STATEMENT OF

DALIA O. BLASS

PARTNER, SULLIVAN & CROMWELL LLP

on

“Empowering Main Street by Unlocking Access to Capital”

before the

Committee on Banking, Housing, and Urban Affairs

August 6, 2026

Chairman Scott, Ranking Member Warren, and distinguished Members of the Committee, thank you for the opportunity to testify today on this important topic. My name is Dalia Blass, and I am the Senior Investment Management Partner at Sullivan & Cromwell LLP. I am testifying today solely in my personal capacity and not on behalf of Sullivan & Cromwell or any of its clients.

Before returning to private practice, I had the honor of serving at the U.S. Securities and Exchange Commission ("SEC" or "Commission") for more than 14 years. I started at the Commission as an Attorney Adviser in the Division of Investment Management and had the privilege of concluding my tenure as the Director of the Division. The Division's work is critical to ensuring that America's Main Street investors have access to a wide array of investment opportunities and the information they need to make well-informed investment decisions. The breadth and strength of our capital markets—the deepest and most liquid in the world—enable hardworking Americans to save for retirement, send their children to college, and achieve their financial goals.

My tenure at the Commission deepened my appreciation for the important role of asset management in our economy and the lives of Main Street investors. Regulated funds provide professional management, reasonable cost, and exposure to assets and strategies that individual investors could not obtain on their own.[1] These funds truly have democratized investments for Main Street investors. Private funds are integral to the portfolios of well-managed pension plans and endowments and have been key to the continued growth of the U.S. economy, driving job creation and innovation.[2] The U.S. asset management industry far outpaces that of every other country in terms of the benefits it provides to investors and is a primary driver of our nation's economy. Still, there are improvements to be made. Thoughtful changes are needed to modernize existing regulations and enhance the industry's ability to grow, innovate, compete, and provide more Main Street investors with well-regulated products and services that better enable them to save for retirement and meet their financial goals. The INVEST Act, as adopted last year in the House, would go a long way toward providing this much-needed access and

---

1 *See, e.g.*, Jack Pitcher, *Index Fund Fees Push Closer to Zero*, Wall St. J. (Sept. 18, 2023, at 6:05 PM), https://www.wsj.com/livecoverage/stock-market-today-dow-jones-09-18-2023/card/indexfund-fees-push-closer-to-zero-FM7B1vXvXLZJ1CjvkIxC ("An individual investor can now build a fully balanced portfolio using ETFs without paying more than 0.05% in total fees, said Susan Thompson, head of SPDR Americas distribution at State Street, compared with around a 1% average fee 20 years ago . . . Fees make a huge difference over a longtime horizon: A $1 million account invested for 40 years would save about $370,000 in fees at a 0.05% fee versus a 1% fee, according to a State Street analysis.").

2 In 2022, the U.S. private equity sector directly employed 12 million workers earning $1 trillion in wages and benefits and directly generated $1.7 trillion of U.S. GDP. Suppliers to the U.S. private equity sector employed an additional 7.8 million workers earning $700 billion in wages and benefits and generating $1.1 trillion of U.S. GDP. The consumer spending of workers of the U.S. private equity sector and its suppliers supported an additional 11.5 million workers earning $700 billion in wages and benefits and generating $1.3 trillion of U.S. GDP. *See* EY, *Economic contribution of the US private equity sector in 2022* (Apr. 2023), https://www.investmentcouncil.org/wp-content/uploads/2023/04/EY-AIC-PE-economic-contribution-report-FINAL-04-20-2023.pdf.

modernization.[3] Importantly, the INVEST Act is an example of Congress working on a bipartisan basis to advance common sense reforms.[4] Likewise, there are several bipartisan bills currently pending in the Senate that would make thoughtful improvements to capital markets regulation.[5]

I would like to touch on several topics relevant to empowering Main Street investors in our markets. First, the need to expand retail access to alternative investments to provide Main Street investors with expanded opportunities to meet their financial goals and save for retirement. Second, addressing the limitations of rules and regulations under federal securities laws that constrain retail product offerings of alternative investments. Third, the process limitations in the Commission's exemptive application framework that must be addressed to empower responsible product innovations within the enduring protections of the Investment Company Act of 1940 (the "1940 Act").

I. <u>Providing Retail Access to Alternative Investment Opportunities</u>

Retail access is about thoughtfully restoring access to alternative investment opportunities to all, rather than a subset of, retail investors. Retail access to these alternative investment opportunities has been significantly curtailed primarily due to the move from defined benefit

---

3 Incentivizing New Ventures and Economic Strength Through Capital Formation Act of 2025, H.R. 3383, 119th Cong. (the "INVEST Act of 2025" or "INVEST Act").

