

Memorandum

SEC Cross Trading Proposal for Regulated Funds Offers Relief for Most Fixed-Income Securities, but Stops Short for Most Private Assets

October 21, 2026

On October 9, 2026, the Securities and Exchange Commission (the “SEC” or “Commission”) [proposed amendments to Rule 17a-7](#) under the Investment Company Act of 1940 (the “Investment Company Act”). Rule 17a-7, known as the “cross trading rule,” exempts certain purchases and sales of securities or other property between a registered investment company or business development company (“BDC”) (each, a “regulated fund”) and its affiliates from the general prohibition on affiliated principal transactions in Section 17(a) of the Investment Company Act.¹ Most significantly, the proposal would restore the ability of regulated funds to cross trade Level 2 securities (most fixed-income securities) with affiliates. This would revive a long-standing practice under Rule 17a-7 that effectively ended for most fixed-income securities after the adoption of Rule 2a-5 under the Investment Company Act, which defined “readily available market quotations” in terms the Commission equated with a Level 1 input under U.S. generally accepted accounting principles (“U.S. GAAP”) fair value hierarchy, a standard most fixed-income securities do not satisfy.

The proposal is a welcome development, but for regulated funds that invest significantly in private assets, it is also notable for what it leaves out. Under the proposal, securities valued using significant unobservable inputs (“Level 3 securities”) and certain private fund-issued securities that are valued at net asset value (“NAV”) as a practical expedient (“practical expedient investments” and together with Level 3 securities, “Excluded Private Assets”) would remain outside the cross trading framework, limiting a tool that could otherwise support deployment, rebalancing, and liquidity management in regulated funds. Given the Commission’s recent focus on expanding retail investor access to such assets, this is a noteworthy missed opportunity that once again leaves regulated funds that invest in private assets on the outside looking in.²

¹ Although BDC affiliated transactions are governed by Section 57 of the Investment Company Act, rather than Section 17, Section 57(i) generally applies the rules adopted by the Commission under Section 17(a) to BDCs, and the Proposing Release confirms that BDCs may rely on Rule 17a-7, including the proposed amendments if adopted. See SEC. & EXCH. COMM’N, Proposed Rule, Investment Company Cross Trading, Investment Company Act Release No. IC-36358 (Oct. 9, 2026) (“Proposing Release”), [here](#); see also Press Release, Sec. & Exch. Comm’n, No. 2026-104, SEC Proposes Expanding Securities Eligible for Cross Trading by Registered Funds (Oct. 9, 2026), [here](#).

² See Paul S. Atkins, Chairman, SEC, Statement at Open Meeting on Proposals to Expand Responsible Retailization of Private Markets (Sept. 30, 2026), [here](#) (describing the Commission’s proposals as “important steps towards providing individual investors with more access to private market investment opportunities, including through the registered fund channel”); see also Paul S. Atkins, Chairman, SEC, Opening Remarks at Private Markets Roundtable (Mar. 4, 2026), [here](#) (stating that the SEC is “focused on what we call the ‘responsible retailization’ of investor dollars into private assets) (together, the “Chairman’s Retailization Statements”).

The proposal would have the greatest immediate impact on certain closed-end funds that invest in corporate bonds, municipal securities and other liquid credit and listed BDCs with significant exposure to broadly syndicated loans or other liquid credit, as these Level 2 securities would become eligible for cross trading. By contrast, the benefits would be particularly limited for regulated funds with private asset strategies, including BDCs that invest substantially in Level 3 securities and registered funds of private funds holding practical expedient investments. Accordingly, the Commission specifically requests comment on whether Level 3 securities should be made eligible subject to additional safeguards and, more broadly, whether funds should be permitted to cross trade any security.

