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Recent SEC Examinations Target Interval Funds and Business Development Companies

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Since as early as April 2025, the Division of Examinations of the Securities and Exchange Commission (SEC) has been conducting an examination initiative focused on registered investment companies that invest in private credit and other illiquid assets. While the SEC has not formally announced this initiative as an examination “sweep,” numerous interval funds and their investment advisers have received similar examination letters from the SEC Staff (Staff). More recently, the Staff has expanded the initiative to include targeted examinations of investment companies that have elected to be regulated as business development companies (BDCs) under the Investment Company Act of 1940 (Investment Company Act).

Interval funds and BDCs are two of the principal regulated fund structures through which retail investors access private credit and other alternative investments, and both types of vehicles present overlapping compliance considerations relating to valuation of assets, board governance, conflicts of interest, liquidity, and investor disclosures.¹ The examination initiative is consistent with the SEC’s broader regulatory focus on alternative investments and alternative capital investment vehicles and aligns with the SEC’s 2026 Examination Priorities, which include as an area of interest registered

investment companies that use complex strategies or have significant holdings of less liquid or illiquid investments.² The examination initiative also comes at a time when private credit loan defaults and redemptions by investors in interval funds, tender-offer funds and BDCs have received heightened media attention. At the same time, perceived stress in private credit markets appears to have prompted a wave of private credit litigation, with securities fraud class actions and other claims under the Investment Company Act being brought against BDCs, advisers, and other participants in retail distribution channels.

It is against this backdrop that the Division of Examinations has been testing whether retail-facing regulated funds³ and their advisers are operating in a manner consistent with applicable regulatory requirements under the Investment Company Act and the Investment Advisers Act of 1940 (Advisers Act).

This article outlines the primary topics included in examination requests and analyzes certain key substantive themes that have emerged.

SEC Examination Requests

The initial request lists issued in the examination initiative cover extensive categories of information

related to interval funds, BDCs, their advisers, as well as the private funds sponsored and/or advised by the advisers and their affiliates and have covered an examination period of typically two years. The requested information encompasses organizational structure, disclosures, compliance infrastructure, portfolio activity, board oversight, and valuation practices and signals that the Staff is conducting a comprehensive assessment of whether interval funds and BDCs (and their advisers) are meeting their obligations under the Investment Company Act, the Advisers Act, and the funds' governing documents and public disclosures. Among other topics, the requests seek:

- Adviser and fund organizational information, including organization charts; ownership structures; lists of supervised persons, committees and service providers; fund documents; shareholder reports; and exemptive orders.
- Compliance-related information, including written compliance policies and procedures; codes of ethics; annual compliance reports under Rule 38a-1 of the Investment Company Act and Rule 206(4)-7 of the Advisers Act; internal audit reviews; third-party compliance reviews; and compliance testing records.
- Portfolio management and trading-related information, including trade blotters; portfolio positions; lists of co-investment transactions, dispositions, and allocations among affiliated funds and accounts; co-investment reports to the board; cross transactions; trade allocation practices; and lines of credit utilized.
- Board governance topics, including all board meeting calendars, agendas, minutes, and meeting materials.
- Valuation information, including service provider details; valuation policies and procedures; valuation process by security type; lists of fair-valued assets (for example, level 3 investments under ASC 820); records supporting fair valuation determinations; and valuation testing.
- For interval funds, information regarding the repurchase offer process under Rule 23c-3 under the Investment Company Act, including detailed documentation of each repurchase offer and evidence of compliance with the repurchase period liquid-asset requirement set out in Rule 23c-3(b)(10).⁴
- For BDCs, information regarding capital structure, including classes of securities and associated rights; asset coverage requirements under Section 18 and Section 61(a)(1) of the Investment Company Act; and details regarding any share repurchase offers.

Key Areas of Focus

With the current examination initiative underway for over a year, key themes and issues have emerged. In the sections that follow we detail the primary areas of focus and analyze the interpretive questions and compliance challenges they raise.

