

SEC Advances “Responsible Retailization” Through a Potential Accredited Investor Exam and Potential Regulated Fund Reforms

On September 30, 2026, the Securities and Exchange Commission (SEC) issued two rule proposals and five notices aimed at expanding investors’ access to private markets. The package would add ways to qualify as an accredited investor, including passing a new exam administered by the Financial Industry Regulatory Authority (FINRA), broaden performance-based compensation and modernize regulated funds, including interval funds and business development companies (BDCs).

The contemplated exam represents a potentially dramatic expansion of the accredited-investor framework, particularly when combined with the separate proposal to treat accredited investors as “qualified clients” permitted to pay performance-based compensation. Regulated fund sponsors also would gain greater flexibility to offer private market strategies through changes to adviser compensation and fund liquidity and distribution.

1. Accredited Investor Expansion: An Exam Available to All Adults

The SEC is considering an order under Rule 501(a)(10) of Regulation D to designate passage of an exam to be developed by FINRA as qualifying an individual for accredited-investor status. The contemplated exam would be open to anyone age 18 or older, making it materially different from existing professional-license pathways. While FINRA has not yet developed the final exam, the SEC indicated that it has had preliminary discussions with the agency about its contents. The SEC expects that the exam would be modeled on the existing Securities Industry Essentials exam and would consist of approximately 75 multiple-choice questions to be answered in a two-hour time limit. At a general level, the exam is expected to cover general securities knowledge, investment risks, disclosures, financial statements, conflicts and governance. After passing, an individual would be treated as accredited for ten years. FINRA also would develop a framework to allow issuers to verify that an investor has passed the exam.

Separate notices contemplate recognizing U.S. CPA licenses, CFA charters, U.S. CFP certifications, FINRA Series 79 licenses or Series 86 and Series 87 licenses.¹ These would be in addition to the existing credentials already recognized as conferring accredited investor status.

The exam is a potentially far-reaching change because its eligibility conditions would allow any individual age 18 or older to qualify as an accredited investor without satisfying an income or wealth threshold.

2. Private Funds and SMAs: Accredited Investors as Qualified Clients

The SEC proposed to amend Rule 205-3 so that accredited investors generally would qualify as qualified clients, replacing the rule's standalone assets under management and net worth thresholds. The change would materially expand eligibility to be treated as qualified clients for natural persons, although certain entities qualifying on the basis of their net worth would face a higher bar.

If both initiatives are implemented, an individual could qualify through the exam for an exempt offering and, through that same accredited status, satisfy the qualified-client requirement for performance-based compensation. This combination could matter more to private fund sponsors than either change alone, as easing accredited investor qualification would be less useful if a separate restriction on performance fees still applied.²

3. Regulated Funds: New Flexibility for Performance Fees

The performance compensation proposal also would permit registered management investment companies and BDCs to pay performance fees without requiring every shareholder to be a qualified client or using the existing — but relatively underutilized — framework permitting fulcrum fees. Unlike the existing BDC statutory exception, the new route would permit performance fees to be calculated and paid based on unrealized as well as realized gains.

The proposed conditions would require:

- **Fee Cap:** Compensation could not exceed 20% of the fund's net capital gains or net capital appreciation over specified periods or as of definite dates.

- **Governance:** The fund's board would need to satisfy Investment Company Act Rule 0-1(a)(7)'s governance standards, which generally relate to having directors who are sufficiently disinterested from the fund and certain similar standards.
- **Board Findings:** As part of its Section 15(c) process, the board, including a majority of independent directors, would need to reach written findings that the arrangement is in the best interests of the fund and its shareholders.

The proposal does not mandate a particular preferred return, hurdle, or a high-water mark, but the board's written findings would need to address the adequacy of any investor-protection features. This was a topic of discussion at the SEC's meeting. A fund adopting a performance fee would need to make particular disclosures, including a separate line-item in the fund's fee table.

4. Interval Fund Liberalization: More Flexible Portfolio and Distribution Structures

The final proposal would amend rule 23c-3 under the Investment Company Act to permit an interval fund to defer its first repurchase request deadline for up to two years after registration effectiveness or the shareholder vote first adopting its interval policy, whichever is later, which could provide more time to build a portfolio. The delay would apply to the fund as a whole, not to each investor; an investor who purchased one year after registration effectiveness would only need to wait one year.

More significantly, the proposal would replace the requirement to maintain liquid assets equal to the full repurchase offer amount during the offer period with a principles-based liquidity standard and policies and procedures overseen by the board. Funds would need to manage liquidity so they can meet repurchase requests without selling investments at prices that deviate significantly from their value, potentially using portfolio cash flows, anticipated subscriptions, targeted sales and borrowing.

Other changes would permit more frequent discretionary repurchases, monthly periodic intervals, and deferred sales loads, while simplifying repurchase pricing and oversubscription procedures.

The proposal also would establish a rules-based framework for permitting multiple share classes in continuously offered closed-end funds and BDCs whose common stock is not traded on a secondary market, replacing most relevant individual exemptive orders.

Timing and Next Steps

None of these changes are effective immediately. Each action is open for comments for 60 days after publication in the Federal Register. The FINRA exam for investor accreditation would still need to be developed and its passage designated by SEC order, which may take some time. The other expansions to the accredited investor qualification framework would also require an SEC order, but this could take place relatively soon after the close of the comment period, depending on comments received. The proposals relating to performance fees and interval funds could take a year or more before rules are finalized.

[1] An individual would be required to hold both the Series 86 and Series 87 licenses.

[2] The SEC requested comment on how the proposed changes would impact other areas of the Advisers Act that use the qualified client threshold. For example, whether a person meets the definition of “investment adviser representative” turns in part on whether their clients are “qualified clients.” In addition, Item 5 and Section 7.A of Schedule D of Form ADV each reference qualified clients. For the avoidance of doubt, the SEC did not propose to amend Section 3(c)(7) (which is defined by statute and could not be altered by SEC rulemaking). Natural person investors in Section 3(c)(7) funds generally need at least \$5 million in investments. This constraint will continue to influence the products that will be available to newly accredited investors.

Related Professionals

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- **Robert H. Sutton**
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- **Vlad Bulkin**
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