

SEC Rule Proposals Related to “Responsible Retailization”

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On Sept. 30, 2026, the Securities and Exchange Commission (the **SEC**) hosted an open meeting, during which the commissioners unanimously voted to propose amendments designed to further the modernization of interval funds. The proposed “Interval Fund Modernization; Expansion of Multiple Share Class to Registered Closed-End Management Investment Companies and Business Development Companies” rule (the **Proposed Rule**) amends Rule 23c-3 (the **Interval Fund Rule**) under the Investment Company Act of 1940 (the **1940 Act**). At the same time as the Proposed Rule, the SEC also proposed amendments to the rules governing investment adviser performance-based compensation (together with the Proposed Rule, the **Proposed Amendments**). If adopted, the Proposed Amendments will make it easier for interval funds to come to market and permit registered closed-end funds, and also business development companies (**BDCs**), to (i) offer liquidity on a more frequent basis and (ii) issue multiple share classes without needing to first obtain exemptive relief from the SEC. The Proposed Amendments, if adopted, would affect how registered closed-end funds, including interval funds, may operate and what they may be required to disclose. Industry participants may wish to consider commenting on either or both of the Proposed Amendments within the appropriate period if they have reactions to the Proposed Amendments or if they have suggestions on any aspect of the Proposed Amendments for the SEC to consider.

Why is the SEC Proposing These Changes?

The proposals are being made by the SEC as part of its efforts to bring “responsible retailization” to private markets and alternative assets. Further, the SEC staff noted that there have not been many changes to the Interval Fund Rule since it was initially adopted in 1993, despite significant growth in the total assets held in interval funds and the launch of many new interval funds in recent years. The goals of the Proposed Rule are (1) to provide investors with more opportunities to access private market channels, (2) to modernize, enhance and simplify the interval fund structure while maintaining appropriate investor protection and (3) to provide greater liquidity and repurchase flexibility for investors.

Key Proposed Changes to Rule 23c-3

Under the Proposed Rule, the SEC aims to modernize the Interval Fund Rule by giving interval funds more flexibility while retaining existing investor protections. The following proposed changes to Rule 23c-3 are being considered in the Proposed Rule and are open for comment from the industry:

- Permit extended deferral of the first repurchase offer for a period of up to two years, which would give a fund sufficient time to build its portfolio and stagger its investments across different vintages to provide greater flexibility for repurchases in the future and not impede the fund’s ability to enter into various private equity and venture strategies without having to exit positions early or avoid certain investments entirely.
- Permit monthly periodic intervals, which would allow funds to offer repurchases monthly and thereby provide investors with more liquidity. This policy would remain a fundamental policy

and would continue to require shareholder approval to be altered. To support a monthly periodic interval, certain other rule changes have been proposed:

- Revise timing requirements for notification that is no less than 14 and no more than 42 days before the repurchase request deadline
 - Require that at least one business day occurs between the repurchase payment deadline and the notification of the next repurchase offer made pursuant to a fundamental policy
 - Codify a requirement that the repurchase payment deadline occurs no later than seven days after the repurchase pricing date.
- Permit more frequent discretionary repurchases by allowing discretionary repurchases to take place as frequently as once a year for all closed-end funds. Additionally, the repurchase offer amount for repurchases made pursuant to a fundamental policy would remain between five and 25 percent of the outstanding common stock, whereas the repurchase offer amount for discretionary repurchases can be for any amount.
 - 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 as a fundamental policy, and the treatment of oversubscribed repurchase offers.
 - Permit the deduction of deferred sales loads from repurchase proceeds, subject to certain conditions, as opposed to the current limit on the repurchase fee of 2 percent.
 - Amend the requirements of Rule 23c-3 that specify that an interval fund must hold a certain amount of liquidity (*i.e.*, assets equal to 100 percent of the repurchase offer amount and sold in the ordinary course) and replace it with a principles-based liquidity approach, which would allow funds to draft their own liquidity policies specific to their individual investment strategies and risks, so long as such policies ensure that repurchase requests would be satisfied without requiring a sale or disposition of investments at a price that significantly differs from the value of the investments.

Changes Related to Multiple Share Classes and Investment Adviser Performance-Based Compensation and Required Disclosure

The SEC has provided hundreds of exemptive orders for registered closed-end funds that desired to offer multiple share classes to their investors. Under the Proposed Rule, the SEC is proposing to codify the exemptive relief and rescind prior exemptive orders. The Proposed Rule would amend Rule 18f-3 under the 1940 Act to permit a multi-class structure for registered closed-end funds, as well as amend Rule 17d-3 under the 1940 Act so such funds and their affiliates can enter into asset-based distribution and service fee arrangements. If adopted as proposed, multi-class and master-feeder funds would also be required to include certain disclosure related to their class and fee structures on Forms N-2 and/or N-CEN.

Alongside the Proposed Rule, the SEC also proposed amendments to the rules governing performance-based compensation for registered investment advisers. The amendments, if adopted, would expand the ability of registered investment advisers to receive performance-based compensation from registered fund products if certain conditions are met. The registered investment adviser would be able to receive performance-based compensation calculated based on the capital gains in or capital appreciation of the regulated fund's¹ account, so long as (1) performance-based compensation is less than 20 percent of the regulated fund's net gains over a specified period, (2) the regulated fund satisfies the fund governance standards of Rule 0-1(a)(7) under the 1940 Act, and (3) the performance-based compensation arrangement is found to be in

the best interest of the regulated fund and its shareholders, as determined by the regulated fund's board, including a majority of the independent directors, and in determining this, the board makes specific findings regarding the appropriateness, structure, and investor protection features of the performance-based compensation arrangement. Certain registration and reporting forms would also require additional disclosure of any performance-based compensation if the amendments were adopted as proposed.

All registered closed-end funds, including but not limited to multi-class funds, would also be affected if the Proposed Rule is adopted. All such funds would be required to include new expense disclosures in the fund's shareholder reports, and a new legend and higher dollar amount for the expense example in the fund's prospectus, among other changes.

The Proposed Rule, if adopted, has the potential to make interval funds, and possibly other forms of closed-end funds, more desirable for retail investors. Moreover, the expanded ability to make use of performance-based compensation in connection with registered funds may make offering these products more desirable to traditional private fund managers.

The public comment periods for the Proposed Amendments are open until early December 2026. If you are interested in submitting a comment letter to the SEC to discuss the Proposed Amendments or would otherwise like to discuss the potential impact of the Proposed Amendments, please contact Rich Kerr, Donela Qirjazi and Arie Heijkoop at Haynes Boone for assistance and additional information.

Read Chairman Atkins' statement [HERE](#).

Read the SEC's proposed rule regarding Interval Fund Modernization; Expansion of Multiple Share Class to Registered Closed-End Management Investment Companies and Business Development Companies [HERE](#).

Read the SEC's proposed rule regarding Investment Adviser Performance-Based Compensation Modernization [HERE](#).

¹ "Regulated funds" include mutual funds, exchange-traded funds, closed-end funds and business development companies.