4 The INVEST Act is a package of more than 20 previously introduced capital-formation bills that passed the House of Representatives on a bipartisan vote on December 11, 2025.

5 *See* Expanding Access to Capital for Rural Job Creators Act, S. 577, 119th Cong. (2025) (sponsored by Sens. John Kennedy [R-LA] and Gary Peters [D-MI] with cosponsors Sens. Shelley Moore Capito [R-WV], Pete Ricketts [R-NE], Raphael Warnock [D-GA], and Tina Smith [D-MN]); HALOS Act of 2025, S. 334, 119th Cong. (2025) (sponsored by Sens. Pete Ricketts [R-NE] and Ruben Gallego [D-AZ]); ACCESS Act of 2026, S. 3662, 119th Cong. (2026) (sponsored by David McCormick [R-PA] and Andy Kim [D-NJ]); *infra* n.24; Small Entity Update, S. 2924, 119th Cong. (2025) (sponsored by Sen. Katie Boyd Britt [R-AL] and Andy Kim [D-NJ] with cosponsors Sens. Angela Alsobrooks [D-MD] and Pete Ricketts [R-NE]); Improving Access to Small Business Information Act, S. 3411, 119th Cong. (2025) (sponsored by Sens. Katie Boyd Britt [R-AL] and Catherine Cortez Masto [D-NV]); Expanding American Entrepreneurship Act, S. 2906, 119th Cong. (2025) (sponsored by Sens. Jerry Moran [R-KS] and Mark Warner [D-VA] with cosponsors Tim Scott [R-SC] and Raphael Warnock [D-GA]); Developing and Empowering our Aspiring Leaders Act of 2025, S. 3351, 119th Cong. (2025) (sponsored by Sens. Mike Rounds [R-SD] and Raphael Warnock [D-GA]); *infra* n.21; Senior Security Act of 2026, S. 4055, 119th Cong. (2026) (sponsored by Sens. David McCormick [R-PA], Susan Collins [R-ME], Andy Kim [D-NJ], and Kirsten Gillibrand [D-NY]); *infra* n.28; ELEVATE Act of 2026, S. 4034, 119th Cong. (2026) (sponsored by Sens. Pete Ricketts [R-NE] and Catherine Cortez Masto [D-NV]); Small Business Investor Capital Access Act, S. 3880, 119th Cong. (2026) (sponsored by Sens. Mike Rounds [R-SD] and Ruben Gallego [D-AZ]); Encouraging Public Offerings Act of 2026, S. 4690, 119th Cong. (2026) (sponsored by Sens. Ted Budd [R-NC] and Raphael Warnock [D-GA] with cosponsors Sens. Thom Tillis [R-NC], Chris Van Hollen [D-MD], and Angela Alsobrooks [D-MD]); Expanding WKSI Eligibility Act, S. 3749, 119th Cong. (2026) (sponsored by Sens. David McCormick [R-PA] and Lisa Blunt Rochester [D-DE]); Enhancing Multi-Class Share Disclosures Act, S. 3831, 119th Cong. (2026) (sponsored by Sens. Mike Rounds [R-SD] and Ruben Gallego [D-AZ]); Financial Exploitation Prevention Act of 2025, S. 2840, 119th Cong. (2025) (sponsored by Sens. Bill Hagerty [R-TN] and Ruben Gallego [D-AZ] with cosponsors Sens. Steve Daines [R-MT], John Hickenlooper [D-CO], Adam Schiff [D-CA], Susan Collins [R-ME], Tammy Baldwin [D-WI], and David McCormick [R-PA]).

plans to defined contribution plans. Only 4% of defined contribution plans, compared to 70% of defined benefit plans, offer exposure to alternative investments.[6] That exposure amounts to only 0.1% of defined contribution plan assets compared to 18% of defined benefit plan assets.[7, 8] To put this in further context, only 14% of private sector workers today have access to defined benefit plans while 70% are in defined contribution plans.[9]

Retail access has become even more critical because of the shift from public to private markets. The number of U.S. public companies has decreased by approximately 40% since the mid-1990s, from more than 7,800 to about 4,700 today.[10] In contrast, between 1997 and 2024, the number of private companies increased by approximately 67%, from about 20 million to 35 million.[11] Since 2014, global private-equity markets have grown nine-fold, while public markets have only doubled.[12] While assets under management in private capital represent only 2.4% of total financial assets, the market is growing, driven by an increasing number of U.S. companies remaining private and utilizing private sources to raise capital.[13] With companies staying private longer, retail investors who are limited to holding public equities are increasingly missing out on the opportunities for early compounding returns. Chairman Atkins and the Commission Staff are working hard to Make IPOs Great Again. Expanding public markets is an important and worthwhile endeavor. But private markets will continue to be a sizable, if not predominant, tranche of the markets. Accordingly, efforts to expand retail access to private markets are just as critical as efforts to expand the public markets.

