Recommendations of the Investor as Owner and Market Structure Subcommittees of the SEC Investor Advisory Committee:

RETAIL INVESTOR ACCESS TO PRIVATE MARKET ASSETS

EXECUTIVE SUMMARY

The private capital markets have grown at a rapid pace in recent years. Given their current size and the investment opportunities they contain, the question of facilitating retail investor access has been raised with increased frequency by investors, market participants, legislators and policymakers. The SEC Investor Advisory Committee ("IAC" or "Committee") finds that this development necessitates a recalibration of the existing regulatory framework, which was designed for a world in which the public markets encompassed the vast majority of all investment opportunities. Importantly, the Committee believes that this recalibration should not undermine any of the three pillars of the SEC's mission: protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

In the Committee's view, the optimal way for retail investors to access private market assets is through *registered funds*, which allow retail investors to invest in broadly diversified funds that contain private market assets, often alongside public market assets. The investor protections embedded in the registered funds framework include Commission review, audited financials, professional fund management, diversification, various levels of liquidity, and the protections of the Investment Company Act. The Committee therefore recommends changes to Staff Interpretations and/or rules under the Investment Company Act of 1940 to allow registered funds to better facilitate investing in private market assets.

The Committee does not take a position on the desirability of expanding retail investors' access to private market assets in direct ways, but, if the SEC were to determine that such an expansion is warranted, the Committee firmly believes that it should be accompanied by certain basic investor protection guardrails. These include an expanded focus on investor sophistication (rather than income or wealth) when determining accredited investor status; prudential limits on the amount that can be invested by retail investors who do not meet sophistication or wealth criteria; the enhancement of certain filing requirements and strict enforcement of certain already-existing requirements; and improved disclosure and transparency to facilitate investor decision-making.

The Committee also recommends various improvements to the registered fund regulatory framework as part of any expansion that enables retail investors to more easily invest in private market assets. These improvements include: providing clarity and transparency on valuations throughout the lifecycle of a fund; enhancing liquidity disclosures and making them more prominent; and providing for certain additional investor protections that specifically address the increased participation of retail investors.

I. INTRODUCTION

The private markets have grown at a rapid pace in recent years, with U.S. private funds managing over $28 trillion in assets and U.S. private companies directly raising $623 billion in 2024.[1] Notably, most retail investors do not have *direct access* to these private assets. *Indirect access* is available but occurs in limited ways through registered funds or through separately managed accounts that, in turn, invest in private companies or private funds.

Given the size of the private markets and the investment opportunities they contain, the question of facilitating retail investor access has been raised with increased frequency by investors, market participants, legislators and policymakers. There is widespread agreement that changing the status quo entails a host of difficult policy questions. Accordingly, the Investor Advisory Committee ("IAC" or "Committee") has held multiple panels and issued multiple recommendations pertaining to these matters,[2] in line with its statutory mission to advise the U.S. Securities and Exchange Commission ("SEC" or "Commission") on regulatory priorities, initiatives to protect investors, and initiatives to promote investor confidence and the integrity of the securities marketplace.[3]

As an initial matter, the Committee finds that the rise of private markets necessitates a recalibration of the existing regulatory framework, which was designed for a world in which the *public* markets encompassed the vast majority of all investment opportunities. Importantly, the Committee believes that this recalibration should not undermine any of the three pillars of the

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[1] The Commission's Office of the Advocate for Small Business Capital Formation produces an annual report that provides key private market data, including estimates of the accredited investor pool. *See, e.g.*, 2024 Annual Report at 14-15, https://www.sec.gov/files/2024-oasb-annual-report-print.pdf. Data on capital raised by private companies excludes pooled funds, which raise capital under applicable exemptions and, in turn, invest it in private companies.

[2] Previous IAC Recommendations discussing retail investor access to the private market include: Recommendation of the Investor Advisory Committee Regarding SEC Rulemaking to Lift the Ban on General Solicitation and Advertising in Rule 506 Offerings: Efficiently Balancing Investor Protection, Capital Formation, and Market Integrity (Oct. 12, 2012), https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-general-solicitation-advertising-recommendations.pdf; Recommendation of the Investment Advisory Committee: Accredited Investor Definition (October 9, 2014), https://www.sec.gov/spotlight/investor-advisory-committee-2012/investment-advisor-accredited-definition.pdf. The IAC has discussed retail investor access in the context of the private markets in the following panel discussions (recordings available for each by accessing webcast archives linked to each meeting as marked): Discussion Regarding Capital Formation, Smaller Companies, and the Declining Number of Initial Public Offerings (June 22, 2017); Overview of Certain Provisions of the Financial CHOICE Act of 2017 Relating to the SEC (June 22, 2017); Discussion Regarding the SEC's Concept Release on Harmonization of Securities Offering Exemptions (Nov. 7, 2019); Panel Discussion Regarding Minority Community Investor Inclusion (Sept. 24, 2020); Panel Discussion Examining the Growth of Private Markets relative to the Public Markets: Drivers and Implications (Mar. 2, 2023); Panel Discussion of Private Funds/Markets and Outbound Investments in Countries of Concern (June 22, 2023); Panel Discussion Regarding Exempt Offerings under Regulation D Rule 506 (Sept. 21, 2023); Panel Discussion Regarding Accredited Investors (Sept. 21, 2023); and Panel Discussion regarding Mainstreaming of Alternative Assets to Retail Investors (Dec. 10, 2024).

[3] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 911, 124 Stat. 1376, 1883 (2010).

SEC's mission: "protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation."[4]

In the Committee's view, the optimal way for retail investors to access private market assets is through *registered funds*, which allow retail investors to invest in broadly diversified funds that contain private market assets, often alongside public market assets. Registered funds include closed-end investment companies, interval funds, tender offer funds, exchange traded funds, and mutual funds; over $35 trillion is currently managed by registered funds.[5] These funds offer a practical and more transparent vehicle for expanding retail access to private assets than one of the main alternatives—unregistered or exempt offerings—because registered funds were developed specifically for retail use and offer numerous protections that are not found in non-public offerings. Those protections include Commission review, audited financials, professional fund management, diversification, various levels of liquidity, and the protections of the Investment Company Act. Improving the regulatory framework that enables retail investor access to registered funds is the primary focus of Part II. Recommended improvements include: providing clarity and transparency on valuations throughout the lifecycle of a fund; enhancing liquidity disclosures and making them more prominent; and providing for certain additional investor protections that specifically address the increased participation of retail investors.

In addition, the Committee has discussed at length the advantages and disadvantages of expanding retail investors' access to private market assets in direct ways, through, for example, changes to the definition of "accredited investor" under Regulation D or guaranteeing some form of limited "basic access" to private markets. We do not take a position on the desirability of these and other proposals. We appreciate, of course, that legislative or executive actions may *require* the SEC to pursue certain policies that expand direct access, or that the SEC itself may *determine*, through notice and comment rulemaking, that such an expansion of direct access is warranted. The IAC believes firmly that if there were to be an expansion of direct access to private market assets, this expansion should be accompanied by certain basic investor protection guardrails. These include an expanded focus on investor sophistication (rather than income or wealth) when determining accredited investor status; prudential limits on the amount that can be invested by retail investors who do not meet sophistication or wealth criteria; the enhancement of certain filing requirements and strict enforcement of certain already-existing requirements; and improved disclosure and transparency to facilitate investor decision-making. These potential guardrails are the focus of Part III.

These Recommendations are the result of work done by all four IAC Subcommittees, which in turn drew on the extensive evidence presented at past IAC panels.[6] The Committee carefully weighed the differing perspectives of different market participants. On the one hand,

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4 U.S. Securities & Exchange Commission, *Mission* (Jan. 23, 2025), https://www.sec.gov/about/mission.

5 *See supra* note 1, at 15 (comparing asset holdings in private versus registered funds in the United States).

6 *See supra* note 2 (listing prior IAC panels).

those that support expanding retail access to private market assets believe that this could allocate more capital to small businesses and give more Americans the ability to invest in a dynamic part of the U.S. capital markets.[7] On the other hand, state regulators, some investor advocates, and others have highlighted risks to both investor protection and the health of the public markets that stem from proposals for expanding retail access to private market assets.[8] Notably, the Committee found that panelists from *both* perspectives acknowledged that information asymmetries, illiquidity, valuation, reduced regulatory oversight, fraud, and loss are all risks that will need to be managed if the Commission expands retail investor access to the private market, directly or indirectly.

We return to our starting point: market changes along multiple dimensions require the recalibration of the existing regulatory framework. It is our hope that these Recommendations will serve as useful guidance for the Commission. We also encourage the Commission to engage with consumer stakeholders and market participants and to proactively solicit comments from the public at large as it considers its next steps in this area.