The proposal would also replace the cross trading rule's pricing and board oversight conditions with a new framework built around fund valuation processes, an adviser best-interest determination, and chief compliance officer review, and would require new public monthly reporting of cross trading activity on Forms N-PORT and N-MFP, as applicable.³ Comments on the proposal are due on December 14, 2026.⁴

Overview of Cross Trading Under the Investment Company Act

Section 17(a) of the Investment Company Act generally makes it unlawful for an affiliated person, promoter, or principal underwriter of a regulated fund, or an affiliated person of such a person, acting as principal, knowingly to sell securities or other property to, or purchase securities or other property from, the regulated fund, in order to protect regulated funds against overreaching or self-dealing by affiliates.⁵ Cross trades can nonetheless benefit regulated funds and their shareholders by avoiding brokerage commissions, bid-ask spreads, and other costs of open market transactions, and by providing execution certainty and an alternative source of liquidity.⁶ Accordingly, the Commission adopted Rule 17a-7 in 1966 to permit such trades between regulated funds and certain affiliates without individual exemptive relief, initially limited to exchange-traded equity securities, and expanded the rule in 1981 to securities with "readily available market quotations," a term it did not then define.⁷ The proposal would add defined terms for "fund" and "eligible affiliate," but the Commission states that those definitions are intended to clarify, not change, the scope of funds and affiliate relationships covered by the current rule. Eligible affiliates would include affiliated registered funds or series and persons affiliated with the fund solely by reason of a common investment adviser or affiliated advisers, common directors and/or common officers.⁸

³ See SEC. & EXCH. COMM'N, FACT SHEET: INVESTMENT COMPANY CROSS TRADING (Oct. 9, 2026) ("FACT SHEET"), [here](#).

⁴ Investment Company Cross Trading, 91 Fed. Reg. 65622 (Oct. 15, 2026).

⁵ See Investment Company Act § 17(a)(1)–(2), 15 U.S.C. § 80a-17(a)(1)–(2).

⁶ See Proposing Release, *supra* note 1, at 17-18.

⁷ See Exemption of Certain Purchase or Sale Transactions Between Affiliated Registered Investment Companies, Investment Company Act Release No. 4697 (Sept. 8, 1966), 31 Fed. Reg. 12092 (Sept. 16, 1966); Exemption of Certain Purchase or Sale Transactions Between a Registered Investment Company and Certain Affiliated Persons Thereof, Investment Company Act Release No. 11676 (Mar. 10, 1981), 46 Fed. Reg. 17011 (Mar. 17, 1981); 17 C.F.R. § 270.17a-7. As discussed herein, the term was not defined until the adoption of Rule 2a-5 under the Investment Company Act in December 2020.

⁸ See Proposing Release, *supra* note 1, at 7 n.5, 94-96; Investment Company Cross Trading, 91 Fed. Reg. at 65622.

Rule 17a-7 currently requires that (a) the transaction be a purchase or sale, for no consideration other than cash payment against prompt delivery, of a security for which market quotations are readily available; (b) the transaction be effected at the independent current market price of the security as prescribed in the rule; (c) the transaction be consistent with each participating regulated fund's policy as recited in its registration statement and reports; (d) no brokerage commission, fee (except for customary transfer fees), or other remuneration be paid in connection with the transaction; (e) the board, including a majority of independent directors, adopt procedures reasonably designed to ensure compliance with the conditions of the rule, approve changes as necessary, and determine at least quarterly that all cross trades complied with those procedures; (f) the board satisfy the fund governance standards in Rule 0-1(a)(7) under the Investment Company Act; and (g) the fund maintain and preserve its procedures permanently and a written record of each transaction for at least six years.⁹

For decades, regulated funds relied on Rule 17a-7 to cross trade both equity and fixed-income securities. In the case of fixed-income securities that lacked readily available market quotations, including municipal securities, regulated funds generally engaged in cross trades in reliance on staff no-action letters permitting funds to use independent pricing services to price securities without readily available market quotations.¹⁰ In December 2020, however, the Commission adopted Rule 2a-5 under the Investment Company Act, which provides that a market quotation is readily available “only when that quotation is a quoted price (unadjusted) in active markets for identical investments that the fund can access at the measurement date, provided that a quotation will not be readily available if it is not reliable.”¹¹ The Commission described this definition as consistent with a Level 1 input in the U.S. GAAP fair value hierarchy, declined commenters' requests to treat Level 2 securities as having readily available market quotations, and stated that the definition applies not just in the context of fair valuation but in all contexts under the Investment Company Act and the rules thereunder, including Rule 17a-7.¹² Because most fixed-income securities are not valued using Level 1 inputs, fund managers have generally not cross traded those securities following the Rule 2a-5 compliance date.¹³ Chairman Atkins observed that the Commission recognized

⁹ See 17 C.F.R. § 270.17a-7(a)–(g).

