sifma

asset management group

April 9, 2025

Submitted electronically via email

Ms. Natasha Vij Greiner
Director, Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: SIFMA AMG Recommendations on Private Markets Regulatory Reforms

Dear Director Greiner:

The Asset Management Group of the Securities Industry and Financial Markets Association[1] ("**SIFMA AMG**") appreciates the opportunity to provide our members' recommendations for consideration by the Securities and Exchange Commission (the "**SEC**" or the "**Commission**") regarding potential regulatory reforms to enhance retail access to private investments. We support the recent directive to Commission staff to explore regulatory changes enabling greater retail participation in the private markets[2] and stand ready to further discuss the issues and recommended reforms described below.

Overview

SIFMA AMG shares the view expressed by Acting Chair Uyeda that "the long-term health of our capital markets requires a vibrant start-up ecosystem where ideas can lead to new products and services that improve standards of living" and that "our capital markets can have vibrant private and public markets at the same time, and our regulatory regime should aim for that result".[3] Accordingly, we welcome efforts to enhance investor participation in private markets, as we welcomed the Commission's previous initiative to harmonize and improve the SEC's exempt offering framework to help facilitate capital formation and increase investor opportunities.[4]

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[1] SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

[2] See comments of SEC Acting Chair Mark Uyeda, Feb. 24 2025 at the Florida Bar's 41st Annual Federal Securities Institute and M&A Conference: "Accordingly, I have directed the Commission staff to explore regulatory changes that enable greater retail investor participation in the private markets, whether through modifications to the accredited investor definition or otherwise, while continuing to ensure that those investors are protected against fraud and bad actors" https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-florida-bar-022425.

[3] See comments of SEC Acting Chair Mark Uyeda (then Commissioner Uyeda), Jan. 22 2024 at the 51st Annual Securities Regulation Institute https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-securities-regulation-institute-012224.

[4] SEC Concept Release on Harmonization of Securities Offering Exemptions, 84 F.R. 30460 (Jun. 26, 2019), https://www.govinfo.gov/content/pkg/FR-2019-06-26/pdf/2019-13255.pdf; Letter from Aseel Rabie, SIFMA and Lindsey Keljo, SIFMA AMG (Sep. 24 2019) ("2019 Letter"), https://www.sec.gov/comments/s7-08-19/s70819-6193329-192494.pdf.

We agree with the Commission's 2020 assessment that "All else equal, expanding the set of investment opportunities can increase diversification and improve the risk-return tradeoff of an investor's portfolio. More specifically, adding private investments to the set of investable assets could allow an investor to expand the efficient risk-return frontier and construct an optimal portfolio with risk-return properties that are better than, or similar to, the risk-return properties of a portfolio that is constrained from investing in certain asset classes, leading to a more efficient portfolio allocation".[5] To that end, we are pleased to share several potential regulatory reforms to further enhance investor access to private investments while maintaining the critical investor protections provided under the federal securities laws.

In sharing our recommendations, we recognize that the existing private markets framework is complex and that there are many considerations with respect to the broader private market ecosystem that go beyond the SEC's immediate remit.[6] Within this wider context, we hope to highlight several areas where targeted Commission action (either through rulemaking or guidance) would be most impactful in increasing retail access to private markets, providing an overall step in the right direction toward the goal of empowering retail investors.

Discussion

I. Registered Funds of Private Funds

The Commission has observed that for retail investors seeking exposure to growth-stage issuers, "there are potential advantages to investing through a pooled investment fund, including the ability to have an interest in a diversified portfolio that can reduce risk relative to the risk of holding a security of a single issuer."[7] We agree that pooled investment vehicles offer significant benefits for retail investors seeking exposure to private markets, providing economic opportunities for individuals otherwise excluded from investing directly in private issuers. However, under the current regulatory framework, retail investor opportunities to access such funds are significantly restricted.