II. TARGETED REFORMS TO REGISTERED FUND REGULATION

Since the 1990s, a greater share of American companies has remained private or been taken private as the number of public companies has contracted, with the latter dropping from over 8,000 in 1996 to only 3,700 in 2024.[9] Of the remaining public companies, concerns have been raised about a number of prominent indexes being increasingly correlated to some of the most popular but volatile companies. For example, major indexes such as the S&P 500 and the Nasdaq 100 commonly hold concentrated positions in the "Magnificent Seven," which include the shares of Alphabet, Amazon, Meta Platforms, Microsoft, Nvidia, and Tesla.[10] For this and other reasons,

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7 *See, e.g.*, December 10, 2024 IAC Panel Remarks of Professor Neal Newman (Texas A&M School of Law); Melody Wang (Director at BlackRock); Rajib Chandra (Partner at Simpson Thacher & Bartlett LLP); September 21, 2023 IAC Panel remarks of Kenisha Nicholson (Commission Office of Small Business Policy), Marguerite Pressley Davis (CEO of Finance Savvy), Pat Gouhin (CEO of Angel Capital Association), and Professor Usha Rodrigues (University of Georgia School of Law); March 2, 2023 IAC Panel remarks of Professor Steven Neil Kaplan (University of Chicago Polsky Center for Entrepreneurship and Innvoation); November 19, 2019 IAC Panel remarks of Sara Hanks (CEO of CrowdCheck, Inc.) and Catherine Mott (CEO of BlueTree Capital Group).

8 *See, e.g.*, December 10, 2024 IAC Panel Remarks of Phil Bak (CEO of Armada ETFs), Craig McCann (Principal at SLCG Economic Consulting), and Professor Benjamin Edwards (University of Nevada (Las Vegas) School of Law); September 21, 2023 IAC Panel remarks of Craig McCann, PhD (Principal of SLCG Economic Consulting); Amanda Senn (Director of Alabama Securities Commission); Alexandra Thornton (Senior Director at The Center for American Progress); Michael Canning (CEO of LXR Group); March 2, 2023 IAC Panel remarks of Elisabeth de Fontenay (Duke University), Tyler Gellasch (Executive Director of Healthy Markets Association), and Faith Anderson (Washington Department of Financial Institutions); November 19, 2019 IAC Panel remarks of Tyler Gellasch (Executive Director of Healthy Markets Association), Professor Renee Jones (Boston College Law School), and Andrea Seidt (Ohio Securities Commissioner).

9 Remarks of Professor Neal Newman during IAC Panel Discussion regarding Mainstreaming of Alternative Assets to Retail Investors (Dec 10, 2024) (presentation available at sec.gov/files/newman-sec-advisory-panel-presentation-riape.pdf).

10 Stephanie Hill, *A Closer Look at Magnificent Seven Stocks,* MELLON INVESTMENTS CORP. (Feb. 2024).

there have been calls to expand retail access to private market assets.[11] One strategy for accomplishing that expansion would be for the Commission to amend its "accredited investor" definition. That definition acts as a pivotal gateway to the private markets because it determines who is and is not eligible to invest in Regulation D private offerings, by far the most common form of private offering.[12] The IAC has considered issues regarding expanded retail access to private assets at roundtables and in prior recommendations. However, the most recent amendments to the "accredited investor" definition did not materially revise the foundational components of the definition, most notably the financial thresholds underpinning the definitional wealth tests.

The way that most retail investors access private assets today is indirect, through an investment in a registered fund that includes some private assets. Registered funds are potentially a safer and more prudent way for retail investors to access these assets because these products have the benefit of Commission registration and regulation, diversification and professional management. These benefits are crucial safeguards for retail investors given the complex, opaque, and illiquid nature of private assets. Yet, some registered funds are limited in how much they can allocate to private assets and must contend with other restrictions that discourage fund managers from including more private assets in their retail offerings. By revising those requirements, the Commission could expand retail access to the private market through safer, registered vehicles.

While relaxing restrictions on registered funds investing in private markets may address some of the pent-up retail demand for those assets, like other strategies that seek to increase retail exposure to alternative investments, the changes do not come without risk. Fundraising from institutional investors has slowed significantly in the alternatives marketplace[13] and some of the largest institutional investors have been looking to sell their stakes for the first time in the secondary market.[14] Existing institutional investors in a number of private funds have seen their distributions drop to historically low levels,[15] leading some investors to sell stakes in these funds into a secondary market.[16] Some funds have attempted to sell some of those hard-to-sell assets into continuation funds where funds from an existing fund are sold into a new fund managed by the

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[11] Jennifer Banzaca, *Apex: Retail Investors See Private Markets As a 'Safer' Haven,* PRIVATE FUNDS CFO (May 6, 2025).

[12] Craig McCann et al., *Regulation D Offerings: Issuers, Investors, and Intermediaries*, SLCG ECONOMIC CONSULTING (Feb 9, 2024).

[13] Karl Angelo Vidal & Neel Hiteshbhai Bharucha, Global Private Equity Fundraising Sinks for 3rd Straight Year, S&P GLOBAL MARKET INTELLIGENCE (Jan. 16, 2025). There is concern that some assets being funneled into retail vehicles may be hard-to-sell assets that funds geared to institutional funds are unwilling to retain or are interested in selling. Moody's Ratings, Private Market Retail to Fuel Opportunity But Intensify Liquidity, Asset Quality Risks, Moodys.com (Jun 10, 2025). Of course, the safeguards proposed in this Recommendation will do little to protect retail investors if they are essentially investing in hard-to-sell assets that have been rejected by institutional investors.

[14] Allison McNeely et al., Yale's Private Equity Sale Spurs Reckoning Over Endowment Model At Elite Schools, BLOOMBERG NEWS (Jun. 6, 2025).

[15] Abdulla Zaid et al., MSCI, *Private Capital in Focus: Depressed Distributions: No End in Sight*, S&P GLOBAL MARKET INTELLIGENCE (May 22, 2025).

[16] Dylan Thomas & Shambhavi Gupta, *Private Equity Secondaries Fundraising Struggles to Keep Pace With Demand*, S&P GLOBAL MARKET INTELLIGENCE (Jun. 26, 2025).

same adviser.[17] However, industry estimates show that 85% to 92% of institutional investors are opting to sell rather than move into the continuation fund.[18] Some market participants have suggested that an increase in retail participation in the private markets through registered funds, could accelerate the growth of secondaries.[19] In addition, some market observers are questioning whether and how the higher returns touted on the institutional side of the private market will translate over to the retail side, given the additional fees imposed on retail shares.[20] Other market observers also question how registered retail funds will be able to navigate illiquidity challenges as private asset allocations increase.[21]

Since the IAC held its "Mainstreaming of Alternative Assets to Retail Investors" panel in December 2024, applications for a number of registered funds such as Exchange Traded Funds and interval funds have been filed with the Commission.[22] These products offer retail investors opportunities to invest into alternative assets without being an accredited investor and with minimum investments of $1,000 versus the $2,500 to $10,000 in most other such funds.[23]

These developments further suggest that the Commission should consider additional safeguards given the potential adverse implications for retail investors who may have a significant percentage of their savings and retirement assets tied up in such products but may need to access those funds due to planned or sudden life events.[24] There is a difference between investors losing money due to an affirmative choice to take excessive risk and a loss due to a failure to understand the features and mechanics of funds invested in illiquid private market assets.[25] Unfortunately, most retail investors do not engage with traditional disclosures,[26] a reality that underpins the IAC's

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[17] Antoine Gara & Ivan Levingston, *Private Equity Firms Flip Assets to Themselves in Record Numbers*, FINANCIAL TIMES (Jul. 23, 2025).

[18] Alexandra Heal & Antoine Gara, *Private Equity Backers Refuse to Roll Over Investments As Returns Dwindle*, FINANCIAL TIMES (Jul. 27, 2025). ("Between 85 and 92 per cent of investors have this year chosen to sell rather than remain invested when private equity groups transfer a portfolio company to a so-called continuation vehicle rather than exiting through a traditional sale or initial public offering – up from 75-80 per cent last year, according to investment bank Houlihan Lokey."),

[19] Jeffrey Diehl et al., *2025 Global Investor Survey: Navigating Private Markets,* ADAMS STREET PARTNERS (Mar. 21, 2025), ("A concerted push to attract more retail capital – supported by the rise of evergreen vehicles, such as funds registered under the Investment Company Act of 1940 – could accelerate the growth of secondaries.").

[20] Jason Zweig, *The Fees on These Funds Will Leave You High and Dry*, WALL STREET JOURNAL (Jul. 26, 2024).

[21] Carrie McCabe, *Retail Investors Into Private Equity Watch The Hidden Costs*, FORBES (May 16, 2025) ("As Cliff Asness at AQR has argued, the true economic value of private holdings almost certainly declines too – even if reported marks lag behind.").

[22] Such funds include but are not limited to Blackstone's Private Multi-Asset Credit and Income Fund (prospectus available at BMACX | Blackstone Private Multi-Asset Credit and Income Fund) and Capital Group KKR Core Plus and Multi-Sector Plus (prospectus available at Prospectus Express - Prospectus).

