

SEC Proposes to Modify Section 3(c)(1) Investment Company Act Exemption for Certain Private Funds

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On February 14, 2024, the U.S. Securities and Exchange Commission (the SEC) proposed a rule (the Proposal) that would increase the threshold for what is considered a “qualifying venture capital fund” from \$10 million to \$12 million.¹

By way of background, on May 24, 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act,² which, among other things, amended Section 3(c)(1) of the Investment Company Act of 1940 (3(c)(1)). This amendment introduced the concept of “qualifying venture capital fund,” which is a “venture capital fund”³ that has not more than \$10 million in aggregate capital contributions and uncalled committed capital. Furthermore, the amendment permitted “qualifying venture capital funds” that rely on 3(c)(1) to have up to a maximum of 250 beneficial owners (as opposed to 100, as is otherwise required). Although 3(c)(1) already requires the SEC to index the dollar amount every five years for inflation, we see this as a welcome proposal, as it will permit managers of “qualifying venture capital funds” to raise even more than they would have in the past.

Similarly, we note the SEC’s Proposal release speaks positively regarding the Proposal’s effect on venture capital managers (which, although factual, may also indicate the SEC taking a more favorable look at venture capital managers):

At the margin, the proposed rule may encourage market competition by lowering barriers to entry for emerging venture

capital managers. Specifically, it could lower compliance costs for eligible funds by exempting them from certain regulatory requirements such as registration as an investment company and make it easier for their managers to raise smaller amounts of capital from a larger number of accredited investors.

Lowenstein Sandler will monitor the status of the Proposal and provide additional updates and analysis in future Client Alerts for venture capital managers to assess any changes applicable to them. Please contact one of the listed authors of this Client Alert or your regular Lowenstein Sandler contact if you have any questions regarding the Proposal, any other rules or guidance with respect to venture capital funds, or any other regulatory matters.

¹ <https://www.sec.gov/files/rules/proposed/2024/ic-35129.pdf>.

² <https://www.congress.gov/bill/115th-congress/senate-bill/2155>.

³ As defined in 17 CFR § 275.203(l)-1.

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