

SEC Proposals Would Expand Individual Access to Private Markets: What Fund Sponsors and Boards Should Know

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At an Open Meeting on September 30, 2026, the Securities and Exchange Commission (the “SEC”) voted to propose rule changes aimed at “facilitat[ing] capital formation in the public and private markets by expanding retail investor choice and promoting innovation in regulated fund structures while preserving appropriate investor protections and safeguards.”¹ Under these proposals (each, a “Proposal”), the SEC proposes to:

- amend Rule 205-3 under the Investment Advisers Act of 1940, as amended (the “Advisers Act”), to expand the ability of registered investment advisers to receive performance-based compensation from certain categories of clients (including from regulated funds and accredited investors more broadly) that is calculated on the basis of capital gains or capital appreciation;
- amend certain regulated fund registration and reporting forms to require disclosure of performance-based compensation;
- amend Rule 23c-3 under the Investment Company Act of 1940, as amended (the “1940 Act”), to modernize the interval fund framework for registered closed-end funds and business development companies (“BDCs”), including by replacing the 100% liquid-asset requirement with a principles-based standard; and
- amend Rule 18f-3 and Rule 17d-3 under the 1940 Act to replace existing exemptive orders with an exemptive rules-based framework for registered closed-end funds and BDCs to issue multiple share classes, generally consistent with how registered open-end funds are able to implement multiple class structures under currently applicable exemptive rules.

In addition to the proposed rulemakings, the SEC separately voted to request public comment as it considers whether to potentially designate six new ways that an

¹ SEC Proposes Amendments to Expand Responsible Retailization of Private Markets (September 30, 2026), available [here](#).

individual can qualify as an “accredited investor” under Rule 501(a)(10) under the Securities Act of 1933, as amended (the “Securities Act”), which relates directly to the proposed expansion of an investment adviser’s ability to charge performance fees, as discussed below.

Each item reflects the SEC’s stated policy of “responsible retailization”: expanded individual access to private-market strategies alongside the investor protections of the registered fund framework. Chair Paul Atkins described the Proposals as “important steps towards providing individual investors with more access to private market investment opportunities, including through the registered fund channel.”

Our take. The Proposals do not stand alone. Executive Order 14330.² issued in August 2025, set a policy goal of expanding access to alternative assets for retirement plan participants, directed the Department of Labor to clarify fiduciary duties for plans offering alternative investments, and asked the SEC to consider revisions to accredited investor and qualified purchaser status in furtherance of that policy. The Department of Labor’s April 2026 proposal of a fiduciary safe harbor responds to the first directive.³ The Proposals, together with the SEC’s recent exemptive orders, staff guidance and anticipated rulemaking under its “responsible retailization” initiative, respond to the second and go beyond it, extending the policy from retirement plans to the individual investor generally.

Three points stand out for sponsors. First, the performance fee Proposal replaces the existing “qualified client” wealth and AUM standards with the “accredited investor” standard. This change requires no action by fund sponsors and fund boards and would expand the universe of individual advisory clients (whether investing individually or via separately managed accounts) and Section 3(c)(1) funds to whom performance fees can be charged.

Second, the performance fee Proposal allows advisers to charge market-standard performance fees to regulated funds, subject to specific conditions, including requiring fund boards to make (as part of their 15(c) process) and annually disclose their substantive analysis that the fees are in the best interests of the fund. The Proposal devotes significant attention to valuation practices, which sponsors of funds holding assets without readily available market quotations should read in the context of their existing valuation practices, and the staff’s recent guidance on fair valuation of private assets.⁴

² Additional Debevoise commentary on this subject is available [here](#).

³ Additional Debevoise commentary on this subject is available [here](#).

⁴ Additional Debevoise commentary on this subject is available [here](#).

Third, the Proposals specific to regulated funds leave certain gaps: no class-level variation in advisory fees, no path for listed or tokenized classes under the new multi-class rule (which remain in the exemptive process), and only limited modernization for tender offer funds.

Nonetheless, taken together, these are the most significant changes to regulated fund access to private-market economics since the creation of BDCs in 1980. If adopted and implemented as proposed, these items could each have a significant impact on the market for private-market investments, reshaping both the investment products that sponsors bring to market as well as the investor base who may participate in such investment opportunities.

Investment Adviser Performance-Based Compensation Modernization

The SEC's first Proposal⁵ would expand the category of advisory clients to whom an adviser can charge a performance fee calculated on capital gains or capital appreciation by adding two categories of "qualified client" in Rule 205-3:

- registered management investment companies or business development companies (collectively, "regulated funds"), subject to certain conditions; and
- any person that is an "accredited investor" under Regulation D of the Securities Act.

