

**MEMO# 31979**

September 24, 2019

# ICI Submits Comment Letter on SEC's Concept Release on Securities Offering Exemptions

[31979]

September 24, 2019 TO: ICI Members  
Closed-End Investment Company Committee  
SEC Rules Committee  
Small Funds Committee SUBJECTS: Closed-End Funds  
Compliance  
Distribution RE: ICI Submits Comment Letter on SEC's Concept Release on Securities Offering Exemptions

As you know, in June, the SEC issued a concept release requesting comment on ways to simplify, harmonize, and improve the regulatory framework for private market offerings.[\[1\]](#) The SEC seeks to expand investment opportunities and promote capital formation while maintaining investor protection.

Our comment letter acknowledges the SEC's initiative to provide opportunities for retail investors to access growth opportunities in the private market but cautions the SEC to consider investor protection measures. We believe that regulated funds (*i.e.*, business development companies and registered funds) already provide investors with both access to the private market and strong investor protection. We recommend that the SEC modify regulations and certain staff positions to encourage private market exposure through these vehicles.

ICI's comment letter is attached and briefly summarized below.

## Summary of ICI's Comment Letter

The letter recommends that, as the SEC considers private market access, it also review ways to promote growth in publicly registered funds, which are already widely available to retail investors. More specifically, we note that additional disclosure and reporting obligations have increased compliance costs greatly over time, and it is imperative for the SEC to examine ways to reduce compliance costs for registered funds.

We ask that the SEC also consider the fundamental differences between private and public market offerings that may make private market offerings unsuitable for direct retail investment. Given those differences, we recommend that the SEC:

- Maintain the requirement that individual investors meet certain financial thresholds to qualify as accredited investors while also modernizing those thresholds to account for the effects of inflation.
- Require that exempt issuers making a general solicitation comply with investor protection measures to mitigate the potential for publishing misleading advertising that will impede investor understanding.
- Maintain current qualified purchaser standards for investors in Section 3(c)(7) private funds and qualified client standards for investors in private funds that charge performance fees.
- Consider investor protection in amending the Regulation Crowdfunding framework to permit special purpose vehicles exempt from Investment Company Act registration from pooling investors in crowdfunding issuers.

Finally, we recommend several changes to encourage regulated funds to invest in private market offerings. We specifically recommend that the SEC:

- Eliminate staff positions that currently limit the ability of closed-end funds from investing in exempt offerings, such as: (i) restricting a closed-end fund from investing more than 15 percent of its net assets in private funds or requiring that investors be accredited investors; and (ii) restricting closed-end funds that invest in exempt offerings from listing on a national securities exchange.
- Encourage interval funds to invest in exempt offerings by allowing them flexibility to set intervals, eliminate maximum repurchase amounts, conduct more frequent repurchases, modify the elements of the repurchase policy that must be “fundamental,” and employ a more efficient notification system.
- Promote tender offer funds by allowing them to meet their filing and notification requirements using the interval fund rule and file post-effective amendments to registration statements that become effective automatically.
- Permit *both* interval funds and tender offer funds to issue multiple share classes, utilize multi-series trusts, engage in additional types of affiliated transactions with “downstream” control affiliates, and rely on transitory relief from diversification requirements for two years after launch.

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## [Attachment](#)

### **endnotes**

[1] See Concept Release on Harmonization of Securities Offerings Exemptions, Securities Act Release No. 10649 (June 18, 2019) (“Concept Release”), *available at* <https://www.sec.gov/rules/concept/2019/33-10649.pdf>. See also Jay Clayton, Chairman, SEC, *Remarks to the Economic Club of New York* (Sept. 9, 2019), *available at*

<https://www.sec.gov/news/speech/speech-clayton-2019-09-09> (discussing retail investor access to private markets).

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