Under existing SEC rules, investors who do not qualify as accredited investors (discussed in further detail in Section V) are largely prohibited from participating in private funds. Funds registered under the Investment Company Act of 1940 ("1940 Act") are permitted to invest in private funds and issuers, however, SEC staff has historically taken the position that a registered closed-end fund investing more than 15% of its assets in private funds can only be sold to accredited investors, effectively blocking retail access to "registered funds of private funds".

We do not believe such a restriction is necessary and urge the Commission to eliminate the 15% cap on private fund investment by closed-end funds available to retail investors. As we have previously explained to the Commission, permitting retail investors to participate in closed-end funds that make significant investments in private funds would allow retail investors to gain exposure to private markets while benefitting from (1) the liquidity typically offered by closed-end funds either through an exchange

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[5] SEC Accredited Investor Definition, 85 F.R. 64234 (Oct. 9, 2020) at 64267, https://www.govinfo.gov/content/pkg/FR-2020-10-09/pdf/2020-19189.pdf.

[6] For instance, there are DOL considerations with respect to private markets for retirement plans organized under ERISA, legislative limitations to potential reforms, along with market structure and operational considerations across a diverse range of market participants that must be addressed to enable increased retail participation at scale.

[7] See 2019 Concept Release, supra n.4, at 30512.

listing or periodic repurchase offers[8] and (2) the selection and oversight of their exposure by the closed-end fund's board and investment adviser.[9]

The staff's rationale for the 15% limitation (which is not required under the 1940 Act or Commission rules) has never been publicly articulated.[10] While the staff's limitation may stem from concerns about investor protection, we believe such concerns are effectively addressed by investing through a closed-end fund structure, which provides investors with diversified access to private funds, subject to the requirements of the 1940 Act.

In a "registered fund of private funds" structure, retail closed-end fund investors would be afforded the same robust protections under the 1940 Act that apply to any other closed-end fund. These protections include disclosures related to the fund's holdings and any risks associated with such holdings, governance by a board of trustees at least 40% of whom must be independent, requirements regarding valuation of fund investments, as well as SEC oversight and examination. Moreover, both the adviser of the closed-end fund and the advisers of the underlying private funds owe a fiduciary duty to their respective funds. Fund structures that indirectly provide exposure to private markets while minimizing potential risks should be encouraged rather than restricted. For these reasons, we urge the Commission to eliminate the 15% cap on investment in private funds for registered closed-end funds available to retail investors.

II. Modernization of Co-investment Framework

As discussed, the ability of registered funds to participate in private investments can provide significant economic benefits for retail investors and also help level the field for retail investors to have the same opportunities as other direct investors. In practice, private investments made by registered funds are often made in coordination with private funds advised by a common adviser, subject to the terms of a co-investment program. Such programs involving registered funds rely on exemptive relief from the Commission, as many co-investment transactions may otherwise be prohibited by Rule 17d-1 under Section 17(d) of the 1940 Act.[11]

While co-investment exemptive relief has been granted under certain conditions, Rule 17d-1 and the many individual exemptive orders have contributed to a highly complex, prescriptive, and difficult-to-manage framework for registered funds seeking to pursue promising co-investment opportunities. Moreover, many exemptive orders are subject to additional limitations that are not specifically

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[8] Though closed-end funds may trade on the secondary market at a discount to net asset value, traditional closed-end funds and interval funds provide a substantial degree of liquidity, making such funds more appropriate vehicles for less liquid private market investments compared to open-end funds. The Commission has observed: "Some types of registered investment companies, such as closed-end funds, are better suited to holding less liquid securities obtained in exempt offerings because they are not redeemable and therefore are not subject to the same rules on liquidity risk management as open-end funds." See 2019 Concept Release at 30512.

[9] See 2019 Letter, supra n.4.

[10] Commission staff have limited offerings of closed-end funds exceeding 15% investment in private funds to accredited investors through comment letters on registration statements filed by closed-end funds. However, such a position is not required by any provision under the 1940 Act or SEC Rule and has not received the benefit of public input through the notice and comment process. We do not believe there is a sufficient basis or justification for this position and encourage the reconsideration of this restriction on closed-end fund investment in private funds.

