

SMAAs, AMCs & Other Actively Managed Products

January 25, 2024

Overview

- More and more product innovation intended to provide investors, from institutional investors, to family offices to high net worth investors, with a range of alternative investments that offer structured returns
- Structured returns often resemble those payoffs associated with swaps or structured products or with fund products
- More investors are seeking “active” strategies with structured payoffs

The engine behind active management

What are Actively Managed Certificates (AMC)?

Definition:

Actively Managed Certificates (AMCs) are investment vehicles that combine the features of actively managed funds and structured products. They are designed to provide investors with exposure to a professionally managed portfolio, while offering the liquidity and transparency associated with traditional exchange-traded securities. Actively Managed Certificates enable investors to access a diversified range of assets, including equities, bonds, commodities, and alternative investments.

One product, many names

- Strategy Index Certificates
- Dynamic Equity Note
- Strategy Notes
- Actively Managed Trackers
- Strategic Index certificates
- Exchange Traded Notes (ETN)
- Exchange Traded Products (ETP)

What are Actively Managed Certificates (AMC)?

- Actively Managed Certificates (AMCs) offer swift, adaptable, and cost-effective access to dynamic investment strategies.
- Investors can convert their investment strategy into a transferable security, linking it to traditional securities and non-bankable assets.
- Public and private offering options are available for AMCs.
- In most jurisdictions, AMCs are classified as structured products, with payouts tied to the performance of underlying assets.
- The selection and adjustment of underlying assets are dynamic, managed by an investment manager or following predefined index rules.
- AMCs are popular among investment managers seeking quick and flexible fulfillment of client needs in terms of investment strategies and asset classes.
- Regulatory compliance is essential for AMCs in the regulated financial industry, especially concerning national and international financial market regulations and cross-border offers.

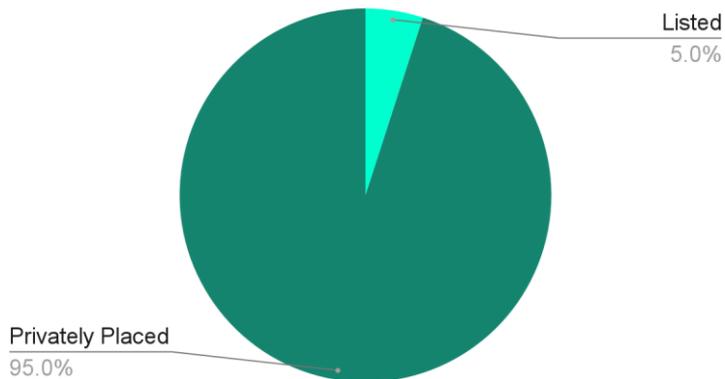
Actively Managed Certificates (AMC) trends

- Expanding into new markets such as South Africa, the Middle East, and Italy;
- Utilizing AMCs issued by Special Purpose Vehicles (SPVs) to convert non-bankable assets into bankable investments;
- Regulated Securitization Vehicles from Ireland and Luxembourg, listed on exchanges like LSE, Milan, and Euwax, with market-making;
- Experiencing growth in the popularity of AMCs linked to indices;
- Witnessing a convergence between active and passive investing, driven by AI technology in index strategies

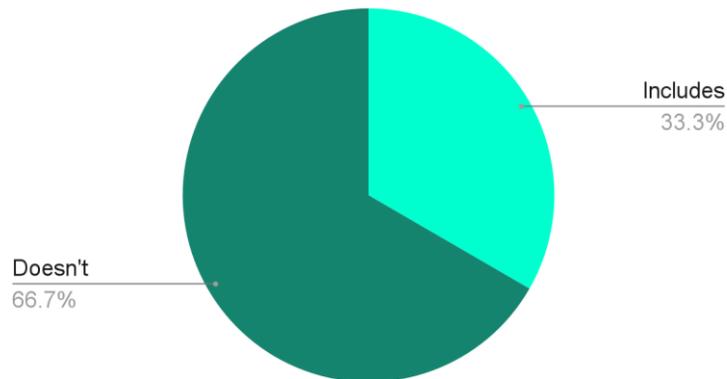
Actively Managed Certificates (AMC) in Numbers