[23] *See id.; see also* Niket Nishant, *KKR and Capital Group Launch Funds Targeting Mix of Private, Public Credit*, REUTERS (Apr. 29, 2025).

[24] David Isenberg, *With Funds Increasing Retail Private Access, New Disclosure Standards May Follow*, FINANCIAL TIMES IGNITES (Jun. 6, 2025).

[25] Matt Wirz, *Moody's Sounds Alarm on Private Funds for Individuals*, WALL STREET JOURNAL (Jun 10, 2025).

[26] Recommendation of the SEC Investor Advisory Committee on Disclosure Effectiveness (May 21, 2020), https://www.sec.gov/spotlight/investor-advisory-committee-2012/disclosure-effectiveness.pdf.

recommendations to the Commission. It is essential, therefore, that registered funds investing in private market assets establish robust investor protections and disclosures from the outset, recognizing the diverse set of retail investors with varying levels of financial sophistication.

Summary of Part II Recommendations:

1. Provide clarity and transparency on valuations throughout the lifecycle of a fund;
2. Consider changes to Staff Interpretations and/or rules under the Investment Company Act of 1940 to allow registered funds to better facilitate investing in private market assets;
3. Enhance and make liquidity disclosures more prominent;
4. Provide for additional investor protections specifically addressing greater participation of retail investors;
5. Open a request for comment process to solicit additional views and perspectives on these and other critical issues.

1. Provide clarity and transparency on valuations throughout the lifecycle of a fund

The IAC recommends that the Commission require funds to disclose additional information to retail investors to better understand how the values of portfolio assets that do not actively trade are determined. Such additional information should include:

- Disclosing when fund sponsors reject or replace third party appraisals, and
- Requiring fund directors, who have a fiduciary duty to protect shareholder interests and manage potential conflicts of interest,[27] to require funds they oversee to disclose more details as to how valuations are determined, ensuring consistency across various investment vehicles.

The inherent lack of daily market prices for many private market assets raises the need for the Commission to establish standards for an impartial party to determine the valuation of the underlying assets, especially as fees are charged to investors typically based on the value of assets, which would be even higher if the fund is using leverage.[28]Those standards become especially important as some Exchange Traded Funds (ETFs) have been offering retail investors daily liquidity to invest in private market assets which in turn necessitates having to estimate the value of all of the ETFs underlying assets daily while those assets themselves may trade infrequently.[29] Among several Business Development Companies (BDCs), which are largely owned by retail investors and are primarily invested in private credit corporate loans, there have been notable

[27] INVESTMENT COMPANY INSTITUTE, UNDERSTANDING THE ROLE OF MUTUAL FUND DIRECTORS (Jun. 7, 2002).
[28] Jason Zweig, *The Fees on These Funds Will Leave You High and Dry*, WALL STREET JOURNAL (Jul 26, 2024).
[29] One such example is State Street's SSGA IG Public & Private Credit ETF (PRIV), the prospectus for which can be found at https://www.ssga.com/us/en/intermediary/etfs/spdr-ssga-ig-public-private-credit-etf-priv. *See also* Jason Zweig, *The Fees on These Funds Will Leave You High and Dry*, WALL STREET JOURNAL (Jul. 25, 2024).

valuation discrepancies across different BDCs holding stakes in the same loans.[30] As one popular retail fund states in its prospectus:

> NAV calculations are not governed by governmental or independent securities, financial or accounting rules and standards… We calculate and publish NAV solely for purposes of establishing the price at which we sell and repurchase shares of our common stock, and you should not view our NAV as a measure of our historical or future financial condition or performance.[31]

In other instances, fund advisers may engage in practices that immediately inflate the NAV ("NAV squeezing") with no immediate increase in the value of the underlying assets. One such fund, whose adviser purchased private equity fund stakes in the secondaries market at a discount, immediately marked up the value in its own NAV, ignoring the competitive market price the fund adviser itself just set.[32]

Given the growing use of private investments in fund portfolios the Commission should emphasize the valuation responsibilities currently delegated to fund directors under Rule 2a-5 under the Investment Company Act of 1940 with a view to providing greater investor protection. This focus is especially critical considering the wide range of investor sophistication and engagement levels, which may complicate the handling of potential valuation discrepancies.[33]

It should be emphasized that fund directors are responsible for:

- Requiring the fund adviser to establish a methodology for valuations;
- Testing the appropriateness and accuracy of valuations and challenging them if necessary; and
- Overseeing the fund adviser's use of third-party valuations.

The IAC recommends the Commission require fund advisers report on a periodic basis to fund directors any rejections or replacements of any third-party valuations.[34] Fund advisers should also disclose to investors the circumstances or conditions that would lead them to override third-party valuations. Such a process is especially important for retail facing funds as many make investment decisions on the valuations presented to them and with little recourse to assessing the assumptions and inputs behind them.

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30 Silas Brown et al., *How Private Credit Market Boom Is Hiding Valuation Problems*, BLOOMBERG NEWS (Feb. 28, 2024).

31 Phil Bak, The Big Bad BREIT Post, BAKSTACK (Jun. 18, 2024).

32 Jason Zweig, *The Future Ain't What It Used to Be for These Funds*, WALL STREET JOURNAL (Jun 6, 2025).

33 Some contractual language to address discrepancies in valuation can be seen in Net Asset Value credit facilities but exclusively involve institutional investors. *See* Mayer Brown, NAV Facilities: Appraisal and Valuation Challenge Rights, MAYER BROWN INSIGHTS (Aug. 13, 2024).

34 Gibson Dunn & Crutcher LLP, Private Fund Advisers and Universities Should Assess Valuation Protocols and Disclosures in Case the SEC Comes Knocking, GIBSONDUNN.COM, (Jul 9, 2025).

Given that it is likely that a number of registered funds, including those offering daily liquidity, will own a number of illiquid assets that are also held in institutional portfolios, we also recommend the Commission offer clarity as to what levels of discrepancies are acceptable in the normal course of business between the valuations used in publicly traded funds and those held in private portfolios managed by the same fund adviser, especially during volatile markets where such discrepancies between the funds may become noticeably greater.

The IAC recommends that the Commission's Examinations Division make reviewing valuations of funds with significant investments in liquid assets a focus area. The Commission's Division of Examinations should also examine performance figures used in marketing materials as retail investors will often make investment decisions based on those numbers.[35]

2. Consider changes to Staff Interpretations and/or rules under the Investment Company Act of 1940 to allow registered funds to better facilitate investing in private market assets

The Commission should facilitate expanding retail investors' ability to gain exposure to private market assets through registered funds (e.g. closed-end funds, interval funds and tender offer funds) without sacrificing the protections of the Investment Company Act. We believe the Commission should consider the following interpretive or rule changes under the Investment Company Act:

a. *Allow more flexibility to invest in private funds.* Closed-end funds are highly suitable for providing retail investors access to less liquid investments. However, until recently the Staff has prohibited a closed-end fund from investing more than 15% of net assets in privately offered funds, unless the fund's shares are available only to accredited investors who make minimum initial investments of at least $25,000. We support the recent change in Staff position as recommended by Chair Atkins who urged that this long-time Staff position be reconsidered.[36] Decisions to make investments in private funds should be determined by a fund's Board of Directors and a fund's investment adviser. This change would provide investors the opportunity to obtain exposure to investments otherwise available to affluent investors.

   Over time, fund advisers and directors should be able to land on the optimal percentage of closed-end funds invested in private market assets. The European Commission in its updated rules for European Long-Term Investment Funds (ELTIFs) lowered the

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[35] Bill Myers, *Marketing Rule Key to Valuations Enforcement*, REGULATORY COMPLIANCE WATCH (Apr. 21, 2023).

[36] *See, e.g.*, Paul Atkins, SEC Chairman, *Prepared Remarks Before SEC Speaks* (May 19, 2025) ("I intend to have the Commission address this situation and reconsider this 23-year old practice concerning investments by closed-end funds in private funds."); *see also* Views of SEC Division of Investment Management, ADI 2025-16 - Registered Closed-End Funds of Private Funds (August 15, 2025).

minimum investment in eligible illiquid assets to 55% of the fund's capital[37] from an original 70% of capital in 2015 to better allow fund advisers to better manage their liquidity and redemption requests.[38] While the European approach under ELTIF differs significantly, those recent changes underscore how larger allocations to private assets exacerbate liquidity challenges for fund advisers.

b. *Provide flexibility for co-investments under Section 17(d) and Rule 17d-1 under the Investment Company Act*. Section 17(d) and Rule 17d-1 thereunder are designed to prevent overreaching in connection with joint transactions involving a fund and its affiliated persons. The SEC has issued numerous exemption orders permitting a closed-end fund and one or more other funds and their affiliates to enter into co-investment transactions, subject to certain conditions. The SEC should consider codifying and simplifying co-investment relief including for funds other than closed-end funds. This would facilitate greater ability for funds to co-invest in private investment opportunities providing benefits to retail investors.

c. *Provide greater repurchase opportunities for investors*. Rule 23c-3 under the Investment Company Act provides for quarterly repurchases of securities by interval funds. The SEC has granted exemptive orders permitting interval funds to conduct monthly repurchases subject to certain conditions. Amending Rule 23c-3 to permit monthly repurchases would eliminate the costs and need for funds to apply for individual exemptive orders.

d. *Allow closed-end funds to offer multiple classes of shares*. Open-end funds are permitted under Rule 18f-3 to issue two or more classes of shares representing interests in the same portfolio. The SEC routinely grants exemptive orders to continuously offer closed-end funds to offer multiple classes of shares. Codifying this relief in a rule would eliminate the costs and need for these funds to obtain individual exemptive orders.

e. *Allow interval funds and tender offer funds to operate as series funds*. Open-end funds have the flexibility to operate as "series investment companies". This allows a cluster of individual investment companies to be organized under a single set of organizational governing documents. Each series offers a separate portfolio of securities with separate investment objectives, policies and risks. Interval funds and tender offer funds should be permitted to operate as series investment companies which would allow these funds to save the time and expense associated with organizing separate registrants.