II. Federal Securities Law Limitations to Retail Access

a. Accredited Investor Definition

The primary focus of my testimony today is the rules and regulations of the 1940 Act that limit retail product offerings because of a one-size-fits-all approach. In addition to these, which I will discuss further below, it is worth noting the continued limitations imposed by the accredited investor definition in rules under the Securities Act of 1933. The House-passed INVEST Act would address barriers to private market access by expanding the definition of accredited investor to include individuals with financial sophistication, regardless of their wealth,

---

6 Fiduciary Duties in Selecting Designated Investment Alternatives, 91 Fed. Reg. 16,088, 16,105-06 (Mar. 31, 2026) ("DOL Proposal").

7 *Id*. The DOL Proposal notes, however, that the holdings for defined benefit plans varied significantly by plan size. *Id*. at 16,105.

8 In addition, in 2023, 24.3% of state and local defined benefit assets, 23.8% of multi-employer defined benefit assets, and 14.9% of single-employer defined benefit assets were invested in private markets, accounting for just a subset of the larger alternative asset category. *Id*. at 16,116.

9 Bureau of Labor Statistics, U.S. Dep't of Labor, Employee Benefits Survey: Latest Numbers, https://www.bls.gov/ebs/latest-numbers.htm (last visited Aug. 2, 2026).

10 Paul S. Atkins, Chairman, SEC, Keynote Address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala (Oct. 9, 2025).

11 DOL Proposal at 16,106 n.79.

12 *Id*. at 16,106.

13 *Id*.

broadening retail access to private market investment opportunities.[14] This proposed change would recognize that financial sophistication is not—and should not be—limited to a simple income or wealth test.

b. <u>Investment Products</u>

Main Street investors can access alternative investments through existing investment products. However, these products have limitations that, if addressed, could provide greater access while maintaining important investor protections.

Retail investment product offerings broadly cover two markets—retirement and insurance markets and general public investment markets. With respect to retirement and insurance, we need to consider the impact of regulations rooted in the 1930s and 1940s. For example, why are retirement, variable life and variable annuity products limited to open-end funds which carry a 15% illiquid limit due to daily redemption features? While defined contribution plans offer a level of liquidity and portability, do they really need a framework that is relevant to funds that offer daily liquidity?

Recently, the Department of Labor (the "DOL") issued a proposal that provides plan fiduciaries with a roadmap and a safe harbor for selecting alternative investments.[15] The proposal is a great step towards restoring retail access to alternative investments for Main Street investors with access to defined contribution plans. The proposal sets out a pathway for an ERISA fiduciary to qualify for a legal presumption that its selection process satisfies the duty of prudence under ERISA, alleviating some of the regulatory uncertainty and litigation risk that has discouraged ERISA fiduciaries from including alternative assets as investment options in the vast majority of defined contribution plans.[16] Specifically, the proposal broadly interprets the duty of prudence under ERISA and would implement a process-based safe harbor for the prudent selection of any designated investment alternatives across the entirety of a fiduciary's plan's menu, including traditional and alternative assets.[17]

In my view, to achieve its full potential, the DOL Proposal should not be hampered by reliance on the current retail product lineup driven by Commission regulations. Allowing market participants the opportunity to tailor products for this space would provide access to greater investment opportunities while maintaining important investor protections. For example, a fund structure that marries a target date fund with an annuity for guaranteed income. And while target date funds are today limited to daily liquid open-end funds, couldn't these funds be enhanced for

---

14 INVEST Act §§ 201, 203 (2025).

15 *See* DOL Proposal.

16 *See* Sullivan & Cromwell LLP, *U.S. Department of Labor Proposes Rule to Facilitate Alternative Investments in 401(k) Plans* (Apr. 6, 2026), https://www.sullcrom.com/insights/memo/2026/April/DOL-Proposes-Rule-Facilitate-Alternative-Investments-401k-Plans.

