REGULATORY UPDATE:

The SEC Proposes Changes to Interval Fund Rules – Investment Adviser Performance-Based Compensation

By Randy Randall, Senior Partner
Helios | October 12, 2026

INTRODUCTION:

On September 30, 2026, the SEC proposed amendments (the "Proposal") that, if adopted, would:

- Amend Rule 23c-3 under the Investment Company Act to provide greater flexibility to interval funds;
- Permit regulated closed-end funds to have multiple share class structures and allow them and their affiliates to enter arrangements for the payment of asset-based distribution and service fees; and
- Expand the ability of investment advisers to regulated funds to receive performance-based compensation calculated based on capital gains in or capital appreciation of a regulated fund's account.

The Proposal is a continuation of efforts be the SEC to facilitate greater retail access to a broader range of investment strategies currently associated with private funds, such as hedge funds, private equity, and venture capital strategies.

The Proposal would also revise the qualified client definition to include investors that meet the accredited investor definition and would remove the separate net worth test and assets under management test from the qualified client definition.

KEY TAKEAWAYS:

- If adopted, the Proposal would provide interval funds greater flexibility by, among other things, enabling all interval funds to offer multiple share classes and offer liquidity as frequently as monthly without obtaining exemptive relief, provided certain conditions are met.
- The proposed shift to a principles-based liquidity standard would ease cash drag, but the proposed standard (no sales price that deviates significantly from value) is highly subjective and will likely be tested in hindsight.
- The Proposal would impose significant responsibilities on advisers and fund boards to ensure that their 38a-1 policies and board reporting adequately address the new requirements.
- Any funds currently relying on exemptive orders (e.g. most monthly interval and multi-class orders) will need to consider if revisions to current policies are required to comply with the rule.
- The comment period will remain open for 60 days after the proposing release is published in the Federal Register.

THE DETAILS:

Under Rule 23c-3, an interval fund can make periodic repurchase offers pursuant to a board-approved fundamental policy subject to certain restrictions, including the following:

- An interval fund can make a repurchase offer at three-, six-, or twelve-month intervals;
- Repurchase offers must offer between 5% and 25% of outstanding shares in each such offer; and
- The fund is required to hold liquid assets equal to 100% of the repurchase offer amount between notification of the offer and the pricing date.

A new interval fund must also start making repurchase offers within two periodic intervals of the fund's effectiveness.

Any fund seeking to deviate from these requirements has had to rely on SEC exemptive relief. The SEC has routinely granted relief, including permitting monthly repurchase offers, allowing the issuance of multiple share classes, and permitting the imposition of deferred sales loads for multi-class funds. The proposed rules would codify much of the current exemptive relief and rescind the existing exemptive orders.

The Proposal would also address the existing 100% liquidity requirement, thereby giving sponsors investing in less liquid strategies to launch interval finds, as opposed to tender-offer funds that are not to the Rule 23c-3 portfolio liquidity requirement.

Interval Fund Modernization

The Proposal would amend Rule 23c-3 to provide greater flexibility to interval funds, including by:

- Permitting extended deferral of the first repurchase offer up to two years, regardless of the fund's repurchase interval;
- Permitting monthly repurchases;
- Permitting discretionary offers once every year;
- Permitting the deduction of deferred sales loads from repurchase proceeds, subject to certain conditions;
- Simplifying and clarifying the process of determining the repurchase pricing date and treatment of oversubscribed repurchase offers;
- Amending the requirements of the rule that specify that an interval fund must hold a certain amount of liquidity and replace it with a principles-based liquidity approach.

Multiple Share Class Closed-End Funds

The Proposal would permit regulated closed-end funds to have multiple share class structures and allow them and their affiliates to enter arrangements for the payment of asset-based distribution and service fees. The proposal would also update required prospectus disclosures to account for multiple share class and master feeder structures in regulated closed-end funds and update certain reporting forms to enhance multiple share class reporting by certain regulated closed-end funds. The proposal would also require enhanced expense disclosures regarding all regulated closed-end funds. The SEC would also rescind certain existing exemptive orders related to interval funds and multiple share class arrangements for regulated closed-end funds.

Investment Adviser Performance-Based Compensation Modernization

The Proposal would expand the ability of investment advisers to funds to receive performance-based compensation calculated based on capital gains in or capital appreciation of a fund's account, subject to the following conditions;

- The performance-based compensation does not exceed 20% of the regulated fund's net gains over a specified period;
- The fund satisfies fund governance standards required by Rule 0-1(a)(7) under the Investment Company Act;
- The fund's board, including a majority of independent directors, determines that:
    - The performance-based compensation arrangement is in the best interest of the regulated fund and its shareholders, and
    - The board makes specific findings regarding the arrangement's appropriateness, structure, and investor protection features.

The proposal would amend certain registration and reporting forms to require disclosure of performance-based compensation.

The proposed amendments would also revise the qualified client definition to include investors that meet the accredited investor definition in Regulation D under the Securities Act and would remove the separate net worth test and assets under management test from the qualified client definition.

About Randy Randall: *Randy Randall is a Senior Partner at Helios and a seasoned compliance executive and securities attorney with more than 35 years of experience advising investment advisers, broker-dealers, and investment companies. Before joining Helios, Randy spent more than two decades at William Blair, where he served as Chief Compliance Officer and General Counsel for the firm's Investment Management business. He counsels and advises clients on SEC and FINRA regulatory matters, compliance program design, governance, and complex legal and regulatory issues affecting the investment management industry.*