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37 Arthur Cox LLP, ELTIF – The Next Generation, ARTHURCOX.COM (Jan. 17, 2025).

38 *See, e.g.*, AFG & Morgan Lewis, Practical Guide to ELTIF 2.0 (Jan. 2025) ("The reduction in this minimum amount invested in illiquid assets should enable managers of ELTIFs to better manage the liquidity of ELTIFs and in particular, to honour redemption requests for open-ended or semi-open ended ELTIFs in strategies that do not generally involve liquidity tools.").

3. Enhance and make liquidity disclosures more prominent

The IAC also recommends the Commission provide investors with a clear understanding of the major differences of retail funds invested in alternative assets where they may be subject to longer redemption timelines and lockups. Such considerations are especially important since retail investors may need to redeem money to meet both normal and emergency expenses and do not have the same access to inexpensive, alternative financing that institutional investors do.[39]

- Simplify risk disclosures for retail investors with an immediate view to understanding the basic features of the fund in a clear and concise manner. The most important features of the fund primarily invested in alternative assets should be very clearly and succinctly presented, including: (1) redemption interval; (2) what percentage can be redeemed in a given interval; (3) the potential for lockup; (4) exceptional circumstances that qualify for off-interval or additional distributions; (5) any previous lockups of the fund; and (6) valuation uncertainty.
- Use layered disclosure formats such as summary dashboards or visual risk indicators[40] to make key risks more digestible.[41]
- Require standardized language across fund documents to reduce confusion and improve comparability.[42]

4. Provide for additional investor protections specifically addressing greater participation of retail investors

The Commission should strongly consider additional investor protections for retail focused funds invested in alternative assets given many of the safeguards in place are primarily for institutional investors and do not take into account an influx of this different set of investors. More specifically, the Commission should:

- Work with the Financial Industry Regulatory Authority (FINRA) and state securities regulators to provide guidelines on when investments in private market assets are in an investor's best interest;

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[39] *See, e.g.*, Charles Hayes, *Harvard and Yale's Endowment Sales: A Liquidity Crisis or Strategic Move?*, AINVEST (Apr. 30, 2025) ("With 83% of its $55.2 billion endowment allocated to private equity and hedge funds – the school risks being trapped in a 'liquidity crunch' … To bridge the gap, Harvard issued $1.2 billion in municipal bonds in early 2025.")

[40] For example, in leveraged ETFs a simple long term performance visual shows a clear divergence between a 2x leveraged ETF versus the underlying stock shows clearly a hidden cost of "volatility drag." Brian Jacobs. *Leveraged ETFs: The Hidden Costs of Volatility Drag*, Aptus Capital Advisors (Feb. 10, 2025).

[41] Carl Ayers, *Second in a Series: Disclosure Examples for New Ad Rule*, REGULATORY COMPLIANCE WATCH (Jul. 21, 2022).

[42] To be sure, standardization should not result in generic, boilerplate language that does not convey useful information to investors.

- Ensure proper disclosure of potential conflicts arising from sales compensation, servicing fees, and revenue sharing agreements;
- Continue to rigorously enforce rules and regulations governing deceptive marketing and false claims to investors; and
- Prohibit clearly conflicted transactions without the approval of a fund's directors.

The IAC recommends the Commission work with FINRA and state securities regulators to monitor broker-dealers and investment advisers for their compliance with Regulation Best Interest[43] and the Investment Advisers Act of 1940[44] when they offer and sell funds invested in alternative assets to their clients.

Financial incentive conflicts arising from sales compensation, servicing fees, and revenue-sharing arrangements that are common features of alternative products need to be properly disclosed and mitigated.[45] The Commission should study the impact that these financial incentives have on retail investors, in contrast to the experience of institutional investors who have historically avoided them or been able to negotiate preferrable terms.

The Commission should also explicitly limit fund advisers from engaging in conflicted transactions without the approval of its fund directors. Examples of such conflicted transactions include (1) fund advisers/sponsors charging multiple layers of fees to the fund, and (2) fund advisers/sponsors failing to negotiate contracts and service arrangements with their portfolio companies on an arms-length basis. [46]

Additionally, advisers should not engage in deceptive advertising of funds primarily invested in illiquid assets and market them as more liquid or less risky than they are in reality.[47] The SEC's Division of Examinations has previously issued Risk Alerts due to private fund advisers failing to act consistently with disclosures and use misleading disclosures surrounding performance[48] and the Division of Examinations should issue further Risk Alerts if the Staff see

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43 Financial Industry Regulatory Authority (FINRA), SEC Regulation Best Interest (Reg BI) (2025).

44 Jacko Law Group PLC, Fiduciary Duties of Investment Advisers and the recent SEC Treatment of Hedge Clauses (Mar. 30, 2022) ("An adviser's fiduciary duties cannot be waived and are enforceable through section 206 of the Advisers Act.").

45 *See, e.g.*, Brander Richmond, Alternative Investments: Promises and Pitfalls, FULCRUM CAPITAL LLC (Jun. 27, 2025) ("Many financial advisors receive higher compensation for selling alternative investments compared to traditional assets, shifting their focus from client outcomes to revenue generation.").

46 Remarks of Rajib Chanda (Simpson Thacher & Bartlett LLP) during IAC Panel Discussion Regarding Mainstreaming of Alternative Assets to Retail Investors (Dec. 10, 2024) (presentation available at sec-panel-stb-slides-chanda.pdf).

47 The SEC has previously brought enforcement action against investment advisers to retail investors for violations of the Marketing Rule under the Investment Advisers Act. *See* Commission Press Release, SEC Charges Five Investment Advisers for Marketing Rule Violations (Apr 12, 2024).

48 SEC Division of Examinations Risk Alert, Observations from Examinations of Private Fund Advisers (Jan. 27, 2022).

recurring issues and prioritize examinations of private funds being sold primarily to retail investors.[49]

5. Open a Request for Comment process to solicit additional views and ideas and other critical issues

While the IAC has extensively discussed and thought through many of these recommendations, given the importance, challenges, and consequential impact of opening private market assets to retail investors, the Committee also recommends that the Commission open a Request for Comment process to obtain input on various matters. These include, inter alia, (1) additional methods investment managers can use to effectively facilitate private market investments to retail investors; (2) other impediments retail investors may have in safely accessing private market investments; (3) the approaches other jurisdictions have taken to facilitate retail investments in private markets; (4) how to expand retail investor access to private markets while maintaining an appropriate level of investor protection; and (5) systemic risks of the growth in the private markets.[50]

III. DIRECT ACCESS: APPROACHES AND GUARDRAILS

We note once again that the Committee has discussed at length the advantages and disadvantages of expanding retail investors' access to private market assets in direct ways. These include, for example, changes to the definition of "accredited investor" under Regulation D or guaranteeing some form of limited "basic access" to private markets directly. We do not take a position on the desirability of these and other proposals. We also appreciate that legislative or executive actions may *require* the SEC to pursue certain policies that expand direct access, or that the SEC itself may *determine*, through notice and comment rulemaking, that such an expansion of direct access is warranted.

With those possibilities in mind, the IAC finds that if there were to be an expansion of direct access to private market assets, this expansion ought to be accompanied by certain basic investor protection guardrails. These include: (1) an expanded focus on investor sophistication (rather than income or wealth) when determining accredited investor status; (2) prudential limits on the amount that can be invested by retail investors who do not meet sophistication or wealth criteria (as discussed in Part III.A below); (3) strict enforcement of certain already-existing requirements; and (4) enhancements to certain filing requirements to facilitate investor decision-making (as discussed in Part III.B below).

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[49] SEC Division of Examinations, FY2025 Division of Examinations Examination Priorities (Oct 16, 2024).