Valuation

Valuation has emerged as a recurring area of interest throughout the examination initiative. Valuation is a critical compliance area in the context of interval funds and BDCs that continuously offer and repurchase shares at net asset value (NAV) because NAV inaccuracies directly affect the price at which investors enter and exit a fund, and the calculation of management fees and, if applicable, performance fees that investors bear. The Staff's focus appears to have been intensified by recent high-profile events in the private credit space, including NAV declines across several large private credit funds in early 2026. Coupled with elevated repurchase activity, the NAV declines have brought about heightened scrutiny from regulators and the plaintiffs' bar as to whether private credit valuations are keeping pace with underlying credit quality and market dynamics. SEC Chairman Paul Atkins recently underscored these concerns, stating that "opacity in [the private credit] space can be an issue."⁵

The examination requests entail an end-to-end review of the valuation process. Initial request lists have sought records supporting the valuation of all fair-valued investments; valuation committee materials; correspondence with auditors, accountants, and other consultants regarding portfolio holding valuations; valuation policies and procedures of the adviser and any third-party valuation service providers; and evidence of valuation testing by the adviser.⁶ During the on-site portions of these examinations, the Staff also has devoted a significant amount of time to discussing and reviewing valuation policies, processes, and testing with responsible advisory personnel.

Requests for valuation policies and procedures of advisers and third-party valuation service providers suggest a dual focus on whether written policies exist and, if so, whether the policies provide sufficiently detailed guidance on how different asset types should be valued, what inputs and methodologies should be used, and how the adviser selects and oversees valuation providers. The Staff's requests appear aligned with themes in certain SEC enforcement actions involving valuation, including one in which the SEC alleged that an adviser's valuation policies gave "only minimal guidance" as to how to value "level 3" investments despite the adviser charging management fees based on its own NAV determinations, and another where the SEC imposed approximately \$80 million in sanctions for, among other things, valuing assets using a pricing methodology that was alleged to have no reasonable basis for the positions at issue.⁷

The Staff's requests for records supporting the valuation of fair-valued investments indicate an interest in testing whether advisers' internal marks are consistent with the methodologies described in their policies and whether deviations from pricing vendor or third-party outputs are appropriately documented. We have observed the Staff specifically inquiring about loans with payment-in-kind (PIK) features that have experienced significant valuation declines, requesting substantial detail concerning a

fund's process for monitoring interest accruals and valuations. This level of scrutiny raises the question of whether the Staff is moving beyond its traditional examination playbook—which has historically focused on flaws in the *valuation process* and failures to adhere to disclosures—toward a more searching review of *valuation outcomes* and questioning whether a particular valuation was substantively "wrong." Whether this approach is well-suited for private credit assets where fair-value determinations inherently require significant judgment remains an open question.

It is too soon to know whether the examination initiative will lead to any valuation-related enforcement actions under Rules 2a-5 or 38a-1 under the Investment Company Act, Rule 206(4)-7 under the Advisers Act, and/or other Investment Company Act or Advisers Act rules.⁸ Nonetheless, the examination scrutiny serves as a useful reminder that advisers should review their valuation policies, valuation documentation, testing practices, and third-party service provider engagements, and ensure that valuation committees and boards are meaningfully engaged in overseeing the valuation process.

Rule 23c-3 Compliance and Liquidity

In examinations of interval funds, the Staff has tested compliance with the requirements of Rule 23c-3 and has requested information regarding a board's determination of repurchase offer amounts, notifications made to shareholders, NAV used for calculating the value of repurchased shares, and the timing of repurchase offer notifications, deadlines, and payments. The Staff has been particularly focused on compliance with the liquid asset requirements of Rule 23c-3(b)(10)(i). Under that provision, from the time an interval fund sends notification of a repurchase offer through the repurchase pricing date, a percentage of the fund's assets equal to at least 100 percent of the repurchase offer amount must consist of "assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the [fund] has valued the investment," within

the period between the repurchase request deadline and payment deadline, or “assets that mature by the next repurchase payment deadline.”⁹

The functional definition of “liquid asset” used in this provision invites considerable judgment, including whether available borrowing capacity under an interval fund’s credit facility may be counted toward the 100 percent threshold. In at least some examinations, the Staff has suggested that an interval fund may not count borrowing capacity toward the threshold, which is a position that merits consideration from industry participants and practitioners.

