

The Defined Outcome Series

Tax structuring Issues for Entities Taxed as Regulated Investment Companies (UITs and ETFs)

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Agenda

- RIC Requirements
- Application by Way of Example



RIC Requirements

UITs and Defined Outcome ETFs
(and most mutual funds, BDCs and other ETFs)

Overview

- Organizational requirements
- Gross income test
- Asset diversification test
- Distribution requirement

Organizational Requirements

- Must be a domestic corporation
 - Series entities (e.g., series trusts) work
- Must be registered under the Investment Company Act of 1940 as a management company, unit investment trust, or business development company
- Must make an election to be treated as a RIC

Gross Income Test

- At least 90% of the entity's annual gross income must be derived from:
 - Dividends
 - Interest
 - Payments with respect to securities loans
 - Gains from the sale or disposition of stock, securities, or foreign currencies
 - Other income (including gains from options, futures, or forward contracts) derived from the business of investing in stock, securities, or currencies

Asset Diversification Test

- At the close of each quarter of the taxable year :
- **50% Requirement:** At least 50% of the value of total assets must consist of:
 - Cash and cash items (including receivables) or U.S. government securities
 - Securities of other RICs
 - Other securities, but limited so that no single issuer represents more than 5% of total assets and no more than 10% of the outstanding voting securities of such issuer
- **25% Limitation:** No more than 25% of total assets may be invested in:
 - Securities of any one issuer (other than U.S. government securities or securities of other RICs)
 - Securities of two or more issuers that the RIC controls and that are engaged in the same, similar, or related trades or businesses
 - Securities of one or more qualified publicly traded partnerships

Asset Diversification Test Relief

- No failure if the asset diversification test is not satisfied by reason of market fluctuations in the value of its securities **unless** the discrepancy between the value of the RIC's investments and the requirements under the percentage tests exists immediately after an acquisition and is either wholly or partly a result of the acquisition
 - If due to an acquisition (i.e., not solely market fluctuations), 30-day cure period after the close of the calendar quarter

Distribution Requirement

- Distribution Requirement (annual)
 - 90% to maintain status, 98.2% to avoid excise tax
 - Corporation for U.S. federal income tax purposes, but entitled to a dividends-paid deduction
- A distribution will be treated as paid on December 31 of the current calendar year if it is declared by the RIC in October, November or December with a record date in such a month and the RIC pays the dividend during January of the following calendar year
- Taxable to shareholders in the calendar year in which the distributions are declared, rather than the calendar year in which the distributions are received



Application by Way of Example

Example – Calamos Autocallable Income ETF (CAIE)

- Calamos Autocallable Income ETF (CAIE, formed 7/31/2025)

HOW CAIE WORKS:

CAIE provides investors exposure to a portfolio of 52+ autocallables, each with similar terms and whose coupon payments and principal at maturity are tied to the MerQube US Large Cap Vol Advantage Index - a benchmark optimized specifically for autocallable strategies.

Strategy:

52+ laddered autocallables, staggered weekly

Individual Autocallable Maturity:

5 years each

Coupon Payments:

Monthly distributions

Coupon Barrier⁴:

-40% (payments stop if breached)

Maturity Barrier⁴:

-40% (principal protection threshold)

Autocallable Level:

Called if MerQube US Large Cap Vol Advantage Index is positive after 1-year non-call period

Reference Index:

MerQube US Large Cap Vol Advantage Index

Ultimately, this portfolio of autocallables is culminated inside an index that is then traded on swap between the ETF and a JP Morgan (the counterparty). This process is what ultimately delivers the coupons and market values of the underlying autocallables to the ETF, and ultimately to the investor.

