

March Brings New Beginnings: SEC Approves Multi-Share Class Exemptive Relief for Private BDCs and Certain Registered Closed-End Funds

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Since March 12, 2025, the US Securities and Exchange Commission (SEC) has approved multiple applications for multi-share class exemptive relief for private business development companies (BDCs) and certain registered closed-end funds¹ (together with BDCs, the Funds). This relief expressly permits, for the first time, Funds that are continuously privately offered in reliance on a registration exemption under the Securities Act of 1933, such as Rules 506(b) or 506(c) (Rule 506(c)) of Regulation D, to have multiple share classes with varying sales loads, asset-based service fees and/or distribution fees. The 1940 Act generally does not permit a Fund to offer multiple share classes without exemptive relief, and until now, the SEC had only allowed non-listed publicly offered Funds to obtain this type of exemptive relief.

What This Means for Privately Offered Funds

This new multi-class relief for privately offered Funds, when combined with the recent SEC guidance with respect to Rule 506(c) described below, is expected to allow privately offered Funds to access new distribution channels (e.g., registered investment advisors (RIAs) and broker-dealers) via issuance of multiple share classes with different distribution expense and compensation structures. Separate share classes may impose different fees for distribution services, shareholder services and administrative services but generally cannot impose different advisory fees, management or incentive fees, custodial fees or other expenses related to the management of Funds.

Similar to multi-class exemptive orders previously granted to non-listed publicly offered Funds, entities that rely on this new multi-class relief must accept subscriptions for their shares on a continuous basis, at offering prices equal to or greater than the then-current net asset value of the applicable share class and comply with various additional regulations and compliance procedures that do not otherwise apply to privately offered Funds. For example, a private Fund aiming to adopt a multi-class structure where each share class is subject to different service or distribution fees would

be required to seek shareholder approval of a distribution plan that complies with the requirements under the 1940 Act. Each investment manager must apply for its own multi-class exemptive relief, and even if an investment manager has previously obtained multi-class relief for non-listed publicly offered Funds, a new multi-class exemptive order must be obtained that will cover both non-listed publicly offered and privately offered Funds.

In March, Katten issued an [advisory](#) regarding the SEC's new guidance related to Rule 506(c) private offerings, highlighting the increased clarity regarding "reasonable steps" verification of accredited investor status, as required under Rule 506(c). The Rule 506(c) guidance, in conjunction with this new ability to obtain multi-share class exemptive relief, will allow privately offered BDCs to generally solicit a broader range of investors and will likely lead investment managers to favor privately offered BDCs, as compared to non-listed publicly offered BDCs, when considering new product launches that target private wealth channels (e.g., RIAs, broker-dealers and other high-net-worth investor channels). Publicly offered BDCs not listed on a securities exchange are subject to blue sky registration, as they do not benefit from federal preemption of state securities laws, adding time, cost and regulatory burden to the registration process. On the other hand, publicly listed BDCs and privately offered BDCs are not subject to blue sky registration. With the ability to offer multiple share classes and more easily engage in Rule 506(c) offerings, a privately offered BDC could be marketed and distributed in a similar manner to a non-listed publicly offered BDC.

We believe that the recent developments discussed above reflect a significant shift by the SEC to facilitate capital formation in the United States and to embrace the creation of investment vehicles that provide exposure to private investments for a broader range of potential investors.

1 Specifically, (i) interval funds operating pursuant to Rule 23c-3 under the Investment Company Act of 1940, as amended (the 1940 Act); and (ii) tender offer funds that periodically offer to repurchase their shares pursuant to Rule 13e-4 under the Securities Exchange Act of 1934, as amended, and Section 23(c)(2) of the 1940 Act.

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