[50] For one discussion of such systemic risks, see Moody's Ratings, *Private Market Retail to Fuel Opportunity But Intensify Liquidity, Asset Quality Risks*, Moodys.com (Jun 10, 2025).

A. The Accredited Investor Definition

One strategy that is frequently featured in private market access proposals is to expand the definition of "accredited investor," which serves to determine who is and is not eligible to invest in a Regulation D offering, which is by far the most popular form of private offering.[51] Notably, the accredited investor definition has long been viewed as problematic by both proponents and opponents of expanding direct retail investor access.[52] The panels held by the IAC over the years suggest that the definition is outdated and that it is simultaneously overinclusive and underinclusive. The IAC therefore puts forward the following considerations for improvement.

Under the existing framework, most investors that qualify as "accredited" do so based on income (individual annual income exceeding $200,000 or joint annual income exceeding $300,000 in the past two years) or wealth (net worth exceeding $1 million and excluding one's primary residence).[53] Except in limited circumstances, investors who do not qualify as accredited do not have direct access to the private markets. Once an investor is qualified as accredited, however, there is no definitional limit to how much that investor can invest in the market. Assuming the investor is not qualified to be an accredited investor under a different test, this technically means that an investor with net worth of $999,999 – just short of the wealth threshold – can directly invest $0 in the private market, but an investor worth just $1.01 more could directly invest their entire net worth.

In 2014, the IAC discussed the challenges associated with the SEC's reliance on wealth and income tests and recommended that the SEC move toward alternate approaches that would qualify an individual based on financial sophistication.[54] Recognizing how difficult it might be for the SEC to shift away from a set of criteria that are deeply entrenched in regulatory policy and market practice and taking into account concerns that alternative proposals might unnecessarily shrink the pool of eligible investors, the IAC also recommended that the SEC consider an alternative: limiting the share of an investor's total assets that can be invested in private offerings.[55] In 2020, the SEC added passing one of three securities licensing exams to its list of professional credentials that qualify an individual as an accredited investor under Rule 501(a)(10).[56] While this represented a positive step in relying on financial sophistication rather than income or wealth, it is

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51 *See* U.S. Sec. & Exch. Comm'n, Review of the "Accredited Investor" Definition under the Dodd-Frank Act (Dec. 14, 2023) at 9 (hereinafter "Commission's 2023 Review of the "Accredited Investor" Definition").

52 *Supra* notes 7 and 8 (comparing competing stakeholder views).

53 Rule 501(a), 17 CFR 230.501(a).

54 Recommendation of the Investment Advisory Committee: Accredited Investor Definition (Oct. 9, 2014).

55 *Id.*

56 These include FINRA's General Securities Representative (Series 7), NASAA's Investment Adviser Representative (Series 65), and FINRA's Private Securities Offering Representative (Series 82). *See* U.S. Sec. & Exch. Comm'n, Order Designating Certain Professional Licenses as Qualifying Natural Persons for Accredited Investor Status Pursuant to Rule 501(a)(10) under the Securities Act of 1933, Release No. 33–10823 (Aug. 26, 2020) [85 FR 64234 (Oct. 9, 2020)]; *see also* Commission's 2023 Review of the "Accredited Investor" Definition, *supra* note 51, at 10, 49-50.

not clear whether the 2020 additions materially increased the number of accredited investors because many may have already qualified as accredited based on the income or wealth test.

The IAC finds that any initiative to expand direct access to retail investors should seek to address the overinclusive and underinclusive nature of the existing definition. Specifically, the current definition places no limits on sales to unsophisticated investors who have a limited time horizon and limited capacity for loss (e.g., older investors who qualify based on retirement assets they cannot afford to lose). At the same time, the current definition prohibits sales to sophisticated investors who do not meet the income or wealth criteria, even if they have longer time horizons and a willingness to assume the requisite risk of loss (e.g., younger professionals and entrepreneurs who are eager to explore the markets and may have decades to save and recover from any potential losses).

Recommended Guardrail #1: Emphasize investor sophistication (rather than income or wealth) as part of any potential expansion of direct access

Rule 501(a)(10) of Regulation D gives the SEC the power to publish by order, after notice and public comment, a list of credentials or designations that it believes demonstrate "sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of a prospective investment." As noted, the SEC relied on this authority in 2020 to qualify investors who pass the Series 7, 63, and 82 securities licensing exams, irrespective of income or net worth.

The IAC reviewed private market access proposals seeking to add additional credentials to the Rule 501(a)(10) list: we found that some appear to be appropriate, but, importantly, that others were not. We based our determination on criteria such as requiring rigorous competency examinations, setting minimum education and professional practice requirements, and imposing continuing education requirements, similar to the securities licensing exams that the Commission has already accepted. Indeed, most of the credentials listed below serve as a regulatory substitute for one or more state securities licensure exams in many jurisdictions.[57]

The IAC believes that the following credentials could be appropriate additions to the existing list: (1) Chartered Financial Analysts, (2) Certified Financial Planners, (3) Certified Public Accountants, (4) Chartered Financial Consultants, (5) Personal Financial Specialists, (6) Certified Investment Management Analysts; and (7) Certified Private Wealth Advisors.[58]

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[57] For a helpful discussion of these credentials and other financial professional designations, please review FINRA's database of professional designations, available at Professional Designations | FINRA.org, and the following investor bulletin jointly produced by FINRA, the Commission's Office of Investor Education and Advocacy, and the North American Securities Administrators Association: Investor Bulletin: Making Sense of Financial Professional Designations | FINRA.org (June 20, 2025).

[58] This is consistent with two legislative proposals introduced in the House this year: (1) H.R.3394 - Fair Investment Opportunities for Professional Experts Act, which passed the House on June 23, 2025, and (2) H.R. 3348 - Accredited Investor Definition Review Act, which was introduced on May 20, 2025. H.R. 3394 directs the Commission to undertake rulemaking that would allow any natural person to become accredited based on

The IAC also supports, in principle, the notion of creating an accredited investor test, *provided that* it (i) adequately probes the examinee's ability to understand the unique features and risks of making private market investments, including the importance of diversification;[59] and (ii) is developed by the Commission in consultation with other federal and state regulators as well as industry and investor stakeholder groups.[60] The Commission could delegate administration of the test to FINRA, given FINRA's extensive experience administering competency examinations, or a body that commonly support retail investors. An accredited investor test, coupled with Commission approval of the designations above, is, in the Committee's view, a reasonable way to remove the private market barrier for sophisticated investors who understand and are willing to take on the risk of private market investment.[61]

Recommended Guardrail #2: Place prudential limits on the amount that can be invested by retail investors who do not meet sophistication or wealth criteria and index the existing income and wealth thresholds for inflation on going-forward basis

As noted above, one of the chief criticisms of the existing accredited investor definition is the perception that it unfairly divides the U.S. population into segments that either get *unlimited*

"demonstrable education or job experience to qualify such person as having professional knowledge of a subject related to a particular investment, and whose education or job experience is verified by a self-regulatory organization (as defined in section 3(a) of the Securities Exchange Act of 1934)." H.R. 3347 directs the Commission to update Rule 501(a)(10) to include the list of certifications, designations, and credentials that were approved by Commission order in 2020 as described above; add other designations that are "substantially similar in measuring financial sophistication, knowledge, and experience in financial matters;" and periodically review and adjust the Commission's list at least once every five years moving forward.

[59] The SEC's own website speaks about the "magic of diversification," which is described as "[t]he practice of spreading money among different investments to reduce risk is known as diversification. By picking the right group of investments, you may be able to limit your losses and reduce the fluctuations of investment returns without sacrificing too much potential gain." *See* U.S. Sec. & Exch. Comm'n, Beginners' Guide to Asset Allocation, Diversification, and Rebalancing (Aug. 27, 2009).

[60] This is consistent with the approach advanced in H.R.3339 - Equal Opportunity for All Investors Act of 2025, which passed the House on July 21, 2025. H.R. 3339 directs the Commission to undertake rulemaking that creates an accredited investor test that is "designed with an appropriate level of difficulty such that an individual with financial sophistication would be unlikely to fail" but capable of demonstrating competency on the following topics: different types of securities, federal disclosure requirements, corporate governance, financial statements, and the risk of investing in private companies and private funds. H.R. 3339 listed the following as examples of private asset risks: limited liquidity, limited disclosures, subjectivity and variability in valuations, information asymmetry, leverage, concentration risk, longer investment horizons, and conflicts of interest. H.R. 3339 passed the House unanimously.

[61] The IAC does not endorse a competing financial sophistication proposal that would treat investors as accredited if they receive investment advice or individualized investment recommendations from a registered investment professional. Registered firms and professionals have strong financial incentives to recommend private market assets, which can compromise the quality of their advice. *See, e.g.*, Remarks of Phil Bak, Craig McCann & Professor Benjamin Edwards, IAC Panel Discussion: Mainstreaming of Alternative Assets to Retail Investors (Dec. 10, 2024). Investors who lack financial sophistication may not be aware of or understand how these conflicts of interest could harm them, as observed in private market cases like GBP Capital and Woodbridge. *See, e.g.*, *Private Equity Exec Sentenced to Prison for $1.6B GPB Capital Fraud*, FA Magazine (May 14, 2025).

access to the private markets or *no access* at all. The IAC agrees that this all-or-nothing approach is flawed. It is important, however, to avoid going from "no access" to "full access."