¹⁰ See United Municipal Bond Fund / United Municipal High Income Fund, SEC Staff No-Action Letter (pub. avail. July 30, 1992), as modified by United Municipal Bond Fund, SEC Staff No-Action Letter (pub. avail. Jan. 27, 1995) (the “United Municipal Bond Fund Letter”); Federated Municipal Funds, SEC Staff No-Action Letter (pub. avail. Nov. 20, 2006) (the “Federated Municipal Funds Letter”); Proposing Release, *supra* note 1, at 30 n.58, 124-25.

¹¹ 17 C.F.R. § 270.2a-5(c).

¹² See 17 C.F.R. § 270.2a-5(c); Good Faith Determinations of Fair Value, Investment Company Act Release No. IC-34128 (Dec. 3, 2020), 86 Fed. Reg. 748, 773 (Jan. 6, 2021) (discussing Level 1 consistency, declining to treat Level 2 inputs as readily available market quotations, and stating that the definition applies “in all contexts under the Investment Company Act and the rules thereunder, including rule 17a-7”); see also Proposing Release, *supra* note 1, at 14, n.23.

¹³ See FACT SHEET, *supra* note 3; Proposing Release, *supra* note 1, at 14. Certain earlier staff no-action letters addressing cross trades of municipal securities without readily available market quotations were not withdrawn when Rule 2a-5 was adopted. See, e.g., United Municipal Bond Fund Letter, *supra* note 10; Federated Municipal Funds Letter, *supra* note 10.

in 2020 that Rule 2a-5 would effectively prohibit cross trading in most fixed-income securities and intended to revisit it, stating: “That time is now.”¹⁴

Key Features of the Proposed Amendments

The principal elements of the proposal are as follows:

A. EXPANDED ELIGIBILITY AND FLEXIBILITY

- **Expansion to Level 2 securities.** Rule 17a-7 currently limits cross trades to securities “for which market quotations are readily available.” Under the proposal, a regulated fund could also cross trade a security that it values using directly or indirectly observable inputs (Level 2 securities) (*e.g.*, broadly syndicated loans) so long as those observable inputs are what drive the valuation. This would permit cross trading of most fixed-income securities while continuing to exclude Level 3 securities (*e.g.*, directly originated loans) and practical expedient investments not classified within the ASC 820 fair value hierarchy (non-leveled securities) (*e.g.*, certain private fund-issued securities that are valued using those private fund shares’ NAV as a practical expedient). The Commission reasoned that Level 2 securities, though lacking readily available market quotations, have observable inputs that can be independently verified and often have multiple pricing sources, reducing the risk of overreaching. By contrast, the Commission decided not to include Excluded Private Assets in the proposal, noting that the proposal is designed to focus on securities that have an independent basis for pricing (*e.g.*, readily available market quotations or observable inputs) in order to reduce the risk of subjectivity, bias or error in pricing.¹⁵
- **Two alternative pricing methods.** The rule’s detailed pricing hierarchy, which turns on where and how a security trades, would be replaced with a choice between two pricing methods: NAV pricing and current market pricing. Under NAV pricing, the fund would use the value it gives the security in its next NAV computation on the business day of the trade. Under current market pricing, the adviser would use a price it determines reasonably represents the current market price based on one or more “unaffiliated” pricing sources and would periodically review whether those prices are reasonable. “Unaffiliated” would exclude both first- and second-tier affiliates of the fund, and the Commission states that indications of interest and accommodation quotes would not reasonably represent the current market price. A fund could use different methods for different trades. However, where two regulated funds are on opposite sides, NAV pricing would be available only if they share the same valuation processes; otherwise, they must use current market pricing. Funds that do not calculate NAV daily, such as certain unlisted closed-end funds and BDCs, could use NAV pricing only on days on which they do calculate their NAV, while current market pricing would be

¹⁴ Paul S. Atkins, Chairman, SEC, Statement on Proposed Amendments to Investment Company Cross Trading (Oct. 9, 2026).

