

LIFTING THE CAP ON CLOSED-END FUNDS: SEC REMOVES 15% LIMIT ON CLOSED-END FUNDS' INVESTMENTS IN PRIVATE FUNDS

This week, the US Securities and Exchange Commission (the “SEC” or the “Commission”) announced that it will no longer require certain closed-end funds registered under the Investment Company Act of 1940, as amended (the “1940 Act”) to limit their investments in funds relying on Sections 3(c)(1) or 3(c)(7) of the 1940 Act (“private funds”) to 15% of their net assets. Prior to this announcement, closed-end funds that proposed to invest more than 15% of their net assets in private funds were required by the SEC staff to limit the sale of their shares to investors: (i) who were “accredited investors,” as defined in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended and (ii) whose minimum initial investment was \$25,000. These requirements were restrictions imposed by the SEC staff, not by rule or statute, but through the staff’s registration statement comment process.

SEC CHAIRMAN ATKINS’ STATEMENT

The first public indication that the SEC was reconsidering its previous position came on May 19, 2025, when Chairman Paul S. Atkins stated the following at the “SEC Speaks in 2025” conference:

“Financial innovation sometimes means getting out of the way of capital formation and allowing all investors to gain the benefits of our robust markets.

Since 2002, the SEC staff has taken the position that closed-end funds investing 15% or more of their assets in private funds should impose a minimum initial investment requirement of \$25,000 and restrict sales to investors that satisfy the accredited investor standard. As a result, many retail investors have missed out on opportunities to invest in closed-end funds that invest in private investment funds, like hedge funds and private equity funds.

Much has changed since 2002 – including the growth of private markets and the increased oversight and enhanced reporting by both private fund advisers and registered funds. Indeed, in the last 10 years alone, private fund assets have almost

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tripled from \$11.6 trillion to \$30.9 trillion. Allowing this option could increase investment opportunities for retail investors seeking to diversify their investment allocation in line with their investment time horizon and risk tolerance.

With this in mind, I intend to have the Commission address this situation and reconsider this 23-year-old practice concerning investments by closed-end funds in private funds. This common-sense approach will give all investors the ability to seek exposure to a growing and important asset class, while still providing the investor protections afforded to registered funds. We must consider and resolve important disclosure issues for these products, particularly for those that trade on exchanges, including conflicts of interest, illiquidity, and fees. (Footnote omitted)."

DIVISION OF INVESTMENT TO NO LONGER PROVIDE COMMENTS ADDRESSING THE 15% LIMIT

The day after Chairman Atkins' remarks, the Director of the Division of Investment Management (the "**Division**"), Natasha J. Greiner, stated the following:

"While the Division continues its day-to-day work, we are also adapting to an ever-changing industry. As Chairman Atkins mentioned in his remarks yesterday, for example, the staff as of yesterday [Monday, May 19, 2025], will no longer provide comments limiting the ability of retail investors to invest in registered closed-end funds that invest in private funds [emphasis added]. This decision was made based on the ever-evolving industry, and we hope that the shift will provide investors with new investment opportunities to the extent they align with their risk tolerance and investment objectives.

As our staff begins to review these filings, we encourage filers to engage with our staff throughout the Division. As you will hear today, many of the topics that we are talking about do not lie within just one office within [the] Division but is very much a collaborative approach. We will be working with filers on disclosure issues that may arise as these products become available to retail investors. And, in reviewing these filings, our staff, as always, will continue to consider disclosures issues relating to conflicts of interests, liquidity and fees."

KEY TAKEAWAYS

This move away from limiting the ability of retail investors in closed-end funds to invest in underlying private funds is a watershed moment for the industry and continues the trend of democratizing investment opportunities for "main street" investors. Closed-end funds may now seek to list their shares on exchanges while offering investors daily liquidity and exposure to underlying private equity and/or hedge fund positions. It remains to be seen what additional disclosures and protections the SEC staff may seek to impose moving forward, but it seems clear that the SEC and its staff are committed to working to facilitate greater indirect exposure for retail investors to private funds in which they historically have lacked meaningful access.

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