If the Commission determines that expanded direct access for retail investors is warranted, we propose the following prudential limit, which we term "basic access."[62] "Basic access" could generally be defined as: "the ability for retail investors who do not meet a sophistication test or the income or wealth criteria set forth in Rule 501(a)(5) and (6) to directly invest the greater of:

(a) on an annual basis, up to 10% of last year's individual or joint spousal income;

(b) in the aggregate, up to 10% of individual or joint spousal net worth, exclusive of personal residence and automobiles; or

(c) in the aggregate, up to 10% of the value of the investor's securities investments."[63]

The Committee discussed which wealth categories to use (income versus net worth versus investable assets) and the need for inflationary adjustments. No particular wealth category emerged as distinctly superior to the others so the Committee is opting for a flexible approach that would allow investors to qualify using any of the categories.[64] In considering whether the financial thresholds used in the income and wealth tests should be adjusted for inflation (bearing in mind that those thresholds have not been adjusted since 1982), the Committee took note of competing industry and consumer views. Panelists representing certain consumer groups have advocated for a full inflationary adjustment retroactive to 1982, while panelists representing industry groups have

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62 Sitting Commissioners Uyeda and Peirce have both discussed this approach. *See, e.g.*, Commissioner Mark Uyeda, Remarks at the "Going Public in the 2020s" Conference: Columbia Law School/Business School Program in the Law and Economics of Capital Markets (Mar. 3, 2023), ("To provide investment exposure to growth-stage companies for Main Street investors, consideration should be given to allowing an individual to invest a certain percentage of his or her income or net worth in one or more private companies during a year."); Commissioner Hester Peirce, Capital On-Ramps: Remarks at the SEC's 42nd Annual Small Business Forum – Exploring the Early-Stage Landscape: Trends and Strategies in Capital Raising (Apr. 24, 2023) (potential options to expand access "include allowing anyone to invest some percentage of her investment portfolio in private companies—a technique already used in the crowdfunding rules").

63 The Committee selected 10% as the allocation figure because it is a recurring feature of private market access proposals and because it is the investment limit found in two existing JOBS Act exemptions – Regulation Crowdfunding (applying 5% and 10% limitations) and Regulation A+ (10% limitation for non-accredited investors). Regulation A limits the amount non-accredited investors can purchase to no more than 10% of the greater of their annual income or their net worth. 17 CFR 230.251(d)(2)(i)(C). Regulation Crowdfunding limits the amount Individual investors can invest in all Regulation Crowdfunding offerings over the course of a 12-month period to: (a) the greater of $2,200 or 5% for investors with annual income or net worth less than $107,000 or (b) 10% of the lesser of the investor's annual income or net worth for investors whose annual income and net worth are equal to or more than $107,000. 17 CFR 227.100(a)(2). The Committee expects that the Commission would solicit comment on this approach as part of the rulemaking process.

64 This approach is similar to a legislative proposal, entitled the Investment Opportunity Expansion Act, which was included in several bills considered by the House during the 118th Congress. The proposal was incorporated into Division C, Title II, of H.R. 2799, the Expanding Access to Capital Act. H.R. 2799, which passed the House. That bill proposed a new qualification path for accredited investors that would allow natural persons to invest up to 10% of the individual's net assets or 10% of the individual's annual income, whichever is greater, in the aggregate for private offerings.

consistently opposed that approach. The Committee is opting for the least-disruptive option, which would be to index the thresholds on a going-forward basis.[65]

Looking ahead, indexing for inflation would help ensure that the thresholds retain their utility as an imperfect but still-relevant proxy for an investor's ability to withstand loss. When initially adopted in 1982, the definition applied narrowly to the wealthiest 1.8% of American households. As noted above, the unadjusted thresholds in the definition covered approximately 19% of American households in 2022. Without indexing for inflation on a going-forward basis, that percentage is estimated to grow to nearly half (49.2%) of all American households by 2042, if not earlier.[66] Indexation would ensure that the income and net worth metrics continue to serve as meaningful proxies for an investor's capacity for loss.

Special Consideration: Retirement Assets

Another idea that generated significant discussion in previous IAC panels is the exclusion of retirement assets (or a portion thereof) from the calculations used in the wealth test. While the Committee would like to see the accredited investor definition calibrated to help Americans save for retirement, it did not have enough information to conclude whether that would be best accomplished by including or excluding retirement assets from the wealth test.

As of 2022, nearly one-third of all "accredited" American households, 4.84 million of the 16.44 million total, relied on retirement assets to qualify as accredited investors.[67] According to one commentator, "[f]or many families, the assets held in IRAs and [defined contribution] plans (typically associated with either a current job or a past job) are among the most important components of their net worth and are a key determinant of their future retirement security."[68] In previous IAC panels, some panelists cautioned that too many older investors, even accredited ones, have lost too much of their retirement savings in the private markets and opined that retirement assets should be specially protected and excluded from the wealth test.[69] Other IAC panelists, however, have noted the investment performance and diversification benefits of private market assets, which could maximize retirement savings under the right circumstances.[70] The Committee

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65 This is consistent with the approach utilized in H.R.3394 - Fair Investment Opportunities for Professional Experts Act, which passed the House on June 23, 2025.

66 Commission's 2023 Review of Accredited Investor Definition, *supra* note 51.

67 *See id*, at 21-23.

68 Aditya Aladangady et al., *Changes in U.S. Family Finances from 2019 to 2022: Evidence from the Survey of Consumer Finances*. Washington: Board of Governors of the Federal Reserve System, at 17 (Oct. 2023), available at https://doi.org/10.17016/8799).

69 *See, e.g.*, Written Statement of Amanda Senn and Written Statement of Michael J. Canning, IAC Panel Discussion Regarding Exempt Offerings Under Regulation D Rule 506 (Sept. 21, 2023).

70 *See, e.g.*, Written Remarks of Rajib Chanda: *What Do Retail Investors Want When Allocating to Private Markets?*, IAC Panel Discussion: Mainstreaming of Alternative Assets to Retail Investors (Dec. 10, 2024) (presentation available at sec-panel-stb-slides-chanda.pdf); Steven Neil Kaplan Presentation, IAC Panel Discussion Examining the Growth of Private Markets Relative to the Public Markets: Drivers and Implications (March 2, 2023).

recommends that the Commission study this important topic and report on its findings to confirm that any change that the Commission makes to the accredited investor definition does not harm retirees.[71]

B. Form D Policy and Practice

The guardrails proposed in this Part are intended to ensure that any expansion of direct access fits with the core architecture of the federal securities laws. Ever since Congress enacted the federal securities laws in the 1930s, the basic rule underlying the regulatory scheme has held that any offer or sale of securities must be registered with the Commission, unless it qualifies for a recognized exemption. For over 90 years, this registration requirement has served to ensure that investors and markets receive full and fair disclosure of material information to promote securities price accuracy, investor decision-making, and investor oversight.[72]

The US Supreme Court, in *SEC v. Ralston Purina*, established the criteria for claiming an exemption from registration under Section 4(a)(2) of the Securities Act.[73] The Court allowed the exemption where the persons participating in the offering do not need the protections provided by SEC registration, because they "have access to the kind of information which registration would disclose."[74] A subsequent Fifth Circuit decision elaborated that if investors "did not possess the information requisite for a registration statement, they could not bring their sophisticated knowledge of business affairs to bear" in deciding whether to invest, meaning that an information-lacking offering could not be exempt.[75] Viewed from today's vantage point, this highlights that sophistication without information is of limited use in navigating the private markets.

In 1982, the SEC adopted Regulation D to allow issuers to offer and sell their securities offerings in *limited* private offerings without the need to register with the SEC.[76] Regulation D

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71 The Commission could study the impact that accredited investor reforms would have on retiree households through: (a) routine examination of investment firms, by reviewing firm policies and procedures to ascertain the criteria that firms subject to fiduciary and best interest standards use to approve and monitor the sales of private offerings to accredited investors and by reviewing anonymized customer account data of accredited investors who indicate their accounts are being used for retirement savings, comparing and contrasting complaint and account performance data for concentrations below, at, and above various allocations; (b) assessment of victim profiles in its own complaint files and in regulatory actions (brought by the Commission, FINRA, and state securities regulators) that involve a private offering to gauge the involvement of and impact on older, retired investors versus other investor populations. Publicly reporting these findings would provide valuable private market data and insights for the Commission and other policymakers and stakeholders whose priorities are to educate and protect older American investors.

72 *See* Commission's 2023 Review of the "Accredited Investor" Definition, *supra* note 51, at 5.