[11] 17 CFR § 270.17d-1.

contemplated by Rule 17d-1 or the 1940 Act, contributing to an unnecessarily restrictive set of requirements for funds entering co-investment transactions.

We commend the Commission's recent notice of its intention to approve the exemptive application filed by FS Credit Opportunities Corp., *et al*. and believe this approval represents an important step toward establishing a more principles-based approach to granting co-investment exemptive relief moving forward.[12] Beyond re-considering the required conditions for exemptive relief and extending such relief to similarly situated market participants in a timely manner, we encourage the Commission to further modernize and simplify existing co-investment requirements through amendments to Rule 17d-1, consistent with the underlying policy basis for Section 17(d) of the 1940 Act. An updated risk-based approach that relies on board oversight and fiduciary judgement to ensure fair dealing rather than a prescriptive set of specific requirements would provide enhanced efficiency for registered funds seeking private investment opportunities, providing benefits for retail investors seeking increased exposure to private markets.

III. Rule 12d1-4

In 2020, the Commission amended Rule 12d1-4 under the 1940 Act in an effort to create a more consistent and efficient regulatory framework for "fund of funds" arrangements.[13] Generally, the Rule permits registered funds and Business Development Companies ("BDCs") to acquire the securities of other registered funds and BDCs subject to several conditions. Under the Rule, three-tiered structures are generally prohibited (subject to certain exceptions), though Rule 12d1-4 allows an acquired fund to invest up to 10% of its total assets in other funds, including private funds.

The 10% limitation for three-tiered fund structures significantly restricts the accessibility of "fund of private fund" products for retail investors. Though two-tiered "fund of private fund" structures are permitted under Rule 12d1-4, registered closed-end funds investing more than 15% of assets in private funds are currently only available to accredited investors, as discussed in greater detail in Section I. Under a three-tiered structure, a retail target date fund would be able to invest in a registered closed-end "fund of private funds", providing another avenue for retail investors to gain private market exposure. However, because such closed-end "funds of private funds" do not meet the requirements for acquired funds under Rule 12d1-4 (exceeding the 10% investment limit in other funds)[14], the utilization of such fund structures is effectively prohibited. Allowing acquired funds within the target date fund structure to exceed the 10% investment limit in private funds would provide an opportunity for meaningful exposure to private markets while maintaining important safeguards to avoid the duplication of fees, as Rule 12d1-4(b)(2) requires management companies to assess the complexity and structure of acquired funds and ensure that the fees and expense of such funds are not duplicative.[15]

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[12] SEC Investment Company Act Release No. 35520, FS Credit Opportunities Corp,. et al. (Apr. 3, 2025) https://www.sec.gov/files/rules/ic/2025/ic-35520.pdf.

[13] SEC Fund of Fund Arrangements, 85 F.R. 73924 (Nov. 19 2020), https://www.govinfo.gov/content/pkg/FR-2020-11-19/pdf/2020-23355.pdf.

[14] 17 CFR § 270.12d1-4(b)(3)

[15] 17 CFR § 270.12d1-4(b)(2). Moreover, in many cases, acquired funds function purely as internal asset allocation vehicles within an asset manager's overall fund complex. These funds are not offered externally and do not charge fees, further mitigating concerns regarding duplicative fees and expenses.

Similarly, certain securitization vehicles such as collateralized loan obligations ("CLOs") are subject to the 10% investment limit under Rule 12d1-4, as these vehicles rely on the Section 3(c)(7) registration exemption under the 1940 Act and are thus considered private funds. CLOs have performed well historically[16] and are popular investment options for debt funds, including BDCs. The 10% limit for acquired fund investment in CLOs decreases investment opportunities in this promising market segment, despite such securitization vehicles functioning differently from traditional private funds in many respects. Commission staff have previously recognized the distinction between traditional private funds and structured finance vehicles in the context of calculating acquired fund fees and expenses, as structured finance vehicles such as CLOs are formed for the specific purpose of issuing debt securities and are not considered pooled investment vehicles.[17] We therefore encourage the Commission to exclude certain securities issued by CLOs from the 10% limitation under Rule 12d1-4 consistent with a broader review of Rule 12d1-4 and its impact on private market investment opportunities.