- Approximately 1.5 Trillion AUM Booked Between Asia & Europe
- Booking \neq Issuer Domiciliation \neq Client Location
- Preference for Fund Style (Basket) Over Certificate Style (Index)
- Few Issuers Permit Leverage Within AMC, Excluding Derivatives

Comparison of Listed vs. Privately Placed AMCs

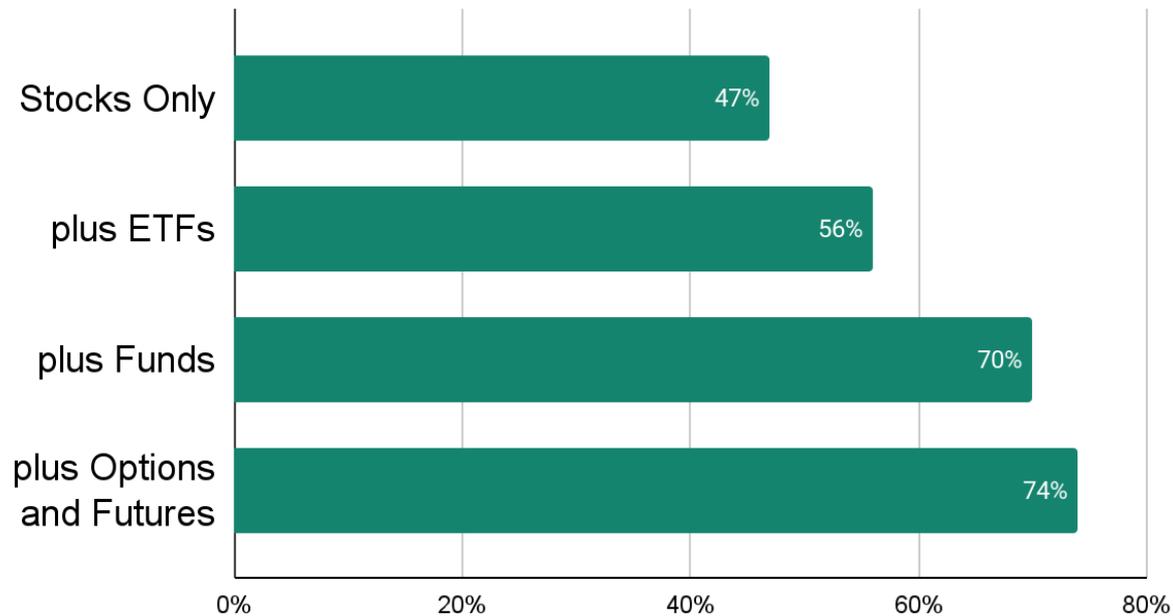


Structured vs. Non-Structured Product Inclusion



Actively Managed Certificates (AMC) in Numbers

Breakdown by Underlying Asset Class



Actively Managed Certificates (AMC) Market Participants

- On-balance sheet issuers: investment and private banks who have a Structured Note program and already have structured products, QIS, Delta One or Prime Brokerage business.
- Off-balance sheet issuers: securitization vehicles that have bankruptcy remote structures like in Luxembourg, Ireland, Guernsey, Jersey, etc.

What are Separately Managed Accounts (SMA)?

A Separately Managed Account (SMA) is a personalized investment portfolio tailored to your unique needs and managed according to customizable parameters in collaboration with a financial advisor. Similar to mutual funds and ETFs, SMAs are diversified baskets of stocks or bonds managed by teams of professionals. However, SMAs are unique in that they provide direct ownership of individual stocks or bonds, allowing for greater flexibility in strategy customization and tax considerations. Available across various asset classes, styles, and risk levels, SMAs can play diverse roles in a well-diversified portfolio and are accessible through financial professionals.

Separately Managed Account

You own the underlying



Mutual fund/ ETF

You and many other investors own shares of the fund

The fund (not the investor) owns the underlying



SMA Key Benefits

Customized portfolios

- Easily align portfolio with ESG requirements
- Define restrictions on companies or industries
- Set parameters for credit rating, maturity, etc.