73 346 U.S. 119, 127 (1953).

74 *See* Commission's 2023 Review of the "Accredited Investor" Definition, *supra* note 51, at 7.

75 Hill York Corp. v. American International Franchises, Inc., 448 F.2d 680, 690 (5th Cir. 1971).

76 *See* Federal Register Vol. 47, No. 51 at 11251,17 CFR Parts 230 and 239 [Release No. 33-6389] at 11251-11261 9, including the chart at 11259-60.

was meant to encourage capital raising by small businesses,[77] and contains two relevant information provisions:

- *Form D*: Issuers relying on Regulation D are required to file "Form D" with the Commission within 15 calendar days after the first sale of securities in a Regulation D offering.[78] The form collects basic information, including the issuer's identity and address, names and titles of executive officers and promoters, amount and type of securities offered and sold, use of proceeds, number and type of investors, and sales commissions and finders' fees. Since 2008, this filing must occur via the EDGAR system, making it easily available to investors, state securities regulators, and other interested parties.

- *Rule 502(b) of Reg. D*: When any investors who are not "accredited investors" participate in a Rule 506(b) offering, the issuer must provide specific information, including financial statements (audited if the offering exceeds $20 million), a description of the securities, use of proceeds, management and business details, risk factors. The issuer is not required to provide any of this information when only "accredited investors" participate in the offering.

One point regarding the original Regulation D is worth emphasizing. Regulation D was clearly intended to provide a narrow exception, including from the overall scheme that the Supreme Court put in place in *Ralston Purina*. The limited scope of the private markets at the time naturally limited the reach of exempt offerings. The registration requirements contained in Section 12(g) of the Exchange Act limited the shareholder base of non-public companies to fewer than 500 shareholders.[79] Finally, the conservative income and wealth thresholds set by Congress in 1982 resulted in less than 2% of U.S. households qualifying as accredited investors.[80]

Since 1982, private markets have grown considerably due to a number of factors, and this growth has been particularly pronounced since 2012, when Congress enacted the JOBS Act.[81] As shown in Figure 1 below, in 2013, there were only 43 U.S.-based "unicorns" (start-ups with an implied valuation of at least $1billion); by 2024, the number of unicorns had risen to 693 and their implied valuation exceeded $2.6 billion.

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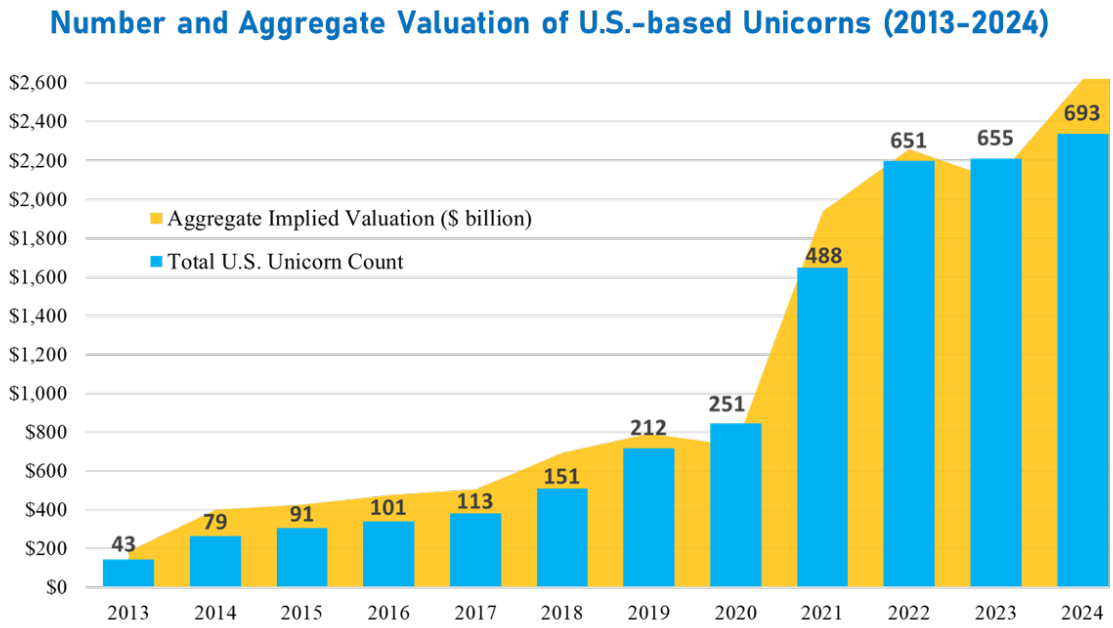
77 The "accredited investor" concept was created by Congress (and not the SEC), pursuant to the Small Business Incentive Act of 1980. *See* Revision of Certain Exemptions From Registration for Transactions Involving Limited Offers and Sales, Release No. 33–6389 (Mar. 8, 1982), 47 Fed. Reg. 11,251.

78 17 C.F.R. § 230.503 (Regulation D Rule 503).

79 This threshold was subsequently raised by the 2012 JOBS Act. *See* Exchange Act §12(g)(1)(A), 15 U.S.C. § 78l(g)(1)(A) (2012).

80 The $1 million net worth threshold from 1982 translates into $3.1 million today; the $200,000 individual income/$300,000 joint income thresholds translate into $615,000/$920,000 today.

81 The JOBS Act included provisions beneficial to the growth of private markets, such as increasing the number of allowed shareholders of record for private companies. *See supra* note 79.



Adapted & updated from: George S. Georgiev, The Breakdown of the Public-Private Divide in Securities Law: Causes, Consequences, and Reforms, 18 NYU Journal of Law & Business 221 (2021) (Figure 1). Data derived from historical CB Insights reports, available at https://www.cbinsights.com/research-unicorn-companies.

Despite the exponential growth of private markets, the SEC has not taken steps to modernize the information requirements contained in Regulation D. The outdated nature of Regulation D taken as a whole has prompted regular critiques from investor representatives, SEC commissioners, legislators, and think tanks.[82] These issues have also been the focus of extensive

[82] *See, e.g.*, Caroline A. Crenshaw, Comm'r, SEC, Remarks at Symposium on Private Firms: Reporting, Financing, and the Aggregate Economy at the University of Chicago Booth School of Business (Apr. 14, 2022); Caroline A. Crenshaw, Comm'r, SEC, Big "Issues" in the Small Business Safe Harbor: Remarks at the 50th Annual Securities Regulation Institute (Jan. 30, 2023); Allison Herren Lee, Comm'r, SEC, Going Dark: The Growth of Private Markets and the Impact on Investors and the Economy (Oct. 12, 2021); Hester M. Peirce, Comm'r, SEC, Bridging the Gap: Remarks before the Northwest Securities Institute (May 30, 2025); Mark T. Uyeda, Comm'r, SEC, Remarks at the 51st Annual Securities Regulation Institute (Jan. 22, 2024); Center for American Progress, How Exemptions From Securities Laws Put Investors and the Economy at Risk (March 22, 2023); Hearing, House Committee on Financial Services, The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation (Feb. 26, 2025); Healthy Markets Association, In the Public Interest: Why Policymakers and Regulators Must Restore the Public Capital Markets (2022).

academic commentary.[83] The IAC has also drawn attention to these issues and urged the Commission to act.[84]

The IAC's March 2023 panel summarized the various drawbacks for individual retail investors, including those who qualify as accredited investors.[85] These include:[86]

- *Lack of Available Information*: If information is provided at all, it need not be uniform in content, making comparisons between companies difficult, and the information need not be updated as circumstances change. Voluntary disclosures are prone to greater error and can be influenced by overly optimistic assumptions about future prospects.[87]

- *Information asymmetry*: Issuers in Rule 506 exempt offerings are not required to provide any information to accredited investors, and even when they do provide such information, what information and to whom they provide it is determined by the issuer or is subject to negotiation and agreement by the investor and the issuer, leaving smaller and more vulnerable investors in a position where they are unlikely to have access to unbiased and important information.[88]

- *Inability to perform adequate due diligen*ce: In the absence of mandatory disclosure, investors in the private market are expected to conduct their own due diligence to determine a fair price for a security. Depending on the circumstances, conducting such due diligence is prohibitively expensive, extremely difficult, and/or practically impossible for a retail investor who can only make a relatively small investment.