¹⁵ See FACT SHEET, *supra* note 3; Proposing Release, *supra* note 1, at 24.

available on other days and intra-day. Money market funds could not use the amortized cost values they may use under Rule 2a-7 but could use their market-based NAV prices.¹⁶

- **De minimis payments.** The general prohibition on brokerage commissions, fees, and other remuneration paid in connection with a cross trade transaction would be retained, but the existing exception for “customary transfer fees” would be replaced with a more specific exception for “de minimis” payments to unaffiliated parties for clearing, settlement, custody, recording, or reporting services. The Commission does not define or propose a numerical threshold for “de minimis” in this context and instead says the answer depends on the facts, that such amounts should be small relative to the size of the trade and less than what the fund would pay in commissions, spreads, or mark-ups in the market, and that a fund’s policies and procedures should explain how it will make that determination. Payments to affiliated service providers, and payments for anything outside the listed categories, would not be permitted. The proposal also does not specify which participant bears a permitted payment. The Commission notes that consistently assigning such payments to one participant could create recurring transfers between affiliated funds, so funds may need to adopt and document an allocation methodology.¹⁷

B. NEW CONDITIONS AND OBLIGATIONS

- **New adviser best-interest determination.** Before effecting a cross trade, the adviser would be required to determine that the trade is in the best interest of each participating regulated fund, with separate determinations for each fund. The Proposing Release identifies relevant factors including investment rationale, liquidity, pricing considerations and cost savings, execution quality, timing, trade size and market impact, the characteristics of the affiliate, and market conditions, and states that a cross trade is not in a fund’s best interest if a more favorable outcome could be obtained in the open market, through a different security, or by not transacting.¹⁸
- **Consistency with fund policies and investment strategy.** As under the current rule, a cross trade would continue to be required to be consistent with the fund’s policies, but the proposal would add an express reference to the fund’s investment strategies.¹⁹
- **New CCO oversight, back-testing and board role.** The fund’s chief compliance officer (“CCO”) would be required to review all cross trades at least quarterly for compliance with the rule, replacing the board’s current quarterly compliance determination. The CCO would also conduct a new annual review, including analysis of the prices ultimately realized when a security purchased in a cross trade is later sold, to identify patterns suggesting the fund was disadvantaged relative to affiliates, and would be required to report the results of both reviews to the board. The rule would no longer expressly require the board to adopt and

¹⁶ See FACT SHEET, *supra* note 3; Proposing Release, *supra* note 1, at 29-49.

¹⁷ See Proposing Release, *supra* note 1, at 49-55, 146-47; Investment Company Cross Trading, 91 Fed. Reg. at 65658.

¹⁸ See FACT SHEET, *supra* note 3; Proposing Release, *supra* note 1, at 55-60; Investment Company Cross Trading, 91 Fed. Reg. at 65635.

¹⁹ See FACT SHEET, *supra* note 3; Proposing Release, *supra* note 1, at 59-61; Investment Company Cross Trading, 91 Fed. Reg. at 65636, n. 93.

approve cross trading procedures, to avoid duplication with requirements under Rule 38a-1 under the Investment Company Act, although the board would still need to satisfy the fund governance standards in Rule o-1(a)(7). The SEC stated that this reallocation of oversight responsibilities is intended to “better align oversight requirements to business responsibilities” and to allow directors to focus on broader conflicts of interest rather than reviewing individual transactions.²⁰

