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Update: SEC Approves Additional Flexibility for Co-Investment Relief for BDCs and Closed-End Funds that Previously Obtained Non-Principles Based Relief

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On April 29, 2025, the U.S. Securities and Exchange Commission ("*SEC*") issued an order granting Franklin Square's ("*FS*") exemptive relief application (the "*FS Application*")[1] permitting certain business development companies and closed-end investment companies (collectively, "*Regulated Funds*") to engage in co-investment transactions under a new, simplified, and principles-based framework. This framework notably departed from the more prescriptive traditional precedents and established a streamlined model for co-investment relief that is expected to give managers of Regulated Funds greater flexibility to engage in co-investment opportunities and enhance retail investor access to private markets. For a discussion of the mechanics and notable features of the FS Application, please refer to Proskauer's prior alert on the topic.[2]

Following the SEC's approval of the FS Application, many filers have applied for and received the new form of co-investment relief, including many filers that had previously received exemptive orders under the prior non-principles-based precedent. Notably, newer iterations of the principles-based application have been permitted to exclude footnote disclosure that appeared in the FS Application that would have otherwise required certain co-investments made in reliance on prior non-principles-based orders to continue to comply with those prior orders with respect to any follow-on investments or dispositions relating to investments originally acquired under such prior orders. As a result, applicants who obtain the newest form of principles-based exemptive relief are now permitted to rely on such principles-based relief even for follow-on investments relating to opportunities that were originally acquired in reliance on a previous non-principles-based iteration of the exemptive relief.

The revised form of principles-based co-investment application reflects the SEC's continued streamlining of the co-investment process, and offers sponsors even greater flexibility in determining how best to structure co-investment opportunities involving Regulated Funds.

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[1] *See* FS Credit Opportunities Corp., et al. (File No. 812-15706) Release No. IC-35520 (April 3, 2025) (notice), Release No. IC-35561 (April 29, 2025) (order).

[2] *See* "SEC Set to Approve More Flexible Co-Investment Relief for BDCs and Closed-End Funds," Proskauer Rose LLP (April 24, 2025) (available here).

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