17 *Id*.

some circumstances with a closed-ended sleeve?[18] If not, could they have a different liquidity or redemption profile than daily liquid open-end funds offered in the public markets? In 1992, the Commission proposed a rule that would have allowed for an open-end fund with a 31-day redemption feature.[19] Another potential product offering here would be a master-feeder structure that would allow for feeders that provide capital distribution starting at retirement and permit portability or transferability to an individual retirement account when employees change plans.

In addition to providing fit-for-purpose fund structures in defined contribution plans, the proposed safe harbor process protections of the DOL Proposal should be expanded to cover a sleeve that is directly invested in private funds by the plan fiduciary. A sleeve is different from the structures contemplated by the DOL Proposal, which is focused on retail funds that invest in other funds.[20] A direct investment would avoid the potential layering of fees from a fund of funds structure.

I believe there is also a need to create parity between 403(b) and 401(k) accounts—both are defined contribution plans, just with different types of employees. Under current law, workers who save for retirement through 403(b) plans lack access to the same investment opportunities available to private sector workers who save through 401(k) plans. This is because of a quirk of language under the federal securities laws. The Retirement Fairness for Charities and Educational Institutions Act would eliminate this disparity.[21]

---

18 Target date funds in retirement plans can be collective investment trusts ("CITs"), which are not subject to the Commission's 15% illiquid investment limit. *See* 17 C.F.R. § 270.22e-4; DOL Proposal at 16,098. The DOL Proposal, however, would effectively extend a liquidity risk management program requirement to CITs offered as designated investment alternatives. DOL Proposal at 16,098. One approach to satisfying the safe harbor's participant-level liquidity standard requires a plan fiduciary selecting a designated investment alternative that is not a mutual fund, "such as a collective investment trust[,]" to obtain a written representation (or otherwise perform appropriate due diligence) that the designated investment alternative "has adopted and implemented a liquidity risk management plan that is substantially similar to a program that meets the requirements of" the 1940 Act. *Id.* at 16,098-99. The same "substantially similar" liquidity risk management program condition applies at the plan level for non-mutual-fund designated investment alternatives, including CITs. *Id.* at 16,140-41. Alternatively, and independently of any written representation or substituted due diligence regarding a liquidity risk management program, the plan fiduciary may itself (or with the advice of a third-party investment advice fiduciary) conduct an "objective, thorough, and analytical" evaluation to assess whether a pooled investment is sufficiently liquid to offer as a designated investment alternative. *Id.* at 16,099-100.

19 Periodic Repurchases by Closed-End Management Investment Companies; Redemptions by Open-End Management Investment Companies and Registered Separate Accounts at Periodic Intervals or With Extended Payment, 57 Fed. Reg. 34,701 (Aug. 6, 1992).

20 DOL Proposal at 16,102.

21 Retirement Fairness for Charities and Educational Institutions Act of 2025, S. 424, 119th Cong. (2025) (sponsored by Sen. Katie Boyd Britt [R-AL] with cosponsors Sens. Raphael G. Warnock [D-GA], Bill Cassidy [R-LA], Gary C. Peters [D-MI], Bill Hagerty [R-TN], Mike Crapo [R-ID], Jacky Rosen [D-NV], Thomas Tillis [R-NC], Christopher A. Coons [D-DE], Kevin Cramer [R-ND], Mike Rounds [R-SD], Tim Kaine [D-VA], Ruben Gallego [D-AZ], Steve Daines [R-MT], Angela D. Alsobrooks [D-MD], Pete Ricketts [R-NE], John Kennedy [R-LA], Chris Van Hollen [D-MD], David McCormick [R-PA], John W. Hickenlooper [D-CO], and Tim Scott [R-SC]) (INVEST Act § 202).

Outside the retirement and insurance space, we have products doing the best they can within today's regulatory framework. Retail offerings under the current regulatory framework are listed closed-end funds, interval funds and business development companies. Each has regulatory limitations that impact retail access to alternatives.

Publicly offered closed-end funds, for example, face two very significant limitations: the Staff's practice of limiting private fund investments in publicly offered closed-end funds from 2002 to 2025, and activist pursuit of such funds. The combination has limited such offerings on the market.[22] This, in turn, has led to the growth of vehicles that fall outside the protections of the 1940 Act, as well as increasing use of interval fund structures which are sometimes referred to as "semi-liquid" products. On the former, these are products that, while innovative, will always have significant limitations because they are structured to operate outside the rules and regulations of the 1940 Act. On the semi-liquid funds, we have seen press reports that assert a liquidity mismatch, misaligned with investor expectations, and the necessity of using gates to address oversubscribed redemptions.