- **New recordkeeping and Form N-PORT/N-MFP reporting.** Funds would be required to keep records of each cross trade for at least six years, including a description of the security purchased or sold, the identity of the eligible affiliate on the other side of the transaction and the terms of the transaction. Funds would also be required to keep the materials the fund CCO used to determine, as part of the quarterly review, that each condition of the rule was satisfied for each cross trade, as well as the materials the fund CCO used for the annual review of whether any cross trade or pattern of cross trades may have disadvantaged the fund relative to an eligible affiliate. The proposal would also require funds to keep the CCO’s quarterly and annual reports to the board, but would eliminate the current Rule 17a-7 requirement to preserve cross trading procedures permanently as duplicative of Rule 38a-1.²¹ The proposal would also add new public reporting on Forms N-PORT and N-MFP. A regulated fund that engaged in cross trades under Rule 17a-7 at any point during the preceding 12 months would report, by asset type or investment category, the aggregate value of portfolio investments it purchased and sold in cross trades and the aggregate value of all portfolio investments it purchased and sold during the reporting period. The comparison metric is broad: the “all portfolio investments” figures would include investments that are not themselves eligible for cross trading, which could make cross trading activity appear smaller as a percentage of overall trading activity than it would appear if measured only against investments eligible for cross trading. In calculating aggregate sales figures, portfolio investments held to maturity would be excluded. BDCs would not be subject to these reporting requirements as they do not file Form N-PORT or Form N-MFP.²² However, the Commission asked in the proposal whether cross trading disclosure should instead be added to a BDC’s Form 10-K or other periodic reports.
- **Compliance dates.** Funds in families with \$10 billion or more in net assets would have 12 months after the effective date to comply, and smaller fund families would have 18 months. Funds could comply early, but only by relying on the amended rule in its entirety; until then, the current rule’s conditions would continue to apply.

²⁰ See FACT SHEET, *supra* note 3; Proposing Release, *supra* note 1, at 61-75; Investment Company Cross Trading, 91 Fed. Reg. at 65637, n. 99; current 17 C.F.R. § 270.17a-7(e)–(f); 17 C.F.R. § 270.38a-1.

²¹ See Proposing Release, *supra* note 1, at 87-91; Investment Company Cross Trading, 91 Fed. Reg. at 65675.

²² See Proposing Release, *supra* note 1, at 76-86; Investment Company Cross Trading, 91 Fed. Reg. at 65640, n. 114.

Practical Considerations and Observations

Although the restoration of fixed-income cross trading would be a welcome development, the proposal fails to create a process for cross trading Excluded Private Assets and would impose new and, in some respects, prescriptive compliance obligations. Advisers and fund boards should consider the following:

- **Excluded Private Assets: a missed opportunity for private asset strategies.** Because Excluded Private Assets would remain ineligible, the proposal would largely return regulated funds to where they stood before Rule 2a-5 with respect to cross trades, but with a greater compliance burden. The rationale and benefits to regulated funds and investors for reinstating the ability to cross trade Level 2 securities would also apply to regulated funds cross trading Excluded Private Assets. Accordingly, given the substantial growth in private assets in regulated fund wrappers and the acknowledged intention by the SEC to increase retail and regulated fund investor access to such assets, it is surprising that more effort was not made to expand Rule 17a-7 to accommodate cross trades in such assets.²³ The limitation is especially significant for BDCs, which generally hold significant Level 3 securities, and for registered funds of private funds, which hold practical expedient assets. As a result, the proposal may not materially expand the cross trades available to them. An expansion of Rule 17a-7 to include Excluded Private Assets would provide a tool to regulated funds investing significantly in private assets to support deployment, rebalancing, and liquidity management. We think the better approach is process-based, not label-based. If a regulated fund already values an asset under Rule 2a-5, the rule could permit a cross trade in that asset where the regulated fund can document that its valuation process, conflicts controls, adviser best-interest determination and CCO review are sufficient for the asset and the transaction.

Given that the Commission specifically requests comment on whether Level 3 securities should be made eligible subject to additional safeguards and given the valuation framework Rule 2a-5 already requires for Excluded Private Assets, commenters should consider asking the Commission to extend eligibility to include such assets.

- **Valuation framework.** Advisers will need to distinguish between two related but separate questions: whether a security is eligible to be cross traded, and whether the price used for the cross trade satisfies one of the proposal's pricing methods. Eligibility would turn on whether the security is valued using readily available market quotations or observable inputs, which generally means Level 1 or Level 2 securities and excludes Excluded Private Assets. Pricing would separately require either NAV pricing, using the value assigned to the security in the regulated fund's next NAV calculation, or current market pricing, using one or more unaffiliated pricing sources that the adviser determines reasonably represent current market price. As a result, fund sponsors should review both their processes for determining which fair value level an asset

²³ See Chairman's Retailization Statements, *supra* note 2.