Section 205(a)(1) of the Advisers Act prohibits a registered adviser from receiving compensation based on a share of capital gains or capital appreciation. The statutory exceptions are narrow: the "fulcrum fee" available to registered funds, the realized-gains incentive fee available to BDCs under Section 205(b)(3), and contracts with Section 3(c)(7) funds and non-U.S. clients.

⁵ *Investment Adviser Performance-Based Compensation Modernization*, Release No. IA-7022 (September 30, 2026), available [here](#).

Rule 205-3 provides the principal exemption, permitting a performance fee where the client (or each equity owner of a fund client) is a “qualified client.” Today that means:

- a client with a net worth above \$2.7 million⁶ or at least \$1.4 million under management with the adviser;⁷
- clients that are “qualified purchaser[s]” under Section 2(a)(51)(A) of the Investment Company Act; and
- certain executive officers and employees of the adviser.⁸

Application to Regulated Funds

Because most retail investors are not qualified clients, an adviser to a regulated fund today may charge a capital-gains performance fee only if all of the fund’s investors are qualified clients. Otherwise, an adviser can charge only an income-based incentive fees or a fulcrum fee to the fund. The practical result is that the performance fee standard in private funds has been largely unavailable in the registered fund channel, other than to BDCs on realized gains.

The Proposal would treat a regulated fund as a qualified client in its own right, without regard to the status of its investors, if:

- the performance-based compensation does not exceed 20% of the fund’s net gains over a specified period;⁹
- the regulated fund satisfies Rule 0-1(a)(7)¹⁰ under the 1940 Act (the fund governance standards); and

⁶ Under the net-worth test, advisory clients must have a net worth of more than \$2.7 million (including assets held jointly with a spouse but *excluding* the value of the primary residence and related debt) as reasonably believed by the adviser immediately prior to the contract.

⁷ Under the assets under management test, advisory clients must have at least \$1.4 million in assets under management immediately after entering into the advisory contract.

⁸ This category includes an executive officer, director, trustee, general partner or person serving in a similar capacity, of the investment adviser, as well as certain other employees who participate in investment activities and have performed such functions for at least 12 months.

⁹ This requirement is conceptually consistent with the performance fee requirements currently applicable to BDCs under Section 205(b)(3) under the Advisers Act. Unlike Section 205(b)(3), the Proposal would allow an investment adviser to calculate performance fees on net realized and net unrealized capital appreciation. A BDC would be able to rely on either of Section 205(b)(3) or amended Rule 205-3.

¹⁰ Under Rule 0-1(a)(7) under the 1940 Act, the fund governance standards require that: (i) a majority of a regulated fund’s board is made up of independent directors (ii) the independent directors of the regulated fund select and nominate any other independent directors; (iii) any person who acts as legal counsel for the

- the regulated fund's board, including a majority of independent directors, determines that the performance-based compensation arrangement is in the best interest of the regulated fund and its shareholders (as a whole) and makes specific findings regarding the arrangement's appropriateness, structure and investor protection features.

The amended definition is not limited to closed-end funds and BDCs; it reaches open-end funds, including mutual funds and exchange-traded funds.¹¹ The Proposal asks whether open-end funds present operational challenges that warrant different treatment.

A fund relying on the new provision would be required to disclose performance-based compensation separately in its fee table and to disclose the board's written findings in Form N-CSR.

Practical Considerations

Board findings are the operative condition. The required findings impose an additional standard to the 15(c) requirements applicable to new and annual approvals of advisory contracts. The findings also require a board to consider additional factors: the appropriateness of the arrangement relative to a fund's strategy and valuation practices, whether the fee is calculated on realized or unrealized appreciation, the measurement period, and the adequacy of investor protection features such as hurdles, high-water marks or clawbacks. For exchange-listed funds, the release also directs boards to consider the effect of persistent discount to NAV. These findings would be made contemporaneous with the annual Section 15(c) process and must be disclosed publicly in fund materials.

BDCs face an election. A BDC may continue to rely on Section 205(b)(3), which permits a capital gains fee on realized gains without the board findings outlined in the Proposal, or on amended Rule 205-3, which permits a fee on net realized and unrealized appreciation subject to the new conditions - full compliance with the fund governance

independent directors of the regulated fund is an independent legal counsel as defined in the fund governance standards; (iv) the board of directors evaluates at least once annually the performance of the board of directors and the committees of the board of directors, which evaluation must include a consideration of the effectiveness of the committee structure of the fund board and the number of funds on whose boards each director serves; (v) the independent directors meet at least once quarterly in a session at which no directors who are interested persons of the fund are present; and (vi) the independent directors have been authorized to hire employees and to retain advisers and experts necessary to carry out their duties.