Interval funds are not new products. They have been offered for decades. They do not have gates, as they are commonly understood. Gates are a tool that an asset manager—typically a hedge fund manager—can use to eliminate liquidity in times of market stress or heavy redemptions from investors. It is an important tool that, when used responsibly, can reduce harm to remaining investors or mitigate the risk of forcing a manager to engage in a fire sale of assets. Interval funds have different characteristics. They have a regulatory requirement under the 1940 Act to provide periodic, or interval, liquidity (usually quarterly) and a pre-disclosed limitation (often 5% over the course of a quarter) on how much of the fund's assets would be subject to such liquidity. I appreciate that "semi-liquid" is a more everyday term but perhaps the use of that terminology gives a false sense of ability to access liquidity without these built-in limitations in the product. To be clear, these limitations are important to maintain in these products because of the types of assets—alternative investments—held in the portfolio. However, these funds offer interval liquidity either under an antiquated rule that is not fit for modern markets or are forced under issuer tender offer rules which also are not fit for purpose. The SEC should consider much needed updates to the interval fund rule.

---

22 From 2002 to 2025, the Staff took the position that a registered closed-end fund investing 15% or more of its assets in private funds should restrict sales to investors that meet the accredited investor standard and impose a minimum initial investment requirement of $25,000. *See* Paul S. Atkins, Chairman, SEC, Prepared Remarks Before SEC Speaks (May 19, 2025). As a practical matter, these conditions prevented such funds from listing on an exchange or being broadly offered to retail investors, because exchange-listed funds cannot realistically enforce accredited investor requirements or a $25,000 minimum investment in secondary-market transactions. In August 2025, however, the Staff formally reversed its position and announced that it would no longer impose those conditions. *See* Div. of Inv. Mgmt., SEC, ADI 2025-16, Registered Closed-End Funds of Private Funds (Aug. 15, 2025), https://www.sec.gov/about/divisions-offices/division-investment-management/fund-disclosure-glance/accounting-disclosure-information/adi-2025-16-registered-closed-end-funds-private-funds.

More importantly, there is a clear and compelling opportunity for modernization of a more apt fund structure: publicly traded closed-end funds. The Increasing Investor Opportunities Act would address challenges faced by publicly offered closed-end funds and explicitly codify their currently implicit statutory right to invest in private funds, protecting and expanding access to private market returns that have historically been unavailable to retail investors.[23] These funds could then combine two great benefits to retail investors: access to alternative investments and real-time liquidity by trading on securities exchanges, albeit at a price that at times can differ from the net asset value of the fund. That said, consideration should be given to the continued use of net asset value for listed closed-end funds. What is the purpose of net asset value for these funds when investors buy and sell at current market prices? When you have a product on the market that allows for price discovery, should we uphold the primacy of market price (including for adviser fee structures) for listed products?

In addition, while codifying this right would provide investors greater opportunity to gain exposure to alternatives, that does not mean other issues standing in the way of listed closed-end funds, including business development companies ("BDCs"), should be tabled. This includes dealing with the limitations of acquired fund fees and expenses ("AFFE"). Notably, the Access to Small Business Investor Capital Act would correct the technical error in the current AFFE rule that results in BDC expenses being double-counted in investor disclosures and permit registered funds to exclude certain indirect BDC-related fees from disclosure calculations.[24]

Further, addressing activist challenges is critical to opening up the markets for more listed closed-end funds.[25] Closed-end funds are the only type of fund that is subject to shareholder meetings by securities exchanges. Activists use this requirement as an opportunity to attack listed closed-end funds, often triggering costly proxy fights. Exchanges have approached the Commission to modify listing rules that require annual shareholder meetings. Concerns have

---

23 Increasing Investor Opportunities Act, S. 3671, 119th Cong. (2026) (sponsored by Sen. Steve Daines [R-MT] with cosponsor Sen. Mike Rounds [R-SD]) (INVEST Act § 206).