From the perspective of advisers, the case for including credit facility availability when calculating liquid assets for purposes of Rule 23c-3(b)(10)(i) is intuitive. When an interval fund draws on a line of credit, the proceeds are cash, arguably the most liquid asset available to market participants and fungible regardless of its source or any corresponding liability. Furthermore, the ability to draw on a facility allows an interval fund to meet its repurchase obligations without experiencing the cash “drag” that results from holding significant amounts of low-yielding assets, and without being forced to raise cash through the sale of investments at potentially less favorable prices and incurring adverse tax consequences solely for the purpose of satisfying the liquid asset requirement under Rule 23c-3. In that regard, an interval fund’s ability to draw on a credit facility to support Rule 23c-3 compliance could be a prudent portfolio management tool relative to engaging in inopportune asset sales. Notably, the SEC itself appears to have contemplated that interval funds would borrow to fund repurchases when it proposed Rule 23c-3. In the 1992 proposing release, the SEC explained that the proposed 2 percent repurchase fee was “intended to compensate the investment company for expenses directly related to the repurchase, such as any costs incurred in disposing of portfolio securities or *in borrowing to make payment for repurchased shares.*”¹⁰ This language appears to support the view that borrowing to fund repurchases is part of the rule’s design, and that the SEC did not view

credit facility usage as inherently inconsistent with investors’ best interests or with the interval fund structure that the rule brought about.¹¹

The practical effect of the Staff’s questions is clear: advisers to interval funds should assume that their liquid asset coverage will be tested, and they should assume that they will need to show that the fund had sufficient liquidity for each repurchase offer, excluding any undrawn credit facility capacity. Advisers should also consider any implications of the Staff’s questions for their liquidity management practices and their Rule 23c-3 policies and procedures.

Industry Classifications

As part of its BDC examinations, the Staff has focused on policies and procedures concerning industry classifications of portfolio investments. Both publicly traded BDCs and non-traded BDCs report their investments’ industry classifications on Forms 10-Q and 10-K, which are filed with the SEC and available to the public. However, neither the Securities Exchange Act of 1934, the Investment Company Act, the Advisers Act, nor any SEC rule or guidance prescribes the classification methodology that BDCs or other regulated funds must use.¹² In practice, funds employ a range of methodologies, such as the Global Industry Classification Standard (GICS), Moody’s, or other proprietary frameworks. Because classification methodologies differ, two or more BDCs managed by different advisers (and/or two or more BDCs managed by affiliated advisers) may classify the same portfolio company investment differently based on different taxonomies—a discrepancy that can be observed by the Staff upon review of public filings.

In recent examinations, the Staff has asked BDCs and their advisers about classification policies and reviewed public filings to assess whether investments held across multiple funds are classified under different sectors. Industry classification may matter to investors because it affects their ability to assess portfolio concentration risk. In addition, funds may

be party to credit agreements with covenants that limit exposure to certain sectors based entirely or in part on designated sector classification taxonomies. Finally, sector classification is relevant to valuation to the extent that funds value certain investments based on comparable investments within the same sector; in such circumstances a sector classification change could result in a different set of comparable portfolio companies from which to generate fair values.