HOLDING	%
Box Spread Flex Options Position - SPY Long Put	54.4%
United States Treasury Bill	37.5%
Box Spread Flex Options Position - SPY Long Call	4.0%
TRS RECEIVE MQAUTOCL: MerQube US Large-Cap Vol Adv Autocallable PAY US SOFR Rate +10bps - JP Morgan	3.4%

Typical Holdings

- Flexible EXchange (FLEX) options
 - Asset tests:
 - Rev. Rul. 83-69. For exchange traded options, the “issuer” is the issuer underlying the option (not the exchange)
 - GCM 39708. For an index, look to the index components (also applies the exchange traded option rule to private options)
 - Income test: “other income”
- Treasuries
- Equity Swaps
 - Asset tests: not entirely clear who is the “issuer” and how to measure valuation (but typically valued on day one at zero if on-market swap)
 - Income test: generally qualifying “other income”

Flagging the Risk (example from CAIE)

- The strategy: “The Fund will not attempt to replicate the Autocallable Index, but will instead use financial instruments such as total return swaps to gain exposure to the level of the index. The Autocallable Index replicates the collective performance of a theoretical portfolio of 52 to 260 synthetic Autocallables arranged in a ladder structure with staggered entry points with similar fixed parameters”
- “For purposes of the qualifying income test, the treatment of derivatives that provide exposure to the Autocallable Index is not entirely clear, and thus whether the income and gain therefrom is qualifying income is uncertain. An adverse determination or future guidance by the Internal Revenue Service with respect to the treatment of income or gain from those investments may adversely affect the Fund’s ability to qualify as a regulated investment company.”
- “For purposes of the diversification tests, the identification of the issuer (or, in some cases, issuers) of a particular investment can depend on the terms and conditions of such investment. Because there is no published Internal Revenue Service guidance or case law on how to determine the “issuer” of various derivatives that the Fund may enter into, there is a risk that the Fund will not meet the Code’s diversification requirements and will not qualify, or will be disqualified, as a regulated investment company.”
- “If determined necessary, the Fund may invest a portion of its assets in a Subsidiary, which is expected to provide the Fund with exposure to the Autocallable Index within the limitations of the qualifying income and diversification tests.”

Distributions - CAIE

DISTRIBUTION DETAIL

	PAYABLE DATE	DISTRIBUTION	NET INVESTMENT INCOME	SHORT-TERM CAPITAL GAINS	LONG-TERM CAPITAL GAINS	RETURN OF CAPITAL
February	02/09/2026	\$0.32452	\$0.01141	\$0.00000	\$0.00000	\$0.31311
December	12/30/2025	0.32453	0.01811	0.00000	0.00000	0.30642
December	12/05/2025	0.32495	0.03302	0.00000	0.00000	0.29193
November	11/07/2025	0.32634	0.06240	0.00000	0.00000	0.26394
October	10/07/2025	0.32808	0.05364	0.00000	0.00000	0.27444
September	09/08/2025	0.30547	0.03607	0.00000	0.00000	0.26940
August	08/08/2025	0.38592	0.02339	0.00000	0.00000	0.36253

The Defined Outcome Series

UPCOMING . . .

- Tuesday, March 24, 2026** – Understanding the regulation of SMAs
- Tuesday, April 14, 2026** – Comparing disclosure and other requirements applicable to ETFs with those applicable to structured notes and ETNs
- Tuesday, May 5, 2026** – Considerations for index providers to, or hedge providers to, ETFs

United States:

- 12:00 p.m. – 12:40 p.m. EST
- 11:00 a.m. – 11:40 a.m. CST
- 10:00 a.m. – 10:40 a.m. MST
- 9:00 a.m. – 9:40 a.m. PST

Europe:

- 5:00 p.m. – 5:40 p.m. GMT
- 6:00 p.m. – 6:40 p.m. CET

Panelists



Rimmelt Reigersman

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- Rimmelt concentrates his practice on federal and international tax matters.
- He advises on a wide variety of sophisticated capital markets transactions and represents issuers, investment banks/financial institutions and investors in financing transactions, including public offerings and private placements of equity, debt and hybrid securities, as well as structured products.
- Rimmelt's areas of experience also include restructurings (both in and out of bankruptcy), debt and equity workouts, domestic and international mergers, acquisitions, reorganizations and joint ventures.



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- Brennan has a broad-based transaction-oriented US federal income tax practice focused on structuring and negotiating the tax aspects of securities offerings including collateralized loan obligations, collateralized fund obligations, and other structured finance products, insurance-linked securities offerings (such as catastrophe bonds and reinsurance side-cars), derivatives and other bespoke products.
- He also advises on the US federal income tax considerations related to domestic and international mergers, acquisitions, reorganizations, and reinsurance transactions.
- Brennan is a frequent speaker on various topics with the Practising Law Institute and on the advisory board of the Journal of Taxation of Financial Products.



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