¹¹ However, the proposed amendment does not include contracts with unit investment trusts, registered investment companies offering variable annuity contracts registered on Form N-3, or pass-through vehicles that allocate contract holder assets to underlying management investment companies registered on Form N-1A.

standards of Rule 0-1(a)(7). The Proposal does not address whether a BDC may rely on the statute for the realized component and the rule for the unrealized component of a single arrangement—a question BDC sponsors should raise in comments.

Open-end funds are included. A fund issuing and redeeming shares daily must address how a performance fee crystallizes across shareholders who enter and exit at different net asset values—a problem that arises in any continuously offered fund but most acute where subscriptions and redemptions occur daily. The Proposal asks for comment on the operational challenges.

Application to Accredited Investors

The Proposal would also replace the net worth and assets-under-management tests in Rule 205-3 with the accredited investor standard under Regulation D. The accredited investor standard is lower and broader than the qualified client standard and includes the following:

- a lower net-worth threshold for individuals;¹²
- a separate net-worth threshold for legal entities;¹³
- an income test (instead of an assets under management test);¹⁴
- no inflation adjustment of the applicable dollar thresholds, unlike the current qualified client thresholds, which the SEC is required to adjust every five years; and
- a broader range of alternative eligibility criteria not tied to wealth measurements, such as under Rule 501(a)(10) discussed below.

As noted below, additional Proposals would independently expand the definition of accredited investor.

Practical Considerations

Collapsing the two standards removes a mismatch sponsors manage daily: An accredited investor can invest in a Section 3(c)(1) fund but, absent independent qualified client

¹² The net-worth test applicable for individuals is \$1,000,000 (excluding the value of the individual's primary residence and any indebtedness secured by such residence up to the estimated value of the residence), either alone or with their spouse or spousal equivalent.

¹³ The net-worth test applicable for legal entities is generally \$5,000,000.

¹⁴ The income test threshold is \$200,000 in each of the two most recent years (or \$300,000 in each of those years jointly with the individual's spouse or spousal equivalent), and a reasonable expectation of reaching the same income level in the current year.

status, cannot be subject to a performance fee based on capital gains. Under the Proposal, an adviser could more easily charge a performance fee to a Section 3(c)(1) fund since more, if not all, investors will be accredited investors.

Chair Atkins observed that this change could incentivize advisers currently operating in the private markets or in differentiated public market strategies to make a broader range of strategies accessible to a wider group of clients and investors. Commissioner Hester Peirce supported expanding the availability of performance-based compensation arrangements as part of a broader effort to increase investor choice and access to investment strategies historically available primarily to institutional investors. Commissioner Mark Uyeda acknowledged criticism that expanding retail access could expose investors to opaque, high-fee or poorly performing products. However, participation would be optional rather than compelled, and advisers would remain subject to disclosure requirements, ongoing SEC oversight and applicable fiduciary obligations.

Interval Fund Modernization and Multi-Class Codification

The second Proposal¹⁵ would modernize the interval fund framework and codify multi-class relief for registered closed-end funds and BDCs.

Interval Fund Modernization

Rule 23c-3 permits a closed-end fund or BDC to operate as an “interval fund” by adopting a fundamental policy to make periodic repurchase offers at three-, six- or 12-month intervals for between 5% and 25% of outstanding shares. The structure has grown over the last few years for private credit and other private-market strategies, but its mechanics date from 1993.

Under the Proposal, the framework governing interval funds would be modernized in the following ways:

- **Two-Year Ramp-Up.** A new fund could defer its first repurchase offer for up to two years after effectiveness, rather than two intervals, giving strategies with long deployment periods time to season.

¹⁵ *Interval Fund Modernization; Expansion of Multiple Share Class to Registered Closed-End Management Investment Companies and Business Development Companies*, Release No. IC-36351 (September 30, 2026), available [here](#).