These observations raise several open questions for advisers. First, should an adviser that manages multiple funds use the same classification taxonomy across all funds, or is it permissible to use different systems for different funds? The Staff's examination inquiries appear to imply a preference for consistency, but no rule requires it, and there may be legitimate business reasons for different fund products to use different taxonomies. Second, is an end-user classification approach—for example, categorizing a software company by the industry it serves rather than by the product it provides—inherently problematic, or is it a reasonable exercise of judgment that can be communicated to investors through reporting and disclosure? There is no authoritative guidance establishing that a product-based classification is more “correct” than an end-user classification, and reasonable minds can differ on which approach more accurately reflects concentration risk for a given portfolio. For example, it seems appropriate to categorize a company that develops software-enabled components for cars in the automotive industry into the automotive sector because the revenues and risks associated with such a portfolio company are overwhelmingly tied to the automotive sector. Third, and more fundamentally, should detailed classification policies be required at all under Rule 38a-1 or Rule 206(4)-7 given that no other laws or rules mandate a particular taxonomy, and advisers using third-party taxonomies (for example, GICS or Moody's) may already be following a specific and documented approach?¹³ In light of these comments, advisers should assume the Staff will continue to press on

industry classifications and should evaluate their classification methodologies accordingly.

Investment Allocation and Co-Investment Exemptive Relief

The Staff has focused on testing advisers' investment allocation policies and procedures, with a particular emphasis on assessing whether such policies are being followed in co-investment transactions and whether advisers and funds are complying with the terms of existing co-investment exemptive orders. Beyond requesting comprehensive information regarding all co-investments, dispositions, and allocations, including whether allocations were made pro rata or non-pro rata, the Staff has at times also identified specific transactions and asked targeted follow-up questions testing why a particular fund may have received a particular allocation and how the final allocation aligned with the firm's documented procedures and the terms of applicable co-investment exemptive orders. The Staff also has requested information about fee structures for different fund vehicles, an inquiry that appears designed to test whether differences in fee structures create incentives for advisers to allocate more profitable investments to higher-fee vehicles (such as private funds that charge performance-based compensation) while directing less profitable investments to lower-fee vehicles (such as regulated funds).

Notably, the standard for allocation under the current form of co-investment exemptive order is more exacting than the Advisers Act's general fiduciary framework. This distinction is important for advisers who historically managed only private funds but have launched regulated fund products and obtained a co-investment exemptive order to allocate negotiated investments across affiliated private and regulated funds in a manner that, absent the co-investment order, would constitute a joint transaction under Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder.

Under the Advisers Act, the SEC has stated that an adviser's fiduciary duties do not require any

particular allocation methodology, such as *pro rata* allocation, and that an adviser may use its judgment and consider the nature and objectives of individual clients when allocating opportunities, so long as the adviser provides full and fair disclosure of its allocation practices and any related conflicts of interest.¹⁴ The current form of co-investment exemptive order, by contrast, imposes a more prescriptive standard. Under the current framework, the order requires that opportunities to participate in co-investment transactions be allocated in a manner that is “fair and equitable to every [r]egulated [f]und,” a standard that goes beyond disclosure and informed consent.¹⁵ The Staff’s focus on investment allocation under co-investment exemptive orders indicates that the Staff is actively testing whether advisers who manage both private and regulated funds have adequate allocation practices to meet the heightened standards for allocating investments to regulated funds, and whether the policies, procedures, and contemporaneous documentation supporting those allocation decisions are sufficient to demonstrate that regulated funds are receiving fair and equitable treatment in practice, not just on paper.

In light of the Staff’s focus, advisers should review their allocation policies and documentation practices and ensure that investment teams responsible for allocation decisions are familiar with both the policies and the heightened “fair and equitable” standard applicable to co-investment transactions involving regulated funds.

Receipt of Fees under Co-Investment Exemptive Orders

In addition to testing allocation, the Staff has tested whether the receipt of certain fees by an adviser or its affiliates in connection with co-investment transactions complies with the conditions of an applicable order. One topic of interest involves the receipt of fees by an adviser’s affiliates for serving as administrative agent with respect to loans in which the adviser’s regulated fund clients invest. Administrative agent fees are paid to an

agent by the borrower (rather than by a fund or its co-investors) for providing ongoing loan services such as organizing payments, coordinating communications, processing assignments and transfers, and ensuring borrower compliance with covenants. Administrative agents are parties to most loan transactions, and their services benefit both borrowers and lenders. It is also common for an affiliate of a lead lender in a transaction to serve as administrative agent for a loan.