24 Access to Small Business Investor Capital Act, S. 1808, 119th Cong. (2025) (sponsored by Sen. David McCormick [R-PA] and Angela D. Alsobrooks [D-MD] with cosponsors Sens. Steve Daines [R-MT], Ruben Gallego [D-AZ], Bill Hagerty [R-TN], Lisa Blunt Rochester [D-DE], Bernie Moreno [R-OH], Andy Kim [D-NJ], Jim Banks [R-IN], Mark R. Warner [D-VA], Katie Boyd Britt [R-AL], John W. Hickenlooper [D-CO], John Kennedy [R-LA], Jeanne Shaheen [D-NH], James C. Justice [R-WV], Jacky Rosen [D-NV], Margaret Wood Hassan [D-NH], and Jon Husted [R-OH]) (INVEST Act § 302).

25 *See* Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Section 302.00 of the NYSE Listed Company Manual, 90 Fed. Reg. 25,659 (June 17, 2025); Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Exempt Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940 That Are Listed as of or After May 20, 2025 From the Annual Meeting of Shareholders Requirement Set Forth in Exchange Rule 14.10(f), 90 Fed. Reg. 24,172 (June 6, 2025); Letter from Investment Company Institute to SEC Secretary Vanessa Countryman Re: Notice of Filing of Proposed Rule Change Amending Section 302.00 of the NYSE Listed Company Manual to Exempt Closed-End Funds from the Requirement to Hold Annual Shareholder Meetings (Release No. 34-100460; File No. SR-NYSE-2024-35) (July 30, 2024), https://www.ici.org/system/files/2024-08/24-cl-nyse-proposed-cef-rules.pdf.

been raised about changing the bargain on investors currently invested. Can these concerns be addressed by not requiring such meetings for new funds and allowing existing funds to forgo such meetings after seeking shareholder approval? And on the topic of shareholder approval, the required quorum under the 1940 Act must be rethought.[26] Funds face difficulty meeting the high quorum requirement (greater than 50% of outstanding shares) imposed under the 1940 Act's heightened thresholds for shareholder approval of certain actions.[27] Among other challenges, retail investors collectively own most fund shares and are difficult to reach and less likely than institutional investors to vote proxies. The Improving Disclosure for Investors Act would partially address this problem by making electronic delivery of investment disclosures and communications the default delivery method, helping to improve the likelihood that shareholders receive and engage with investor disclosure materials.[28] Additional solutions to consider include coupling a lower quorum requirement with a higher affirmative vote requirement and allowing changes to certain fundamental investment policies to proceed without shareholder approval, subject to appropriate investor protections (such as fund board approval and advance notice to shareholders).

There are many other fundamental questions that need to be answered as market participants, regulators and policymakers work toward retail access and modernizing the framework for retail investment products. The direction of travel is clear—private markets will become, or perhaps must become, more accessible and more important to more investors. The questions are whether the products and regulations are fit-for-purpose. Getting this right is one of the most consequential market innovations and challenges of this generation. And it cannot take decades. It took more than a decade for SPY to come to market. It took many more decades for an ETF rule to facilitate the regulatory framework. It should not take decades to find workable solutions for retail investors to regain access.

III. **Improving the 1940 Act Exemptive Process to Promote Responsible Product Innovation**

The ability of market participants to innovate within the protective parameters of the 1940 Act is paramount to protecting Main Street investors. Unfortunately, market participants are unable to negotiate timely relief with the Commission. Congressional action is needed to cure the shortcomings of the process that governs requests for relief.

---

26 *See* Letter from Investment Company Institute to SEC Chair Paul S. Atkins Re: Recommendations for Innovation and Investor Protection (Apr. 11, 2025), https://www.ici.org/system/files/2025-04/25-cl-chair-atkins-investor-priorities.pdf.

27 Investment Company Act of 1940 § 2(a)(42), 15 U.S.C. § 80a-2(a)(42).

28 Improving Disclosure for Investors Act of 2025, S. 1877, 119th Cong. (2025) (sponsored by Sen. Thomas Tillis [R-NC] with cosponsors Sens. John W. Hickenlooper [D-CO], Jeanne Shaheen [D-NH], Mike Rounds [R-SD], Gary C. Peters [D-MI], Ted Budd [R-NC], Katie Boyd Britt [R-AL], Sen. Raphael G. Warnock [D-GA], Steve Daines [R-MT], Ruben Gallego [D-AZ], and Catherine Cortez Masto [D-NV]) (INVEST Act § 205).

Congress, when it promulgated the 1940 Act, had the foresight to provide the Commission with broad exemptive authority under various provisions. Most significantly, section 6(c) gives the Commission upon application or by rule broad power to exempt conditionally or unconditionally any person, security or transaction, from any provision of the Act or rule thereunder.[29] Every single 1940 Act retail fund offered today relies on several exemptions in order to launch and operate.