IV. Interval Fund and Tender Offer Fund Reforms

In addition to the recommendations discussed above, there are several additional reforms related to the Commission's treatment of certain closed-end funds such as interval funds and tender offer funds that could enable enhanced retail participation in private markets. Unlike traditional closed-end funds, which are typically listed on exchanges and offer limited redemption opportunities, interval funds and tender offer funds are generally not listed but offer periodic redemption opportunities for fund investors. In 2019, the Commission indicated that these funds are potentially well-equipped to provide exposure to less-liquid private investments, explaining: "As compared to open-end funds, interval funds can employ strategies that involve less liquid assets, such as securities obtained in exempt offerings, or strategies where the predictability of potential inflows and outflows to the fund is more important. An interval fund differs from traditional closed-end funds in that it has a fundamental policy to provide investors with some degree of liquidity at net asset value on a periodic basis through the repurchase offer".[18] However, the Commission observed at the time that interval funds and tender offer funds have not been used extensively as a means to provide capital to smaller issuers in exempt offerings.[19]

We agree that interval funds and tender offer funds can be useful vehicles to provide investors with exposure to private markets while providing liquidity through redemption opportunities at net asset value. However, certain requirements under Rule 23c-3 of the 1940 Act, which sets specific criteria regarding the timing and amounts of repurchase offers[20], may limit the effectiveness of interval funds as a mechanism to provide exposure to private markets. For instance, Rule 23c-3 sets a maximum window of

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[16] Over the long term, CLO tranches have outperformed other corporate debt categories, including leveraged loans, high yield bonds, and investment grade bonds, and have significantly outperformed at lower rating tiers. CLOs have also outperformed on a risk-adjusted basis, generating higher Sharpe ratios than many other credit asset classes. CLOs have historically presented lower levels of principal losses relative to corporate debt and other securitized products.

[17] See Staff Responses to Questions Regarding Disclosure of Fund of Fund Expenses (2006), Answer to Question 1: "AFFE (Acquired Fund Fees and Expenses) is intended to include the expenses of investments in investment companies, hedge funds, private equity funds, and other entities traditionally considered pooled investment vehicles. Accordingly, the staff would not recommend enforcement action if a fund does not include in the fee table expenses associated with *investments in structured finance vehicles, collateralized debt obligations, or other entities not traditionally considered pooled investment vehicles* (emphasis added), https://www.sec.gov/divisions/investment/guidance/fundfundfaq.htm.

[18] See 2019 Concept Release at 30512.

[19] Id. at 30515.

[20] 17 CFR § 270.23c-3

two years for an interval fund to complete its first repurchase offer[21] despite many private funds having substantially longer investments period. We believe enhanced flexibility for interval funds is necessary to better meet the needs of investors and enable increased utilization of these funds to provide exposure to the private market. In addition, enabling interval funds and tender offer funds to operate series investment companies, as permitted for open-end funds under Rule 18f-2[22], would promote efficiency to further enable the development of these products.

V. Accredited Investor Definition

In 2020, the Commission adopted amendments to the accredited investor definition to establish additional categories of investors having sufficient knowledge and expertise to participate in investment opportunities not requiring registration under the Securities Act of 1933.[23] The Commission noted the importance of qualifying as an accredited investor, explaining that accredited investors may "under Commission rules, participate in investment opportunities that are generally not available to non-accredited investors, including certain investments in private companies and offerings by certain hedge funds, private equity funds, and venture capital funds."[24] Prior to the adoption of the 2020 amendments, the Commission relied exclusively on financial criteria as a proxy for an investor's financial sophistication to determine an individual investor's status as an accredited investor.[25] The 2020 amendments broadened the range of investors eligible to participate in private markets by establishing alternative indicators of financial sophistication beyond wealth.[26] We welcomed these amendments and supported the logical expansion of the accredited investor definition to include individuals with certain professional qualifications.[27]

Consistent with our past advocacy, we are supportive of amendments to the accredited investor definition that broaden the investor base for private capital markets while generally deferring to the Commission's judgment with respect to the specific qualifications an individual must meet to qualify as an accredited investor.[28] Several potential amendments have been discussed, including reforms to expand the range of professional qualifications and examinations to determine accredited investor eligibility.[29] Another suggested reform is the development of a "sliding scale" approach, which would allow

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[21] Id.