- **Monthly Intervals.** The Proposal would permit monthly periodic repurchase intervals, subject to certain conditions.
- **Discretionary Repurchases.** The Proposal would increase the permitted frequency of discretionary repurchases by registered closed-end funds and BDCs to every year rather than every two years.
- **Repurchase Pricing Date.** The Proposal would simplify and clarify the process of determining the repurchase pricing date, including removing the requirement to include the maximum number of days between the repurchase request deadline and the repurchase pricing date in the fund's fundamental policy.
- **Oversubscribed Repurchases.** The Proposal would simplify and clarify the treatment of oversubscribed repurchase offers such that, when a fund repurchases less than 100% of the amount tendered by shareholders, the fund must repurchase the shares tendered on a pro rata basis in an amount equal to at least the repurchase offer amount but not exceeding the repurchase offer amount plus up to 2% of the outstanding common stock as of the repurchase request deadline.
- **Deferred Sales Loads.** The Proposal would permit the deduction of deferred sales loads from repurchase proceeds, provided that the deferred sales load is effected in compliance with Rule 6c-10, Rule 11a-3 and Rule 22d-1 under the 1940 Act, each as applicable.
- **Liquidity Management.** The Proposal would amend the requirements of the rules that specify that an interval fund must hold at least 100% of the repurchase offer amount in sufficiently liquid assets and replace it with a principles-based liquidity approach.

Practical Considerations

The liquidity change is the most consequential. The current 100% requirement is a sub-optimal fit for private-asset portfolios and is one of the reasons sponsors chose the tender offer structure instead. But the Proposal arrives in a year in which several interval funds and other semi-liquid vehicles experienced sharp increases in repurchase requests. Sponsors adopting the principles-based standard – which borrows the formulation of Rule 18f-4(e) governing unfunded commitments – should expect boards, distribution platforms and the SEC's examination staff to ask what the policies actually contain: stress testing, committed facilities, scheduled portfolio cash flows and escalation triggers. The standard could matter most precisely when it is hardest to satisfy.

Monthly intervals need a workable calendar. As drafted, the notice, pricing and payment periods of one offer can extend beyond a month, and the next offer cannot be noticed until the prior offer is complete. The Proposal asks whether the minimum notice period should be shortened to seven days for monthly offers and whether boards may approve repurchase amounts for several periods in advance. Both are needed for a monthly cadence to work in practice.

Tender offer funds are largely left out. The Proposal does not extend the modernized Rule 23c-3 mechanics to the periodic tender offers that tender offer funds conduct under Rule 13e-4 under the Securities Exchange Act of 1934, as amended (“Exchange Act”). A tender offer fund may use the Rule 23c-3 process for a discretionary repurchase – annually under the Proposal, rather than every two years – but its regular quarterly tenders remain subject to Schedule TO. The principal remaining distinction between the structures is that an interval fund’s fundamental policy obligates it to make each offer, with the suspension permitted only in narrow circumstances under Rule 23c-3(b)(3), whereas a tender offer fund’s board retains discretion whether to offer at all. The Proposal does not address the suspension provision.

Multiple Share Class Arrangements

The Proposal would codify the multi-class exemptive relief that closed-end funds and BDCs have obtained by order for more than a decade, extending Rules 18f-3 and 17d-3 to those vehicles.

Section 18 of the 1940 Act otherwise prohibits a closed-end fund from issuing more than one class of stock with differing rights.¹⁶

Under amended Rule 18f-3, a closed-end fund or BDC could issue multiple classes under a written plan approved by the board, including a majority of independent directors, with class-level distribution and service arrangements and fund-level allocation of all other expenses.

The closed-end specific conditions are:

- The company offers its common stock on a continuous basis.
- The company’s common stock must not be listed, offered or traded on a secondary market.

¹⁶ Each of these Section 18 requirements are made applicable to BDCs under Section 61(a) of the 1940 Act.

- Any offer to repurchase common stock must be equally made to holders of all classes of common stock, and the percentage taken up and paid for in any repurchase offer must be allocated on a company, not class, basis.
- Exchange offers must comply with Rule 11a-3 as if the fund were open-ended, and for an interval fund, shares exchanged out count toward the repurchase offer amount.

In addition to amending Rule 18f-3, the Proposal would also make similar changes to Rule 17d-3 under the 1940 Act. Rule 17d-3 currently permits an affiliated person of, or principal underwriter for, a registered open-end fund, or an affiliated person of the affiliate or principal underwriter, to enter into a written agreement to permit the open-end fund to make payments in connection with the distribution of its shares. Multi-class structures are already standard for most continuously offered closed-end funds and BDCs, but only through individual exemptive orders. The Proposal would codify that relief under Rule 18f-3, so new funds could launch with multiple classes without having to seek exemptive relief.

Practical Considerations

Listed and tokenized classes stay in the exemptive process. Proposed Rule 18f-3 would exclude any fund with a class listed on an exchange or traded on a secondary market.

