SEC Signals Opening For Private Fund Investment Reform

By **Nicole Simon and William MacGregor** (June 9, 2025)

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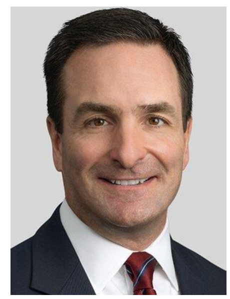

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At SEC Speaks on May 19 and 20, the staff of the U.S. Securities and Exchange Commission publicly signaled that it is walking back a long-standing limitation restricting certain closed-end funds from investing in underlying private funds, opening the door for registered funds of private funds to be offered broadly to true retail investors.

In line with remarks delivered the previous day by SEC Chair Paul Atkins at the conference, Natasha Greiner, director of the Division of Investment Management, noted on May 20:

> The staff, as of yesterday, will no longer provide comments limiting the ability of retail investors to invest in registered closed-end funds that invest in private funds. This decision was made based on the ever-evolving industry, and we hope that this shift will provide investors with new investment opportunities to the extent they align with their risk tolerance and investment objectives.[1]

Going forward, it is fair to expect that the SEC staff will focus on the considerations it has highlighted with respect to these investments: in particular, ensuring proper disclosures around conflicts of interest, liquidity and fees.

Background

Since 2002, the SEC staff had taken the position that an unlisted closed-end fund investing in underlying private funds must either: (1) limit such investments to no more than 15% of its assets, or (2) restrict sales of its own shares to investors that satisfy the accredited investor standard and impose a minimum initial investment requirement of $25,000.[2] Listed closed-end funds had been prohibited from investing in underlying private funds at all.

"Private funds" have generally been defined for this purpose as those that would be investment companies but for the exceptions provided in Sections 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940. Focused primarily on limiting investments in hedge funds and private equity funds, the scope of this definition did not preclude investments in underlying private issuers relying on other exemptions from investment company status, including real estate funds relying on Section 3(c)(5). Additionally, the SEC staff had recently agreed to allow certain infrastructure funds relying on Section 3(c)(1) or 3(c)(7) to be excepted from the scope of the limitation.

Notably, this informal position that the staff has taken for more than two decades was not based on a statute or rule. Rather, it had historically been imposed via the registration statement comment process.

For certain closed-end funds investing in underlying private funds, the SEC staff required that this limitation be added to their registration statements in order for the SEC to agree to declare them effective. There is no clear support as to why a threshold of 15% was established.

Recent SEC Statements Signaling Change

Over the years, on various occasions, certain SEC commissioners and staff have raised the prospect of revisiting the private fund investment limitation in the name of expanding retail investor access to alternatives.

For example, in a speech at the PLI Investment Management Institute in 2020, Dalia Blass, then the director of the SEC's Division of Investment Management, revealed that the SEC staff was reexamining whether this staff position should be reviewed and requested comment related to the limitation.[3] This initiative ultimately stalled, but with the recent change in administration and with Atkins now at the helm, the SEC staff has finally moved ahead with this change of course.

One day ahead of the more concrete statement by the staff on May 20, Atkins previewed his intent to have the SEC reconsider this informal position in recognition of the "growth of private markets and the increased oversight and enhanced reporting by both private fund advisers and registered funds."[4] Atkins referred to this as a "common-sense approach" that would give all investors the ability to seek exposure to private investment funds, such as hedge funds and private equity funds, while still providing the investor protections afforded to registered funds.

In a similar vein, SEC Commissioner Mark Uyeda on May 15 also expressed his support for "ways to expand opportunities by promoting greater retail investing in private companies."[5]

What's Next?

With the SEC staff no longer issuing its long-standing comment to new closed-end funds, such funds will now be able to provide a broader scope of retail investors with access to what Atkins described at SEC Speaks as "a growing and important asset class."[6]

New funds proposing to invest in underlying private funds can expect an SEC staff focused on appropriate disclosures. In her remarks on May 20, Greiner said,

> As our staff begins to review these filings, we encourage filers to engage with our staff. … We will be working with filers on disclosure issues that may arise as these products become available to retail investors. And in reviewing these filings, our staff … will continue to consider disclosure issues relating to conflicts of interest, liquidity and fees.[7]

Amid the current backdrop, new funds filing registration statements should not preemptively self-impose more restrictive limitations than required.

Existing funds with either a 15% limitation or accredited investor standard in place for this purpose likely will be able to consider removing such limitations going forward, as corresponding disclosure changes are reviewed with the SEC staff. In connection with a decision to remove these limitations, existing funds should review their disclosures focusing on conflicts of interest, liquidity and fees, and consider the appropriateness of those disclosures to an expanded retail audience.

Last, it is important to note that this guidance does not directly address how listed closed-end funds will be treated. Various exchanges have historically required closed-end funds to make a representation that they will not invest in certain underlying private funds as part of the listing application process, a requirement that stemmed from a related informal position of the SEC staff on the matter.

In his remarks on May 19, Atkins indirectly suggested potential flexibility in the listed closed-end fund space, though no concrete position on that front has been relayed.[8]

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[1] Remarks of Natasha Greiner, 2025 SEC Speaks program. https://www.youtube.com/live/SFiKBQmNdxo?si=9bR1YlNht7AsaEG4&t=5924.

[2] Individual investors meet the definition of "accredited investor" if they have an individual net worth, or a joint net worth with that person's spouse or spousal equivalent, exceeding $1 million; or an individual income in excess of $200,000 in each of the two most recent years, or joint income with that person's spouse or spousal equivalent in excess of $300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year. (See Rule 501(a) of Regulation D).

[3] Dalia Blass, Speech: PLI Investment Management Institute (July 28, 2020). https://www.sec.gov/newsroom/speeches-statements/blass-speech-pli-investment-management. See also Concept Release on Harmonization of Securities Offering Exemptions, 84 Fed. Reg. 20460 at 30516 (June 18, 2019) (not referencing the 15% limitation specifically but asking for comment on appropriate restrictions for closed-end funds investing in private equity and hedge funds). https://www.sec.gov/files/rules/concept/2019/33-10649.pdf.

[4] Paul S. Atkins, Prepared Remarks Before SEC Speaks (May 19, 2025). https://www.sec.gov/newsroom/speeches-statements/atkins-prepared-remarks-sec-speaks-051925. In contrast, Commissioner Caroline Crenshaw recently highlighted the risks inherent in removing the private fund investment limitation, stating that "private markets are inherently riskier, entail less disclosure, and require a higher tolerance for volatility and illiquidity." Caroline A. Crenshaw, A Reckless Game of Regulatory Jenga - Remarks at "SEC Speaks" (May 19, 2025). https://www.sec.gov/newsroom/speeches-statements/crenshaw-remarks-sec-speaks-051925.

[5] Mark T. Uyeda, 2025 Conference on Financial Market Regulation (May 15, 2025). https://www.sec.gov/newsroom/speeches-statements/uyeda-conference-financial-market-regulation-051525.

[6] See supra note 4.

[7] See supra note 1.

[8] See supra note 4 ("We must consider and resolve important disclosure issues for these products, particularly for those that trade on exchanges, including conflicts of interest, illiquidity, and fees."). The New York Stock Exchange proposed to change its rules on this point in 2021, but its proposal was withdrawn.