Active management

- Work with professional portfolio managers, advisors, and traders to optimize your bespoke investment requirements

Comprehensive transparency

- Access to real time account balances
- Regular performance/transaction reports
- Clearly defined fees and costs

Tax Management

- Tax gain/loss harvesting
- Fund accounts with existing securities to circumvent selling at a profit and triggering tax implications.
- Avoid capital gains distributions

Separately Managed Accounts

- A separately managed account (SMA) may provide for investments in structured notes or investments designed to replicate those returns
- An SMA is an account not a 1940 Act (or “fund”) product although, like a fund:
 - It is “managed” by a manager
 - The manager must be (in the United States) a registered investment adviser
 - It can provide for transparency regarding the holdings in the account
 - There are “management fees”
- Sometimes referred to as a “fund of one”

Separately Managed Accounts *(cont'd)*

- However, there are many differences:
 - Fees may be higher than those associated with a mutual fund
 - The degree of customization is also much higher with an SMA than a mutual fund—ETFs may track an index, but an SMA's holdings can be much more flexible
 - Tax objectives also can be specific to the investor
 - There is no required prospectus or disclosure document

Actively Managed Certificates

- Despite their name, actively managed certificates, or AMCs, generally are debt securities, not equity
- Debt securities that are either issued by a financial institution that has an active structured products program (issued directly from the issuer) or are issued by or through a special purpose entity that is established by a financial institution that is an issuer of structured products
- The AMCs generally will provide sophisticated investors with structured payoffs that reference the performance of an index—or the performance of a basket (which is “active” or “managed”)

Actively Managed Certificates *(cont'd)*

- AMCs generally are offered pursuant to an offering program so there will be program documentation that will include:
 - An offering document
 - A program document (with the dealer and/or distributors)
 - For each offering, a final term sheet
 - There may be an index provider and a license agreement, or a research license agreement
 - There may be product fact sheets or other product supplements
 - Depending on the program structure, there may be an investment management agreement

Actively Managed Certificates *(cont'd)*

- In certain respects, just like SMAs may resemble funds, AMCs may resemble funds
- In certain jurisdictions in Europe, AMCs may be subject to particular regulatory and compliance considerations in order to avoid being classified as collective investment schemes

Actively Managed Certificates – US Considerations

- U.S. Securities Act of 1933
 - All securities offered or sold in the United States must either be registered with the SEC under the Securities Act or within an exemption from registration.
 - There must be an exemption for the offer and sale of the AMCs if offered and sold in the United States or to US persons
 - Regulation D under the Securities Act provides several non-exclusive safe harbors in connection with exemptions from the Securities Act registration requirements.
 - Rule 506 of Regulation D provides that offers and sales of securities that satisfy certain offering restrictions will be deemed to be transactions “not involving any public offering” and will therefore be exempt from registration pursuant to Section 4(a)(2) of the Securities Act.
 - Rule 506(b) restricts any general solicitation or general advertising.
 - An offering complying with Rule 506(b) will generally be limited to accredited investors, but there is no limitation on the number of accredited investors in a Rule 506(b) offering.

Actively Managed Certificates – US Considerations

(cont'd)

- Securities issued in a Rule 506 offering are “restricted securities,” and cannot be freely transferred by the purchasers.
- Companies that rely on Rule 506(b) must file a Form D electronically with the SEC after they first sell their securities.
- Regulation D offerings require the issuer and any placement agent to conduct diligence to confirm that none of the issuer, any placement agent or certain other enumerated individuals connected with the offering are “bad actors” that have violated certain U.S. securities laws in the past.
- Rule 144A provides a safe harbor for offers and sales of qualifying securities to QIBs.
 - An issuer may not rely on Rule 144A. Rule 144A only applies to resales of restricted securities. The issuer must rely on another exemption from registration under the Securities Act for the sale to the initial purchaser.
 - Rule 144A also requires the issuer to provide or make available certain reasonably current information about the issuer, including financial statements.