falls under and their pricing-source diligence practices, including relating to pricing vendor selection, methodology and oversight, timing, conflicts, challenge processes and testing.²⁴

- **Municipal securities and existing staff relief.** Funds that cross trade municipal securities today generally rely on staff no-action letters allowing the use of independent pricing services to price securities without readily available market quotations. The proposal does not formally withdraw those letters, but the Commission says that if the amendments are adopted, its own views would control and inconsistent staff positions would be superseded. It lists the United Municipal Bond Fund Letter, the Federated Municipal Funds Letter and the IDC Letter (defined below) among the staff positions the proposal addresses, so municipal cross trades would be expected to proceed under the amended rule instead. Because the Proposing Release also says that list “may or may not be exhaustive,” commenters may want to ask the Commission to confirm the status of the municipal letters and related pricing conventions, such as pricing variable rate demand note (“VRDN”) cross trades at par plus accrued interest (permitted in a separate staff letter).²⁵ The Commission has itself asked whether the proposed pricing provisions are workable for municipal securities and VRDNs.
- **IDC no-action letter.** Many regulated funds that cross trade today do so in reliance on the staff’s 2018 no-action letter to the Independent Directors Council (the “IDC Letter”), under which the staff stated it would not recommend enforcement action if a fund’s board receives a written representation from the fund’s CCO that Rule 17a-7 transactions complied with the board-adopted procedures, instead of the board itself determining such compliance (with similar relief for Rules 10f-3 and 17e-1).²⁶ Fund complexes and boards will want to understand the extent to which the proposal merely codifies the IDC Letter versus imposing additional substantive or procedural requirements relative to existing processes. In that regard, several elements of the proposal appear to be new or enhanced requirements relative to current practice, including the adviser’s trade-by-trade best-interest determination, the CCO’s quarterly review of all cross trades for compliance with the rule (rather than a representation as to compliance with procedures), and the CCO’s annual back-testing.
- **Reframing of board and CCO responsibilities.** Formally moving the current Rule 17a-7 quarterly transaction-level compliance determination from the board to the fund CCO would change the rule’s oversight mechanics, although boards would continue to oversee cross trading through CCO reports and their Rule 38a-1 compliance-program responsibilities. For CCOs, the new quarterly and annual review obligations, which would extend to the rule’s pricing, eligible security, transaction fee, best-interest and fund-policy conditions and to detecting patterns such as “cherry-picking” or “dumping,” would, as the Commission acknowledges, require real resources, including personnel time, recordkeeping infrastructure

²⁴ See Proposing Release, *supra* note 1, at 22-27, 35-49; Investment Company Cross Trading, 91 Fed. Reg. at 65653; Good Faith Determinations of Fair Value, *supra* note 11.

²⁵ See Proposing Release, *supra* note 1, at 44, 96-98.

²⁶ See Independent Directors Council, SEC Staff No-Action Letter (Oct. 12, 2018), [here](#).

and, in some cases, upgraded systems for tracking securities and analyzing transaction prices.²⁷ Boards and CCOs should consider how board reporting, compliance program resources, Rule 38a-1 policies and procedures, and access to adviser trading and compliance information would need to be adjusted.

- **Best-interest documentation.** The Commission acknowledges that a best-interest determination is consistent with an adviser's existing fiduciary duty, but the proposal would make it an express pre-trade condition for each participating fund and would require keeping the support materials, which is a new documentation requirement for each cross trade. The Proposing Release confirms that standardized forms and pre-approved dropdown rationales may be used so long as they accurately document the determination, but it cautions that advisers should consider, in deciding who makes the determination, whether the relevant personnel have incentives to favor one participating fund or account over another. Where two regulated funds are on opposite sides of a cross trade, separate best-interest determinations would be required for each fund, considering that fund's particular facts and circumstances, even if the same personnel conduct both reviews.²⁸
- **Back-testing burden.** The annual review would require the fund CCO to review cross trades and other transactions or information necessary to determine whether any cross trade, or pattern of cross trades, may have disadvantaged the fund, including the timing and price of any later sale of a security purchased in a cross trade, regardless of when that disposition occurs. The Commission notes that this may require tracking subsequent-sale information, average-price mechanics and, in some cases, tax-lot-level or supplementary records over months or years, retaining the supporting records, and making them available to the board promptly on request. Because the Proposing Release does not specify the length of time associated with a subsequent sale of a cross traded security, a fund CCO may need to assess a sale that occurs a significant time after the cross trade. Helpfully, the Proposing Release confirms that the CCO would not need to review later sales of securities cross traded before the amendments are adopted.²⁹
- **Enforcement context.** The Proposing Release cites recent enforcement actions involving alleged internal and dealer-interposed cross trades executed at prices that deviated from current market prices and alleged prearranged offsetting trades that favored one regulated fund over another. Those examples help explain why the proposal would pair expanded cross trading flexibility with independent pricing requirements, trade-by-trade best-interest determinations and CCO reviews designed to identify whether a fund was disadvantaged relative to an affiliate.³⁰

