



Five questions: Trends in retail alts product due diligence with Mick Law

We recently had the opportunity to discuss trends in nontraded investment product due diligence with **Brad Updike, LLM, JD**, an attorney and shareholder of **Mick Law, P.C.** based in Omaha, NE.

What is due diligence as it applies to non-traded securities products?

Due diligence is the undertaking of an assessment of a product's costs, risks and prospects for providing competitive returns considering the risks. On the public side, you have an investment banking firm that undertakes this assessment and uses that information to set an IPO share price. On the private side, you don't have an investment banking firm setting a share price, per se, but you do have an "underwriting-like" process (i.e., due diligence) in which law firms review an issuer's assets, management, background, operations, financials and related reporting, organizational agreements, investor transparency rights, and prior performance within the area or sector in which investor money is being used, and, in our case, we then use that information to provide our broker-dealer (BD), RIA or family office clients with an assessment as to whether the investment opportunity and its prospects for success justify the investment and business execution risks.

Where has your recent work come from and what product sectors stand out?

While commercial real estate has slowed over the past couple years in view of higher interest rates, oil/gas program capital-raising activities in 2024 and 2025 have been solid and stable. In 2024, we reviewed 15 unique oil/gas program sponsor companies that collectively raised \$1.4 billion. Although commodities prices have come down recently, to \$60-\$70 per barrel of oil, this is not necessarily a bad development, as it will enable the oil/gas compa-

nies from 2024 to deploy that capital at a time when drilling and mineral asset capex is lower. While commercial real estate transactions are down from their 2021-2022 levels, we have seen a fair number of real estate deals being done in niche markets with lower debt limits. We expect an increase in real estate transactions as cap rates and debt markets stabilize.

What are your thoughts on the OBBBA and how will it affect your work?

With the enactment of the new laws pertaining to Qualified Opportunity Zones (QOZ), we expect to see a significant roll-out of new Qualified Opportunity Fund (QOF) products emerge within the retail financial channel in 2026-2027. This will no doubt include conventional commercial real estate, as well as more oil/gas-oriented QOFs that utilize drilling as their business due to the enactment of rural QOZ census tracks.

How do you envision that AI will affect your due diligence work?

The development of AI is exciting, as it will help standardize and streamline certain marketing and compliance functions relating to securities products (e.g., research, document processing). With respect to publicly traded securities, I believe AI will enable RIAs and FINRA member firms to conduct their Reg. BI comparative product analysis with greater speed and efficiency.

That said, the use of AI to conduct due diligence on alternative products will be more limited, in my opinion, especially with respect to project/programs sold through private placement. On the private side, you have literally thousands of variations of companies with differing assets, strategies, products, IT/IP and operating processes, and much of the key information needed to properly analyze these areas is proprietary and not available to

the public. Accordingly, it takes manpower to compile, review and analyze this data.

Also, being a law firm that conducts alternative products due diligence, we are required to perform our own legal reviews of organizational agreements and other transactional documents for fairness and transparency purposes. Accordingly, there may be many variations of how various managerial duties, investor rights and other provisions within an issuer's organizational agreements are stated, which AI may or may not always pick up. As such, while AI will probably be somewhat helpful in enabling us to draft certain parts of our legal opinions with greater speed, the underwriting and legal service components to our work product will no doubt enable us to remain highly relevant in the overall Alts compliance process.

Any parting words to our readers?

For our BD readers, please revisit FINRA's and SEC's published guidance and risk alerts pertaining to Reg. BI, which requires all BDs to understand the costs, risks and rewards pertaining to the investments they recommend after performing comparative product assessments. As comparative product component of Reg. BI is important, we have recently restructured certain of our opinions (i.e., in oil/gas and DSTs) to provide analysis of key common data points that are relevant to such assessments (e.g., which touch upon offering costs and sponsor compensation, underwriting returns, and prior performance). While our firm will take a careful look at AI over the next few months in our effort to improve our process, the niche characteristics of independently owned businesses and private programs will continue to require a significant human element to appropriately decipher the risks and rewards of such opportunities.



Mick Law, P.C., based in Omaha, is a boutique law firm focused on broker-dealer, registered investment adviser, family office and bank/trust company representation, as well as real estate finance. The firm's due diligence representation includes reviewing and opining on offerings of various asset classes including DSTs, real estate equity funds, REITs, qualified

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