Actively Managed Certificates – US Considerations

(cont'd)

- Regulation S provides an exclusion from the Section 5 registration requirements of the Securities Act for offers made outside the United States to non-U.S. persons.
 - The availability of Regulation S is subject to two general conditions:
 - The offer or sale must be made in an offshore transaction; and
 - No “directed selling efforts” may be made by the issuer, a distributor, any of their respective affiliates, or any person acting on their behalf.
 - Depending on the applicable Category, securities initially distributed pursuant to Regulation S may be subject to a distribution compliance period during which they may not be offered or sold to U.S. persons in the secondary market.

Actively Managed Certificates – US Considerations

(cont'd)

- U.S. Securities Exchange Act of 1934
 - Section 15(a)(1) of the Exchange Act makes it unlawful for any “broker” or “dealer” to effect transactions in securities within the jurisdiction of the United States unless registered with the SEC.
 - The definitions of “broker” and “dealer” include both domestic and foreign persons.
 - Foreign broker-dealers are not required to register if either their business in securities is conducted exclusively outside of the jurisdiction of the U.S. or an exemption or exception from SEC registration is available.
 - Exchange Act Rule 15a-6 permits foreign persons that would be defined as brokers or dealers to engage in certain limited activities in the U.S. without registering as a broker-dealer with the SEC.
 - A foreign broker-dealer may effect an unsolicited transaction with any U.S. persons without registration with the SEC. The SEC has not defined “solicitation” in this context and determines the term’s meaning on a case-by-case basis.

Actively Managed Certificates – US Considerations

(cont'd)

- Under Exchange Act Rule 15a-6(a)(4), a foreign broker-dealer may solicit and effect securities transaction with the certain categories of U.S. persons, including SEC registered broker-dealers, U.S. banks acting in an exempt capacity, certain global development banks, foreign persons temporarily present in the United States with whom the foreign broker or dealer had a bona fide pre-existing relationship, and some U.S. persons outside of the U.S. in non-U.S. transactions (subject to additional restrictions on the manner of sale).
- A foreign affiliate of a U.S. registered broker-dealer may enter into foreign securities transactions with offshore clients using U.S. resident fiduciaries without the involvement of a U.S. registered broker-dealer or effecting those transactions in accordance with Rule 15a-6.
- Rule 15a-6(a)(3) permits a foreign broker-dealer to solicit and execute securities transactions for a “U.S. institutional investor” or the “major U.S. institutional investor” through a U.S.-registered broker-dealer, provided that the foreign broker-dealer adheres to certain requirements.

Actively Managed Certificates – US Considerations

(cont'd)

- Investment Company Act of 1940
 - Entities that **(i)** issue securities to investors and which hold significant amounts of assets that are or may be deemed to be securities **or (ii)** otherwise hold themselves out as being engaged in an investment company business would fall within the definition of an “investment company” under the 1940 Act and are subject to registration with the SEC absent an exception from the definition or an applicable exemption.
 - The 1940 Act imposes significant limitations on registered investment companies, including limitations relating to the composition of the board of directors, types of investments, amount of leverage, classes of “senior securities” that can be issued, affiliate transactions, custody of assets, and approval of contractual arrangements with an investment adviser, and requires registered investment companies to disclose information about their investment objectives, policies, restrictions, operations, and financial condition when stock is initially sold and periodically thereafter.

Actively Managed Certificates – US Considerations

(cont'd)

- Failure to comply with registration and other 1940 Act requirements could render transactions voidable
- For foreign issuers, an exception or exemption under the 1940 Act is a practical requirement as foreign issuers are generally prohibited from registering under the 1940 Act
- If an AMC is issued through a special purpose entity, the 1940 Act should be considered; with Delta One AMCs, consideration should be given as to whether the SEC would look through the instrument and take the view that the reference assets themselves are a de facto investment company

Actively Managed Certificates – US Considerations

(cont'd)

- Investment Advisers Act of 1940
 - The Advisers Act regulates “investment advisers” (any person or firm that, for compensation, engages in business of the providing advice to others regarding securities) and requires their registration absent an available exemption or exclusion from the definition of investment adviser.
 - The registration requirement includes any non-exempt investment adviser that uses U.S. jurisdictional means, i.e., the United States mails or any other means or instrumentality of interstate commerce, in connection with its advisory business.