In recent examinations, the Staff has suggested that the receipt (and retention) of agent fees by a regulated fund’s affiliate may not comply with co-investment exemptive orders. These comments raise interpretive questions about the scope of the fee-related conditions under the SEC’s current and prior co-investment order frameworks. Under the current framework, the first sentence of Condition Four of the order requires that “[a]ny transaction fee (including break-up, structuring, monitoring or commitment fees...) received by an Adviser or Participant in connection with a Co-Investment Transaction will be distributed to the Participants on a pro rata basis based on the amounts they invested or committed.” As a separate matter, the third sentence of Condition Four provides that no affiliated entity, regulated fund or any of their affiliated persons will “accept any compensation, remuneration or financial benefit *in connection with a [r]egulated [f]und’s participation in a Co-Investment Transaction*,” subject to limited exceptions for brokerage fees permitted under Sections 17(e) or 57(k), as a result of being a participant in the transaction, and, in the case of an adviser, investment advisory compensation.¹⁶ The prior iteration of co-investment exemptive order contains similar though somewhat distinct provisions, prohibiting “any additional compensation or remuneration of any kind *as a result of or in connection with a [c]o-[i]nvestment [t]ransaction*” (subject to the same limited exceptions).¹⁷

The application of these conditions to the receipt of administrative agent fees by an adviser’s affiliates is not straightforward. One interpretation is that

agent fees are “transaction fees,” within the meaning of the first sentence of Condition Four, while another interpretation is that agent fees fall within the broader “compensation, remuneration, [and] financial benefit” condition in the third sentence of Condition Four. The underlying premise of each of these interpretations appears to be that the relevant affiliate would not have received agent fees from the borrower *but for* a regulated fund’s participation in the co-investment transaction, and thus the affiliate received such fees “in connection with” or “as a result of” the transaction.

These inquiries highlight important interpretive questions for regulated funds and advisers. For instance, although the prior and current iterations of the SEC’s co-investment exemptive orders prohibit the receipt of compensation, remuneration, and financial benefit where such fees are received “in connection with a co-investment transaction” or “in connection with a regulated fund’s participation in a co-investment transaction,” respectively, agent fees are paid by the borrower, not by a regulated fund or its co-investors, in exchange for ongoing loan administrative services. Generally, agent fees are: (1) negotiated directly between the agent and the borrower; (2) owed regardless of whether any particular lender participates in a co-investment transaction; and (3) flat fees that do not vary based on the size of the transaction, the identity of the lenders or the manner in which such lenders participate.¹⁸ Moreover, the receipt of agent fees does not appear to implicate the policy concerns that Section 17(d) of the Investment Company Act, Rule 17d-1 thereunder, and the co-investment exemptive orders are designed to address, namely, ensuring fair dealing and preventing overreaching in joint transactions involving an investment company and its affiliated persons.¹⁹

As these interpretive questions continue to be tested in examinations, advisers should review the conditions of their co-investment orders and analyze any fees received and retained by affiliates, including agent fees, structuring fees, or other similar fees.

Conclusion

The scope and consistency of the Staff’s inquiries across examinations of multiple regulated funds and advisers suggest a coordinated effort that is likely to continue, especially if there continues to be perceived stress in the illiquid assets in which many retail-facing regulated funds invest. As discussed throughout this article, several of the Staff’s comments raise interpretive questions, including the treatment of a credit facility under Rule 23c-3 and its use for repurchase offers, whether Rule 38a-1 requires detailed written policies and procedures related to industry classifications, and whether co-investment exemptive orders should apply to borrower-paid agent fees that are received by an adviser’s affiliates.