²⁷ See Proposing Release, *supra* note 1, at 61-75, 171; see also Natalie Lin, *SEC Looks to Shift Cross-Trading Duties from Boards to CCOs*, Board IQ (Oct. 13, 2026), [here](#).

²⁸ See Proposing Release, *supra* note 1, at 55-60, 90-91; Investment Company Cross Trading, 91 Fed. Reg. at 65659.

²⁹ See Proposing Release, *supra* note 1, at 66-67, 91-92; Investment Company Cross Trading, 91 Fed. Reg. at 65637.

³⁰ See Proposing Release, *supra* note 1, at nn. 38-39, 92 (citing *In the Matter of Macquarie Investment Management Business Trust*, Investment Company Act Release No. 35325 (Sept. 19, 2024); *In the Matter of Putnam Investment Mgmt., LLC and Zachary Harrison*, Investment Company Act Release No. 33257 (Sept. 27, 2018)).

- **No Advisers Act or ERISA relief.** Neither the current rule nor the proposal provides relief under the Investment Advisers Act of 1940, including Section 206(3) and an adviser's duty to seek best execution and act in each client's best interest, and compliance with Rule 17a-7 does not relieve a party's ERISA obligations for cross trades involving ERISA plans.

Next Steps

We commend the Commission for working to restore a long-standing cost-saving and efficient portfolio management tool for regulated funds, particularly those with fixed-income strategies. However, we believe the proposal misses an important opportunity to further facilitate capital growth in and access to regulated private asset funds, as it would still exclude many private assets in which certain unlisted closed-end funds and BDCs, in particular, invest. Nevertheless, as the Proposing Release specifically requests comment on whether Level 3 securities should be made eligible and whether funds should be permitted to cross trade any security, the Commission has not foreclosed the opportunity for further relief and we encourage engagement with the Commission on this important issue.

The Commission has also asked for comment on several other questions of practical importance, including, among others, whether eligibility should be tied to U.S. GAAP concepts at all; whether bid-side pricing should be permitted under NAV pricing; how often, and how independently, the adviser should review pricing; whether oversight should be scaled to a fund's size or cross trading activity; whether "de minimis" should be given a number; and whether cross trade information should be reported confidentially or trade-by-trade through systems such as TRACE or RTRS.

With comments due on December 14, 2026, and several other major SEC proposals pending,³¹ advisers should prioritize compiling data to support the eligibility of Excluded Private Assets and assessing the pricing, best-interest, back-testing, recordkeeping, and reporting processes that an amended Rule 17a-7 would require, and should consider submitting comments on these points.³² Simpson Thacher intends to submit a comment letter on the proposal and we look forward to the opportunity to participate in the comment process and to work with industry participants.

³¹ See Regulation Crypto Assets, Securities Act Release No. 11434 (proposed Aug. 18, 2026); Proxy Solicitation Modernization, Securities Act Release No. 11439 (proposed Sept. 16, 2026); Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4, Exchange Act Release No. 106383 (proposed Sept. 16, 2026); Adviser and Regulated Fund Custody Rules; Crypto Custody Rules, Investment Advisers Act Release No. 7023, Investment Company Act Release No. 36353 (proposed Oct. 1, 2026).

³² See Proposing Release, *supra* note 1, at 28, 43, 47-48, 55, 73, 75 and 85; FACT SHEET, *supra* note 3.

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