Over time, applicants have expressed frustration with the exemptive process, particularly the length of time it takes to get an order for both routine and novel applications. Although the Commission adopted a rule to govern the process which was amended to update and improve the process in 2020, while I was Director of the Division, the process continues to present significant challenges.[30] This is not a new challenge but rather one that has been a question since 1990 when the Commission requested comments on whether a different process was warranted and proposed an expedited process for routine applications.[31] In 2006, the Commission's Office of the Inspector General issued a report[32] that covered issues with timeliness and recommended improvements. Although the 2020 amendments to the exemptive process under the 1940 Act adopted an expedited review process for routine applications, the Rule did not provide a time-limited review process for novel relief requests.[33]

Under the expedited process, notice of the application will be issued no later than 45 days from the date of filing, unless the applicant is notified that the application does not qualify because it does not meet the eligibility criteria or because additional time is necessary for appropriate consideration.[34] The expedited review process is limited in scope, however, and certain lines of applications, including co-investment applications and status applications, will generally not satisfy the "substantially identical" standard.[35] The Commission could not adopt a "deemed approved" mechanism analogous to the provisions applicable to self-regulatory organization rule changes under the Securities Exchange Act of 1934 (the "Exchange Act")[36] or the advance notice

---

29 Investment Company Act of 1940 § 6(c), 15 U.S.C. § 80a-6(c).

30 Amendments to Procedures With Respect to Applications Under the Investment Company Act of 1940, 85 Fed. Reg. 57,089 (Sept. 15, 2020) ("2020 Exemptive Process Rule").

31 Request for Comments on Reform of the Regulation of Investment Companies, 55 Fed. Reg. 25,322 (June 21, 1990).

32 Off. of Inspector Gen., SEC, *IM Exemptive Application Processing*, Audit No. 408 (Sept. 29, 2006), https://www.sec.gov/about/offices/oig/reports/audits/2006/408final.pdf.

33 2020 Exemptive Process Rule at 57,093. "Routine" applications are those that are substantially identical to two precedent applications for which an order granting the requested relief has been issued within three years of the date of the application's initial filing. *Id*. For applications that do not qualify for expedited review, the Commission adopted an informal internal procedure under which the Staff should take action within 90 days of the initial filing and each of the first three amendments, and within 60 days of any subsequent amendment. *Id.* at 57,097. The Staff may also grant itself 60-day extensions, with no limit on the number of such extensions. *Id.*

34 *Id*. at 57,096.

35 *Id*. at 57,095.

36 Securities Exchange Act of 1934 § 19(b)(2), 15 U.S.C. § 78s(b)(2), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 916(a), 124 Stat. 1376, 1833 (2010).

"no-objection" standard under the Dodd-Frank Act[37] due to the current language of section 6(c) of the 1940 Act.[38]

It is not unprecedented for novel applications to take years, five to 10 in some cases, from start to finish,[39] frequently because the Staff simply are reluctant to make a decision. This delay translates into significant cost to applicants and uncertainty in outcome, which impedes business planning. It is also a material barrier to entry and innovation. Frequently, only the largest and most established market participants can afford the time and cost of years of negotiations with the Staff. It has also promoted both innovations outside the protections of the 1940 Act and a non-transparent process. Applicants with new ideas do not initially file public applications. Instead, they typically seek Staff concurrence before such filing, which translates into years of being held back.

Congress addressed a similar scenario in 2010 when it amended section 19(b) of the Exchange Act for self-regulatory organization filings.[40] This 19(b) process is transparent and promotes certainty. It is not about a yes, it is about an answer and working towards a known endpoint. It is transparent and holds both parties, market participants and the regulator, accountable.

Under the 19(b) process, SROs (exchanges) submit a proposed rule change with the Commission on Form 19b-4 via the Electronic Form Filing System (a system separate from EDGAR). That submission begins a thoughtful, clear and definitive process.

- Public Notice: The Commission promptly publishes a notice of the proposed rule change for public comment (within 15 days of receiving the filing). However, the Commission may, within seven days of receipt of the filing, reject the filing if it does not comply with Commission rules relating to the required form of a proposed rule change (e.g., Form 19b-4 is incomplete).
- 45-Day Decision: The Commission has 45 days from the publication in the Federal Register to approve the rule change, disapprove it, or initiate proceedings to determine whether it should be disapproved.