Whether these questions or others raised by this initiative will be resolved through processes such as SEC guidance, no-action relief, rulemaking, or enforcement actions remains to be seen. In the meantime, regulated fund sponsors should treat the themes emerging from this examination initiative as a roadmap for self-assessment, and should take proactive steps to review and, where appropriate, enhance their compliance infrastructure in the areas the Staff has identified.

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NOTES

- ¹ Interval funds are closed-end, registered investment companies that make periodic repurchase offers under Rule 23c-3 of the Investment Company Act at predetermined intervals (every 3, 6, or 12 months) of between 5 percent and 25 percent of outstanding shares at NAV. The rule requires the fund to maintain liquid assets equal to 100 percent of the repurchase offer amount from shareholder notification through the repurchase pricing date, but because only a portion of the portfolio must

be liquid, interval funds typically hold substantial illiquid assets such as private credit, private equity, and real estate assets. BDCs are a distinct form of closed-end investment company, created by Congress in 1980, that elect to be regulated under Sections 54–65 of the Investment Company Act. BDCs must invest at least 70 percent of their total assets in securities of “eligible portfolio companies” (generally, domestic private or small-cap companies), offer managerial assistance to those companies, and comply with asset coverage requirements under Sections 18 and 61(a) that limit leverage. BDCs may be publicly traded, non-traded (typically providing periodic liquidity through quarterly discretionary share repurchases of up to 5 percent of NAV), or privately offered (generally providing liquidity only through events such as an IPO, listing, sale, or wind-down). While interval fund and BDC structures differ in their statutory frameworks and liquidity mechanisms, both serve as principal vehicles through which retail investors access private credit and other illiquid assets.

² SEC Division of Examinations, “Examination Priorities Fiscal Year 2026” (Nov. 17, 2025), available at <https://www.sec.gov/files/2026-exam-priorities.pdf>.

³ This article uses the term “regulated fund” to refer, collectively, to closed-end investment companies that (i) are registered under the 1940 Act and operate as interval funds or tender offer funds; and (ii) have elected to be regulated as BDCs.

⁴ Rule 23c-3(b)(10)(i) requires that “[f]rom the time a company sends a notification to shareholders... until the repurchase pricing date, a percentage of the company’s assets equal to at least 100 percent of the repurchase offer amount shall consist of assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the company has valued the investment, within a period equal to the period between a repurchase request deadline and the repurchase payment deadline, or of assets that mature by the next repurchase payment deadline.” 17 CFR § 270.23c-3(b)(10)(i).

⁵ Paul S. Atkins, *Keynote Remarks at the Economic Club of Washington* (Apr. 21, 2026), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-keynote-remarks-economic-club-washington-042126>.

⁶ Rule 2a-5 under the Investment Company Act took effect in September 2022 and sets out requirements for a fund’s board to satisfy its obligations to determine fair value of portfolio investments in good faith when market quotations are not readily available. While a fund’s board of directors has ultimate responsibility over valuation, Rule 2a-5 permits a board to designate a valuation designee to perform valuations. *See* 17 CFR § 270.2a-5.

⁷ *See* Advisers Act Rel. No. 6709 (Sept. 19, 2024) and Advisers Act Rel. No. 6315 (May 24, 2023).

⁸ Rule 38a-1 under the Investment Company Act and Rule 206(4)-7 under the Advisers Act, known as the compliance rules, require regulated funds and advisers, respectively, to adopt and implement written policies and procedures reasonably designed to prevent violations of federal securities laws. *See* 17 CFR §§ 270.38a-1, 275.206(4)-7. As discussed above, regulated funds are also subject to Rule 2a-5 under the Investment Company Act, which provides a framework for how boards of directors can satisfy their obligation under Section 2(a)(41) of the Investment Company Act to determine fair value in good faith. *See* 17 CFR § 270.2a-5.

⁹ *See supra* n.4.