Actively Managed Certificates – US Considerations

(cont'd)

- Regulation S transactions (if subsequent transfers to U.S. persons are prohibited) will not implicate the Advisers Act as no advice is given to any U.S. persons.
- Section 202(a)(11)(C) of the Advisers Act excludes from the definition of investment adviser any broker or dealer whose performance of investment advisory services is *solely incidental* to the conduct of its business as a broker or dealer and who receives *no special compensation* for such services.
- Other primary registration exemptions under the Advisers Act include the “Private Fund Advisers Exemption” and the “Foreign Private Advisers Exemption.”

Actively Managed Certificates – US Considerations

(cont'd)

- An investment adviser relying on either the Private Fund Adviser Exemption or the Foreign Private Advisers Exemption is still subject to various provisions of the Advisers Act, such as the insider trading provision, the general anti-fraud provisions in the Advisers Act (including the principal transaction disclosure and consent requirements), the pay-to-play rule and the pooled investment vehicle anti-fraud rule.
- An investment adviser relying on the Private Fund Adviser Exemption will also still be required to comply with certain reporting obligations under the Advisers Act, including filing a Form ADV annually.

AMCs from the perspective of EU law

- Legal structures for AMCs in the EU: on balance sheet / special purpose vehicles / fiduciary notes structures (segregated pools)
- Requirements of the **Prospectus Regulation** (EU) 2017/1129:
 - Underlying-linked securities (Annex 17 of the Delegated Regulation (EU) 2019/980)
 - Comprehensive description of the strategy
- **PRIIPs Regulation** (EU) No 1286/2014 (preparation of a KID)
- Product governance (**MiFID**):
 - Suitability for targeted investors (esp. retail)
 - Product intervention (conflicts of interest, general suitability of strategy and product for retail investors)

AMCs from the perspective of EU law (cont'd)

- Requirements of the **Benchmark Regulation** (Regulation (EU) 2016/1011):
 - Qualification of strategy as an “index” (likely due to degree of discretion?)
 - Methodology must “contain clear rules identifying how and when discretion may be exercised in the determination of that benchmark”
 - Registration as benchmark administrator
- Distinguishing AMCs from **funds/AIFs** (esp. in case of SPV or fiduciary notes structures):
 - Some EU regulation, but may be question of qualification under applicable national law
 - Issues include: degree of asset segregation, discretion regarding investment decisions, potential look-through in case of fiduciary structures
- Two main sources of **liability**:
 - Prospectus liability (*e.g.*, as a result of inadequate disclosure)
 - Mis-selling (*e.g.*, product not suitable for investors)



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- Marla advises clients on the structuring and trading of complex derivatives and structured financial products. Her practice focuses on bespoke structures designed for institutional and sophisticated investors, proprietary indices and structured product automation.
- She also counsels on issues arising under the federal securities laws, advises clients in the negotiation of ISDA and equity derivative transactions, and assists with the setup and ongoing operation of structured note, warrant, certificate of deposit and commercial paper programs and the ongoing maintenance of and issuances under covered bond programs.



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- Anna represents issuers, investment banks/financial intermediaries and investors in financing transactions, including IPOs and other public offerings and private placements of equity and debt securities.
- She works closely with financial institutions to create and structure innovative financing techniques, including new securities distribution methodologies and financial products. She has particular financing experience in certain industries, including tech, telecommunications, healthcare, financial institutions, REITs and consumer and specialty finance.



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- Patrick's practice includes debt capital products, issuance programs, derivative investment products, re-packagings, and synthetic securitizations. His team advises on debt capital markets issuances and disclosures, debt issuance programs, hybrid capital instruments and liability management transactions. The OTC derivatives practice focuses on advising and negotiating master agreements (including repos and stock lending), collateral solutions, netting questions and provides transaction support with regard to all underlyings, including equity-linked, credit-linked, fund-linked or commodity-linked derivatives.
- Patrick's recent work also focuses on a number of significant issues currently surrounding the regulation of the OTC derivatives markets, the testing of key derivatives principles, and the clearing of financial products through central counterparties.

Resources



Read and subscribe to **REVERSEinquiries**, Mayer Brown's structured and market-linked products-focused newsletter.

We invite you to join our **REVERSEinquiries LinkedIn Group**, a resource maintained by Mayer Brown for issuers and financial intermediaries involved in, or interested in, developments affecting the structured and market-linked products market.