---

37 Dodd-Frank Wall Street Reform and Consumer Protection Act § 814, 12 U.S.C. § 5465(e).

38 The current language of section 6(c) of the 1940 Act requires the Commission to make an affirmative finding that an exemption is "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]" before granting relief. Investment Company Act of 1940 § 6(c), 15 U.S.C. § 80a-6(c).

39 *See* SPDR Trust, Series 1, Investment Company Act Rel. Nos. 18959 (Sept. 17, 1992) (notice) and 19055 (Oct. 26, 1992) (order) (application initially filed on June 25, 1990); Precidian ETFs Trust, et al., Investment Company Act Release Nos. 33440 (Apr. 8, 2019) (notice) and 33477 (May 20, 2019) (order) (application initially filed on December 22, 2014); Apollo Investment Corporation, et al., Investment Company Act Release Nos. 32019 (Mar. 2, 2016) and 32057 (Mar. 29, 2016) (order) (co-investment application initially filed on February 16, 2010). Notably, the initial public filing of novel applications does not generally indicate the start of conversation with the Staff on the relief request. Applicants typically negotiate term sheets with the Staff for years prior to any public filing.

40 Securities Exchange Act of 1934 § 19(b)(2), 15 U.S.C. § 78s(b)(2), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 916(a), 124 Stat. 1376, 1833 (2010).

- Extension: The Commission can extend this 45-day period by an additional 45 days to approve, deny or institute proceedings (total of 90 days).
- Final Decision: The Commission must make a final decision within 180 days of publication in the Federal Register, though that can be extended for an additional 60 days (total of 240 days). Notably, if the Commission does not act, the filing is deemed approved.[41]

This congressionally mandated process provides a clear starting point and a clear ending point for market participants.

Congress could look to the 19(b) process, including Rule 19b-4, as a model for creating something similar under the 1940 Act. For example, such a process could include:

- Filing: Applications would be filed publicly on EDGAR. As with the 19(b) process, which allows Staff to reject a submission upon review for technical compliance, a 1940 Act process could similarly allow for an initial confidential filing and a Staff comment period (e.g., 14 days) for similar purposes.
- 45-Day Decision: Routine applications could be noticed under the existing Rule 0-5 process, though Congress could also consider a process like section 19(b)(3)(A) under which applications become effective 21 days after filing unless the Commission abrogates within that period.
- Initial Comment Period: Non-routine applications could receive comments within 45 days with an allowance for an additional 45-day extension (total of 90 days).
- Follow-on Comments: Staff would have 45 days from the filing of an amendment on EDGAR to provide additional comments, provided that the amendment is filed within 90 days, otherwise the initial comment period restarts.[42]
- Additional Protections: In the event that (a) an applicant is not cooperative with Staff comments or (b) issues require a differentiated time frame, additional protections could be included. For example, the Commission would have the authority to deny an application if the applicant is not appropriately resolving open comments. In the event that there are material issues, the process could provide the Commission with authority to extend the process by either a set number of days (e.g., an additional 90 days) or at the Commission's discretion so long as a date certain is provided with the rationale for the additional time.
- Final Decision: The Commission could be required to publish a notice approving or denying the application within 225 days of the initial filing of the application, though that could be extended for an additional 60 days (for a total of 285 days). As with the 19(b) process, inaction on the part of the Staff within this period could either result in a "deemed approved" outcome or the application automatically moving to the Commission for a final decision within a time certain.

---

41 *Id.*; 17 C.F.R. § 240.19b-4.

42 This provision would be in place to guard against an amendment filed after a prolonged period where the Staff review would be stale.

Congress acting to promote a transparent process with protections for market participants while ensuring the Commission is empowered to fulfill its mission under the federal securities laws would result in continued innovations under the enduring protections of the 1940 Act.

IV. <u>Conclusion</u>

As Congress and the Commission look to the future, please remain focused on ensuring that the strength and accessibility of U.S. capital markets keep pace with how Main Street investors save, invest, and prepare for retirement today. The growth of private markets and the practical limitations of a product framework built in the 1930s and 1940s have combined to narrow, rather than broaden, retail access to the full range of investment opportunities available to institutional and high-net-worth investors.

Thoughtful, targeted modernization of the accredited investor definition, of the retail product framework under the 1940 Act, and of the exemptive application process that governs responsible product innovation would help to expand access while preserving the enduring investor protections that have made our markets the deepest and most liquid in the world.

Thank you again for the opportunity to share my views with the Committee. I look forward to answering your questions.