[22] 17 CFR § 270.18f-2

[23] SEC Accredited Investor Definition.

[24] Id. at 64235.

[25] Prior to the 2020 amendments, only individuals with a (i) net worth exceeding $1 million (excluding the value of the investor's primary residence), (ii) income exceeding $200,000 in each of the two most recent years, or (iii) joint income with a spouse exceeding $300,000 in each of those years with a reasonable expectation of reaching the same income level in the current year qualified as accredited investors.

[26] SEC Accredited Investor Definition at 64237.

[27] See 2019 Letter; Letter from Aseel Rabie, SIFMA (Mar. 11, 2020) https://www.sec.gov/comments/s7-25-19/s72519-6936812-211846.pdf.

[28] Id.

[29] See Comments of SEC Commissioner Peirce, Apr. 24 2023, Capital On-Ramps: Remarks at the SEC's 42nd Annual Small Business Forum – Exploring the Early-Stage Landscape: Trends and Strategies in Capital Raising, https://www.sec.gov/newsroom/speeches-statements/peirce-capital-ramps-04-24-2023.

individuals to invest in private markets up to a certain degree based on personal financial metrics.[30] The Commission has also previously considered broadening the accredited investor definition to include investors who receive advice through a registered investment adviser or other qualified financial professional such as a broker-dealer subject to Regulation Best Interest, though the Commission determined not to broaden the definition in this manner as part of the 2020 amendments.[31]

We welcome a thorough review of the existing accredited investor standard and encourage creative approaches to more accurately assess investor sophistication. However, we urge the Commission to ensure that any revised qualifications be clear, simple, and easy to evaluate. As we have previously noted, in this particular area, we believe bright-line tests are beneficial in reducing legal costs and evidentiary burdens for issuers and investors and ensuring trades can be made in a timely and efficient manner.[32] Relatedly, we welcome the recent staff guidance regarding the verification of accredited investor status for Rule 506(c) offerings and encourage further consideration of additional approaches to facilitate investment under Rule 506(c).[33] We stand ready to further engage with the Commission on any specific proposals to amend the accredited investor definition.

Remaining Industry Considerations

As mentioned in the opening of our letter, we understand that the existing private markets framework is complex and that there are many considerations beyond potential SEC regulatory reforms that must be addressed to enable greater retail participation in private capital markets on a large scale. For instance, market participants will need to address various market structure and operational considerations such as technological and trade life cycle challenges, market data costs, distribution of products, and the development of the secondary market to name a handful of potential areas of focus. To address these issues, we have convened an internal working group of subject matter experts across SIFMA and SIFMA AMG and plan to facilitate continued dialogue among our members to assess the various dimensions of private market growth.

We also kindly encourage the Commission to convene (and welcome the opportunity to participate in) an industry-wide roundtable event to discuss these regulatory suggestions and to work through the range of potential operational or business-related challenges that may be impeding increased private market participation.

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[30] See Acting Chair Uyeda Comments, supra n.3.

[31] SEC Accredited Investor Definition, 64254-64255.

[32] See 2019 Letter.

[33] See No Action Letter: Latham & Watkins, Re: Request for Rule 506(C) Interpretive Guidance (Mar. 12, 2025), https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/latham-watkins-503c-031225.

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On behalf of SIFMA AMG, we greatly appreciate the opportunity to provide our members' recommendations on potential regulatory reforms to increase access to private markets and empower retail investors. We are happy to discuss the reforms described above further and welcome any future opportunities to engage with the Commission and staff on these issues. If you have any questions or require additional information, please do not hesitate to contact us by calling Lindsey Keljo at (202) 962-7312 or Ray Mosca at (202) 962-7342.

Sincerely,

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