¹⁰ *Repurchase Offers by Certain Closed-End Investment Companies*, Investment Company Act Release No. 19399 (proposed Aug. 6, 1992), 57 Fed. Reg. 34,693, 34,701 (Aug. 6, 1992) (emphasis added), available at https://archives.federalregister.gov/issue_slice/1992/8/6/34693-34726.pdf.

¹¹ On the other hand, there is arguably a textual basis to support the view that available borrowing under credit facilities should not be used when determining whether an interval fund has sufficient liquid assets during a repurchase period. Rule 23c-3(b)(10)(i) refers to “assets,” and available borrowing capacity on a credit facility is not an “asset” in the traditional sense. It is instead a contractual right to borrow, subject to

conditions, covenants, and other limitations that could restrict or eliminate cash availability for a fund. Permitting interval funds to count contingent borrowing capacity as a “liquid asset” could undermine the protective purpose of Rule 23c-3(b)(10)(i) by allowing funds to satisfy the liquid asset requirement on paper without certainty of access to actual liquid assets. This argument is, however, undermined by the fact that an interval fund can typically draw on a credit facility and receive cash proceeds the same day, meaning that available borrowing can be converted into an “asset” on the fund’s balance sheet at almost a moment’s notice. This raises a legitimate question as to why available borrowing should not be counted toward the 100 percent threshold. Nonetheless, the Staff’s views may reflect a concern that reliance on credit facilities to fund repurchases causes a fund to incur interest expense and facility fees that are borne by the fund and its remaining shareholders, effectively subsidizing the exit of redeeming investors.

¹² Article 12 of Regulation S-X requires registered regulated funds to, among other things, present a schedule of investments categorized by type of investment (for example, convertible securities, fixed income securities, short-term securities) and by related industry, country, or geographic region. Article 12 governs how regulated funds report their portfolio holdings in financial statements filed with the SEC, but it does not prescribe specific classification taxonomies. *See* 17 C.F.R. §§ 210.12-12, 210.12-12B.

¹³ The Staff’s position appears to be that both rules require written policies and procedures governing classification methodology, including when and how overrides of default classifications are permitted and documented.

¹⁴ *See Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, Investment Advisers

Act Release No. 5248 (June 5, 2019), available at <https://www.sec.gov/files/rules/interp/2019/ia-5248.pdf>. In this release, the Staff specifically declined to include a requirement that advisers “treat all clients fairly” when allocating investment opportunities among eligible clients and instead chose to remove this statement from its final interpretation. *See id.* at Note 66.

¹⁵ *See, e.g.*, FS Credit Opportunities Corp., et al., File No. 812-15706 (Apr. 3, 2025) (application), Condition 1, available at <https://www.sec.gov/Archives/edgar/data/1568194/000119312525071964/d920107d40appa.htm>.

¹⁶ *See, e.g.*, FS Credit Opportunities Corp., et al., File No. 812-15706 (Apr. 3, 2025) (application), Condition 4 (No Remuneration) (emphasis added), available at <https://www.sec.gov/Archives/edgar/data/1568194/000119312525071964/d920107d40appa.htm>.

¹⁷ *See, e.g.*, FS Credit Opportunities Corp., et al., File No. 812-15507 (application), Condition 14 (Transaction Fees) (emphasis added), available at <https://www.sec.gov/Archives/edgar/data/1501729/000119312524239404/d859102d40appa.htm>.

¹⁸ In this respect, agency fees appear analogous to other permissible affiliate servicing arrangements, such as custody or similar administrative functions.

¹⁹ *See* Chase Manhattan Bank, SEC No-Action Letter (pub. avail. July 24, 2001) (“Section 17(d) and Rule 17d-1, taken together, are designed to ensure fair dealing and no overreaching in connection with joint transactions involving an investment company and its affiliated persons.”). Because agent fees are typically structured as “flat” fees and generally do not vary based on the size of a particular loan, the potential receipt of agent fees does not appear to create a financial incentive for an adviser or an administrative agent to steer a regulated fund into any particular transaction.

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