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The blog provides up-to-the-minute information regarding securities law developments and commentary on developments relating to private placements, IPOs, and other securities topics.



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Additional Resources

The screenshot shows a landing page for Vestr's active management platform. The main headline is "The engine behind active management". Below this, a section titled "Why vestr?" describes the platform as an easy-to-integrate multi-asset platform for issuers that digitizes the lifecycle management of actively managed investment products. It highlights features like a modular platform to automate value chains, a regressive "pay as you earn" pricing model, and a white-labelled solution. A list of integrated complementors includes SIX, SUNGARD, FIS, CREDIT FINANCE, xignite, ITIVITI, InteractiveBrokers, Bloomberg, avoloo, and CLARITY AI. A testimonial from Fabio Dertle is included, along with a call to action: "Click here to schedule a call".

The Engine Behind Active Management

The screenshot shows the cover of a white paper titled "A Primer on Actively Managed Certificates" by Stefan Wagner and Luca Bianchi. The cover features the Vestr logo and a circular badge indicating it is a "WHITE PAPER" dated "18.08.2023". The text on the cover includes a foreword and introductory paragraphs about innovation, digital transformation, and the demand for specialized investment solutions. It also mentions the adoption of technology and the benefits of the platform for issuers.

A Primer on Actively Managed Certificates

SMA Key Benefits

Customized portfolios

- Easily align portfolio with ESG requirements
- Define restrictions on companies or industries
- Set parameters for credit rating, maturity, etc.

Active management

- Work with professional portfolio managers, advisors, and traders to optimize your bespoke investment requirements

Comprehensive transparency

- Access to real time account balances
- Regular performance/transaction reports
- Clearly defined fees and costs

Tax Management

- Tax gain/loss harvesting
- Fund accounts with existing securities to circumvent selling at a profit and triggering tax implications.
- Avoid capital gains distributions

vestr in a nutshell

We offer an easy-to-integrate platform that **digitizes the life-cycle management** of your actively managed investment products.

Our tuneable software engine handles everything from **portfolio rebalancing** to **investor reporting** and **audit trails**, so you can focus on your core competencies.

The screenshot displays the 'Rebalancing' interface for 'AMC on the Best Stocks'. It features a navigation bar with 'Weighting', 'Trading instructions', and 'FX hedge' steps. A search bar on the left shows 'ro'. The main table lists various stocks with columns for 'Total units', 'Last price', 'Percentage (target)', 'Percentage (current)', and 'Percentage (indicative)'. The table includes entries for ROLLS-ROYCE HOLDINGS P., ROTORK PL, ROCHE HOLDING AG-GEN., ROGERS COMMUNICATIO..., ROYAL BANK OF CANADA, ROHM CO LTD, ROKU INC, ROSS STORES INC, and WALT DISNEY CO/THE. A 'Bonds' section is visible at the bottom.

Symbol	Total units	Last price	Percentage (target)	Percentage (current)	Percentage (indicative)
ROLLS-ROYCE HOLDINGS P. (RR/LN)					
ROTOROK PL (ROR LN)			100%		
ROCHE HOLDING AG-GEN... (ROG SE)	E INC	9'436.98		5.07%	5.07%
ROGERS COMMUNICATIO... (RCI/B CT)	IE INC	7'526.19		5.39%	5.39%
ROYAL BANK OF CANADA (RY CT)	AS AG	3'666.18	5%	2.54%	5%
ROHM CO LTD (8963 JT)	IDESK INC	8'438.64		3.85%	3.85%
ROKU INC (ROKU UW)	ZON.COM INC	884.73		4.37%	4.37%
ROSS STORES INC (ROST UW)	HICAN EXPRESS CO	8'454.81		2.66%	2.66%
	CORP/DE	13'146.84	1%	3.64%	1%
	CAST CORP-CLASS A	22'576.47	6%	2.60%	6%
	AR GENERAL CORP	7'802.97		2.47%	2.47%
	WALT DISNEY CO/THE	7'734.72		2.77%	2.77%
	FISERV INC	12'150.39		2.76%	2.76%

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