

SEC Proposes Significant Rulemakings to Expand and Modernize Retail Fund Access

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On September 30, 2026, the U.S. Securities and Exchange Commission (the SEC) [issued](#) two proposing releases that could significantly expand retail access to private market strategies through regulated fund structures. The [first proposed rulemaking](#) would permit advisers to registered investment companies (specifically, mutual funds, exchange-traded funds and closed-end funds) and business development companies (BDCs) (collectively, regulated funds) to earn performance fees based on net capital gains or net capital appreciation without imposing any suitability standard on investors. The [second proposed rulemaking](#) would modernize the interval fund structure and expand share class flexibility for unlisted registered closed-end funds and BDCs.

Together, these proposed rulemakings could significantly alter decisions by alternative asset managers to enter the retail fund space, impact how current managers offer existing products to a broader universe of investors and influence the types of funds being brought to market that invest primarily in private market strategies.

Performance-Based Compensation

The first rulemaking would amend Rule 205-3 under the Investment Advisers Act of 1940 (Advisers Act) to permit registered advisers to receive performance-based compensation from any regulated fund without regard to investor qualification, provided that:

1. the compensation does not exceed 20% of the fund's net gains (i.e., net capital gains or net capital appreciation) over a specified period;
2. the fund satisfies the fund governance standards of Rule 0-1(a)(7) under the Investment Company Act of 1940 (Investment Company Act); and

3. the fund board, including a majority of the independent directors, finds the arrangement is in the best interest of the fund and its shareholders, and makes specific findings on the arrangement's appropriateness, structure and investor protections.

Notably, the proposal would allow the 20% cap to apply to net *unrealized* capital appreciation in addition to realized capital appreciation. Currently, Section 205(b)(3) of the Advisers Act permits BDC advisers to receive capital gains compensation only on realized capital gains, computed net of realized losses and unrealized depreciation, without the ability to reflect any unrealized appreciation. The SEC proposed to also let BDCs rely on the proposed exemption under Rule 205-3, not just registered funds.

The proposal would generally not apply to contracts entered into before the effective date of the final rule. An existing fund that adopts a net gains-based performance fee under the amended rule generally would need shareholder approval of the amended advisory contract under Section 15 of the Investment Company Act, which would be accompanied by an associated proxy solicitation and related costs. The proposal also would expand disclosure requirements in fund registration statements and shareholder reports relating to performance-based compensation.

Separately, the proposal would redefine “qualified client” under Rule 205-3 to include anyone meeting the “accredited investor” definition and eliminate the net worth and assets-under-management tests, with conforming changes to related Advisers Act rules. These changes are covered in a separate [Kirkland AIM](#).

Simplified Interval Fund Structure

The second proposed rulemaking would amend Rule 23c-3 under the Investment Company Act to give interval funds more flexibility, including:

- extending the period an interval fund may defer its first repurchase offer from two periodic intervals to two years from the effective date of its registration statement;
- permitting monthly repurchase offers (in addition to the current ability to use quarterly, semi-annual or annual repurchase offers);
- allowing discretionary repurchases once every twelve months rather than once every two years; and
- simplifying the repurchase pricing date and clarifying (but not substantively altering) oversubscription mechanics.

Importantly, the proposal also would replace the requirement that an interval fund hold 100% of its repurchase offer amount in liquid assets while an offer is outstanding with a principles-based standard. Funds would need to manage liquidity so they can meet repurchase requests without selling portfolio investments at prices that deviate significantly from current values.

Unlisted Closed-End Fund and BDC Multiple Share Classes

The proposal also would replace individual exemptive orders and permit continuously offered, unlisted registered closed-end funds and BDCs to issue multiple share classes on conditions similar to open-end funds in reliance on Rule 18f-3. As a result, these funds and BDCs could pay asset-based distribution and service fees that vary by share class. The amendments to Rule 18f-3 also would come with enhanced fee and expense disclosure, and the SEC would rescind all but one of the existing monthly repurchase and multi-class exemptive orders.¹

Next Steps

Comments on both proposed rulemakings are due 60 days after Federal Register publication. The SEC also requested comment on designating certain professional credentials as qualifying an individual as an accredited investor, which a separate [Kirkland AIM](#) covers.

The proposed rulemakings reflect the broader deregulatory orientation of Chairman Atkins's SEC. With the SEC down to [two Commissioners](#) of one party as of October 2, adoption in some form appears likely. The timing, the changes that emerge from comments, and the durability of any final rules against legal challenge or future leadership changes remain open questions.

Please contact the Kirkland attorneys with whom you regularly work if you have questions regarding these proposed rulemakings. A subsequent *Kirkland Alert* also will cover these proposed rulemakings in additional detail.

1. The exemptive order that would not be rescinded is the order received by ARK Venture Fund and ARK Investment Management LLC, Investment Company Act Release No. 36308 (Aug. 24, 2026) (Notice) and Investment Company

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Suggested Reading

- 30 September 2026 Kirkland Alert Guidance Meets the Market: A Practical Look at ILPA's 2026 Draft Continuation Vehicle Guidance
- 21 May 2026 Kirkland Alert SEC Proposes Sweeping Offering Reform – Significant Implications for Registered Closed-End Funds, BDCs and Other Private Wealth Products
- 06 May 2026 Kirkland Alert SEC Staff Expands Co-Investment Relief to Registered Open-End Funds

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