

Investment Management

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

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On August 21, 2024, the U.S. Securities and Exchange Commission (SEC) adopted a rule (Final Rule) that will increase the threshold for what is considered a “qualifying venture capital fund” from \$10,000,000 to \$12,000,000.¹ The Final Rule will take effect on September 30, 2024.

As we have previously written,² in February 2024, the SEC proposed the new rule under the Investment Company Act of 1940 (the Investment Company Act) to adjust the current dollar threshold for determining what constitutes a qualifying venture capital fund.³ The Final Rule also allows the SEC to make future inflation adjustments by order every five years and specifies how those adjustments will be determined. Although Section 3(c)(1) of the Investment Company Act (3(c)(1)) already requires the SEC to index the dollar amount every five years for inflation, the Final Rule permits managers of qualifying venture capital funds to raise even more than they would have in the past.

The SEC’s Final Rule release speaks positively regarding the Final Rule’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.

Please contact one of the listed authors of this Client Alert or your regular Lowenstein Sandler contact if you have any questions regarding the Final Rule, any other rules or guidance with respect to venture capital funds, or any other regulatory matters.

¹ <https://www.sec.gov/files/rules/final/2024/ic-35305.pdf>.

² <https://www.lowenstein.com/news-insights/publications/client-alerts/sec-proposes-to-modify-section-3-c-1-investment-company-act-exemption-for-certain-private-funds-im>.

³ A “qualifying venture capital fund” is a venture capital fund that has not more than \$10,000,000 in aggregate capital contributions and uncalled committed capital. See 17 CFR § 275.203(l)-1. Furthermore, the amendment permits 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).

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