Advisory fees may not vary by class. Rule 18f-3 permits class-level differences only in distribution and service arrangements. Management fees—and, under the companion Proposal, performance fees—must be allocated fund-wide on relative net assets. The structure that could be very attractive to various distribution channels—ability to vary advisory fees—is not available under either Proposal.

Existing orders would be rescinded. The Proposal would rescind existing multi-class orders one year after the rule's effective date. Funds whose orders include relief the rule does not cover—a listed class, a tokenized class or non-standard conditions—face a partial supersession the Proposal does not address.

Rule 501(a)(10) Accredited Investor Designations

The SEC also issued five notices requesting comment on whether to designate six additional credential-based pathways to accredited investor status under Rule 501(a)(10):¹⁷

- Passage of a new accredited investor examination to be developed and administered by the Financial Industry Regulatory Authority, Inc. (“FINRA”);
- U.S. Certified Public Accountant (or “CPA”) license;
- Chartered Financial Analyst (or “CFA”) charter;
- Certified Financial Planner (or “CFP”) certification;
- FINRA Investment Banking Representative license (Series 79); and
- FINRA Research Analyst licenses (Series 86 and Series 87).

The FINRA examination is the significant one: It would be the first pathway that depends on neither wealth nor industry employment. Commissioner Peirce flagged the 10-year expiration as a practical problem for follow-on investments in long-duration private funds, since accredited investor status is tested at each sale. Sponsors should expect that question to be addressed in any final designation. Accredited investor status alone would not satisfy the qualified purchaser standard for Section 3(c)(7) funds. But combined with the Rule 205-3 amendment, the designations would make a materially larger population eligible for performance-fee products in both the private and the registered channels.

Practical Considerations

The pathway not on the list. Each of the six proposed designations is a credential the investor personally holds. None addresses the relationship an investor has. An individual advised by a registered investment adviser or broker-dealer representative is in a materially different position from one investing alone, and that relationship—

¹⁷ *Potential Designation of Passage of an Accredited Investor Exam*, Release No. 33-11445 (September 30, 2026), available [here](#); *Potential Designation of U.S. Certified Public Accountant License*, Release No. 33-11446 (September 30, 2026), available [here](#); *Potential Designation of Chartered Financial Analyst Designation*, Release No. 33-11447 (September 30, 2026), available [here](#); *Potential Designation of Certified Financial Planner Certification*, Release No. 33-11448 (September 30, 2026), available [here](#); *Potential Designations of Series 79, Series 86, and Series 87 Licenses*, Release No. 33-11449 (September 30, 2026), available [here](#).

which would supply the verification 506(c) requires and, under the companion Proposal, qualified client status as well—is not among the pathways the SEC has put forward.

What Sponsors and Fund Boards Should Do Next

Comments to the interval fund proposal and the accredited investor designations are due December 4, 2026, which is 60 days after Federal Register publication on October 5, 2026. Comments to the performance fee proposal are expected to be due December 5, 2026, which is 60 days after its scheduled publication Federal Register on October 6, 2026.

These actions were issued on the same day and interact—the performance fee rule and modifications to the accredited investor definition expand the universe to whom an adviser can charge performance fees and the interval fund changes shape how a performance-fee fund manages liquidity—yet each release treats the other as background. Investment advisers, including sponsors to regulated funds, should consider this interaction when commenting.

In the meantime, fund sponsors should review performance-fee SMA and 3(c)(1) fund documentation against the accredited investor standard, and, for any adviser to a regulated fund considering a performance fee, begin socializing such considerations with the fund's board and its counsel.

For fund boards, the performance fee Proposal would add a set of written findings to the annual Section 15(c) review, and the interval fund Proposal would place liquidity-policy oversight and repurchase determinations more squarely with the board.

Finally, the Department of Labor's proposed safe harbor for selecting designated investment alternatives in participant directed plans, issued in April of this year, evaluates an investment on six factors: performance, fees and expenses, liquidity, valuation, benchmarks and complexity—and specifically identifies conflicted valuation processes as failing the prudence standard. A regulated fund sponsor that satisfies the Proposals' conditions - the fund governance standards, the board findings and the liquidity policies, together with the Rule 2a-5 valuation oversight that already applies - will have addressed several of the factors a plan fiduciary must evaluate under the DOL's proposed safe harbor: fees, liquidity and valuation in particular. The two regimes overlap substantially and a fund built for one is well positioned for the other.

Please do not hesitate to contact us with any questions.



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