- *Inability to negotiate favorable terms*: In the exempt market, larger or well-known investors can—and often do—receive more favorable terms, and the best deals may

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83 *See, e.g.*, Elisabeth de Fontenay, *The Deregulation of Private Capital and the Decline of the Public Company*, 68 HASTINGS L.J. 445 (2017); Jennifer S. Fan, *Regulating Unicorns: Disclosure and the New Private Economy*, 57 B.C. L. REV. 583 (2016); Renee M. Jones, *The Unicorn Governance Trap*, 166 U. PA. L. REV. ONLINE 165 (2017); George S. Georgiev, *The Breakdown of the Public–Private Divide in Securities Law: Causes, Consequences, and Reforms*, 18 N.Y.U. J.L. & BUS. 221 (2021); Matthew Wansley, *Taming Unicorns*, 97 IND. L.J. 1203 (2021); Elizabeth Pollman, *Private Company Lies*, 109 GEO. L.J. 353 (2020); Verity Winship, *Private Company Fraud*, 54 U.C. DAVIS L. REV. 663 (2020); Anat Alon-Beck & John Livingstone, *Mythical Unicorns and How to Find Them: The Disclosure Revolution*, 2023 COLUM. BUS. L. REV. 1 (2023); George S. Georgiev, *Is "Public Company" Still a Viable Regulatory Category?*, 13 HARV. BUS. L. REV. 1 (2023).

84 *See supra* note 2 (listing prior IAC panels and recommendations).

85 Panel Discussion Examining the Growth of Private Markets relative to the Public Markets: Drivers and Implications (Mar. 2, 2023).

86 While many panelists spoke to these drawbacks, they were summarized well by Faith Anderson of the Washington Securities Division, and her remarks are used to frame this issue.

87 *See also* George S. Georgiev, *The Breakdown of the Public–Private Divide in Securities Law: Causes, Consequences, and Reforms*, 18 N.Y.U. J.L. & BUS. 221, 284-86 (2021); George S. Georgiev, *Is "Public Company" Still a Viable Regulatory Category?*, 13 HARV. BUS. L. REV. 1 (2023).

88 Previous proposals to expand the private markets have cited the 'increasing availability of information' as a general reason to ease private market restrictions. While there certainly is more information than ever, it remains the case that the most salient investment information about most private companies is kept out of public view and is difficult for less influential investors to access.

only be available to the largest and most influential investors. Realistically, retail investors cannot negotiate for such advantages and therefore may enter into private investments at a severe disadvantage.

In sum, while the Commission, state regulators and investor advocates all agree that retail investors deserve access to high-quality investment options, the obsolete informational framework pertaining to the private markets leaves investors in a vulnerable position. In the private markets, small retail investors are often unable to obtain access to important information, face prohibitive costs for the necessary level of due diligence, typically receive less favorable terms than larger investors, lack the resources to lower risk through diversification, and are exposed to higher levels of fraud.[89] Expanding information requirements will not be as burdensome as it might first appear, because many issuers are already in possession of the information that investors need, which is generated in the course of the preparation of audited financials and in order to maintain internal controls and procedures over financial reporting.

Guardrail #3: The SEC should enforce the already-existing Form D filing requirement

The SEC should strictly enforce the existing requirement that issuers relying on Regulation D submit Form D within 15 calendar days of closing the first offering. Under existing Rule 507, issuers who do not comply with the Form D filing requirement may lose their ability to rely on Regulation D upon the completion of certain procedural steps. In the interest of judicial efficiency, the SEC should condition the availability of Reg D exemptions on the filing of Form D and adopting a clear penalty for such failure. For example, failure to file a Form D with the SEC could result in the loss of the ability to rely on Reg D exemptions for a 12-month period. Penalties should also be considered for failure to file any required amendments.

We note that Form D is not burdensome: Form D calls for the provision of very minimal information, none of which should be commercially sensitive; it is to be completed online, and, according to the SEC's own estimates under the Paperwork Reduction Act, the average time burden per filing is 4 hours.[90]

In addition, the SEC should require an explanation when an issuer uses the "decline to disclose" options on Form D. Certain fields, including revenue range and number of employees, allow the issuer to check a "decline to disclose" box on Form D. The SEC should revise Form D to require an explanation for the issuer's unwillingness to disclose. While the IAC believes that

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89 Written Testimony of Elisabeth de Fontenay, Professor of Law, Duke University, Before the United States House of Representatives Committee on Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, "Examining Private Market Exemptions as a Barrier to IPOs and Retail Investment" at 8-10 (Sept. 11, 2019). See also sources cited in note 83 *supra*.

90 *See* Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Regulation D (Form D) (2024). The estimated annual cost to the federal government of processing Form D is also minimal ($15,000). *See* Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Form D (2016).

there may be circumstances where such non-disclosure could be warranted, in the vast majority of cases the information would already be available through other sources, and issuers should be encouraged to complete Form D as fulsomely as possible.

Guardrail #4: The SEC should mandate information parity among investors and the filing of a Form D amendment at closing; it should also consider expanding Form D through notice-and-comment rulemaking

Assuming that the SEC proceeds with expanding direct access, the Committee supports the expansion of Form D information requirements. Importantly, the Committee believes that the precise contours of the new information requirements should be determined through notice-and-comment rulemaking. We note that the expanded information requirement can be calibrated to apply to issuers of a certain size or securities issuances above a particular dollar threshold or issuers of above a particular size, as measured by assets and/or revenues. Such scaled approaches are already in place in other contexts.[91]

In particular, the Committee recommends that the SEC consider the following categories of information: (1) Legal counsel representing the issuer, if any; (2) The issuer's accountants or auditors, if any; (3) A brief description of the issuer's general solicitation plans, if any; (4) A brief description of the issuer's existing and proposed business, including products or services offered or intended to be offered; (5) A listing of any officers or directors with greater than a 5% equity interest in the issuer; (6) Expansion of current information in Item 16, Use of Proceeds; (7) Disclosure of any findings of securities fraud, pending and concluded enforcement actions, and/or non-compliance with the securities laws by the issuer or any Related Persons; (8) Disclosure of material risks and conflicts of interests including details regarding any fees, costs, or charges assessed to investors. We note that this list of items is intended to be a starting point and that the feedback of investors and market participants may reveal that, in some or all offerings, some of these information categories are unnecessary or that others may be necessary.

To give those investors and the Commission a complete picture of the offering, including the amount of capital that is actually raised, the issuer should file a closing amendment to Form D, as previously proposed by the Commission in 2013.[92] Without such a filing, neither the SEC nor the issuer's investors have reliable information about the volume of capital actually raised in the offering.

The SEC should require that issuers provide copies of any information provided to one investor to all other investors to ensure consistency of information disclosure across all investors. In multi-stage funding rounds, new investors must receive all information provided to other

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91 *See, e.g.*, Jeff Schwartz, *The Law and Economics of Scaled Equity Market Regulation*, 39 J. CORP. L. 347 (2014).

92 *See* U.S. Sec. & Exch. Comm'n, Proposed Amendments to Regulation D, Form D, and Rule 156, SEC Rel. No. 33-9416 (July 10, 2013).

investors in the preceding 90 days to ensure that any new investor has access to the same information as prior and existing investors.

The IAC recognizes that there may be special circumstances whereby an information parity requirement may be unworkable or cumbersome or where an investor requests information for its own compliance purposes due to its specific regulatory profile. The Committee recommends that the SEC consider appropriate exceptions for information that clearly fits those criteria and develop a mechanism whereby an issuer may apply for a waiver of the information parity requirement.

Special Consideration: Ongoing disclosure of basic information by large private firms

Assuming that the SEC proceeds with expanding direct access, the Committee recommends that the SEC study whether it is necessary to require *ongoing reporting* of basic information by large, private issuers, where the information required would be similar to the information required to be provided on Form D. The IAC believes that such a requirement may be needed to level the playing field for investors in what is a large and rapidly growing secondary trading market for securities that were initially sold based upon an exemption from the registration requirement. We preliminarily suggest that the SEC examine whether to create the category of "large private issuer" and define it as any company with a valuation of at least $700 million (excluding the value of shares held by affiliates) and more than 1,000 beneficial equity owners, or any company with a valuation of at least $700 million that is an affiliate of a registered broker-dealer, investment adviser, or bank.[93]

IV. CONCLUSION

The Committee appreciates the Commission's consideration of the foregoing Recommendations to calibrate retail investor access to private market assets. As noted throughout, in the Committee's view, the optimal way for retail investors to access private market assets is through registered funds, which allow retail investors to invest in broadly diversified funds that benefit from Commission review, audited financials, professional fund management, various levels of liquidity, and the protections of the Investment Company Act. To improve the suitability of such investments for investors, the Commission should implement the recommendations discussed in Part II. If there were to be an expansion of direct access to private market assets, this expansion should be accompanied by the basic investor protection guardrails discussed in Part III.

While this Recommendations has sought to address traditional private market assets specifically, the Committee believes that this careful weighing and balancing of competing industry and investor interests should be applied in equal measure to all corners of the U.S. capital markets. Retail access to private market assets has historically been limited precisely because those

[93] *See, e.g.*, S. 4857, Private Markets Transparency and Accountability Act, 117th Congress (2021–22) (introduced Sept. 15, 2022) (proposing one potential approach).

assets are less transparent and riskier than public market assets. As the Commission considers revamping private market access requirements and introducing guardrails, the Commission should consider how policy choices in that context can be reconciled with its investor access and investor protection policies for other similarly-situated asset types that are unregulated or exempt, that provide the same (or lower) levels of transparency, and that have equal (or greater) risk.