounced increase in continuation fund transactions in recent years, which have become popular as a tool for sponsors to generate liquidity and extend holding periods for assets that would benefit from a longer hold and/or additional capital. However, these transactions inherently involve conflicts of interest, as the sponsor effectively acts as both seller and buyer, and they present heightened sensitivity around valuation, timing, governance, and performance fee incentives. This matter is among the most visible examples to date of the friction that can arise

between sponsors and investors over these issues.

For sponsors, the litigation reinforces the importance of a transparent and well-documented process when executing continuation fund transactions. In particular, sponsors should engage the LPAC early in the process, and maintain regular communication as the transaction progresses, so that any feedback received from the LPAC can be taken into account in determining the deal's structure and terms. Further, sponsors should seek to avoid any misalignment of information provided to limited partners of their existing funds relative to prospective buyers in the continuation fund by providing both sets of investors with access to the same information about the underlying assets, including with respect to the sponsor's future exit plans. As continuation fund transactions become more prevalent in the market, sponsors should anticipate increased scrutiny by existing investors of their conflict-management practices, valuation methodologies, and the sponsor's economics and fee arrangements.

## **Regulatory backdrop**

The SEC has increasingly scrutinized private fund adviser practices, particularly around conflicts of interest, fiduciary duties, and valuation. The Division of Examinations has highlighted these issues as key focus areas, emphasizing the importance of independent approvals, adequate disclosures, and market-driven valuations. Sponsors should expect examination questions on whether investors presented with a continuation fund transaction received sufficient information to make informed, non-coercive choices and whether processes mirrored regulatory expectations for fairness. Comprehensive documentation of conflict management, fairness opinions, advisor selection, and market-check protocols remains critical.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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<sup>1</sup> Abu Dhabi Inv. Council Co. et al. v. Energy & Minerals Grp. LP et al., No. 2025-1389-NAC (Del. Ch. Dec. 3, 2025) (verified complaint for preliminary injunction in aid of arbitration), <https://www.documentcloud.org/documents/26341087-adic-vs-emg/>