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SEC plans vote on private offering reforms

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At a meeting next week the agency will consider new rules based on last year's concept release, which discussed lifting interval fund restrictions

David Isenberg February 28, 2020, 4:07 pm

The **SEC** is slated to hold an open meeting next Wednesday on ways to harmonize private securities offering exemptions, including perhaps loosening interval fund restrictions for investing in private markets.

The press release stated that the open meeting will be March 4 at 10 a.m. and will consider whether to propose rule amendments that would "simplify, harmonize, and improve certain aspects of the framework for exemptions from registration under the Securities Act of 1933 to promote capital formation while preserving or enhancing important investor protections."

A source familiar with the meeting confirmed the meeting will address the concept release issued last summer on a broad array of ways to simplify the rules surrounding the sale of private placements in an effort to open private markets to retail investors. Among those was a proposal to use interval fund structures and other closed-end products to get retail investors more exposure to growth-stage companies.

Currently, the SEC requires interval funds to limit their holdings in private placements to 15% of their investments, though that limit has frustrated the interval fund industry, especially because it is not an official rule.

The concept release stated that the SEC was contemplating what the implications would be of letting more interval funds and related registered products pursue private placements and strategies, including in providing exemptions from those diversification requirements and whether interval funds would need particular relief from affiliated transaction restrictions in the Investment Company Act of 1940.

Due to the concept releases breadth, most industry attorneys could only speculate what specifically will be tackled next week. The commission, lawmakers, and industry professionals have been seeking new ways for retail investors to get access to private markets.

Harry Pangas, a partner at **Dechert**, thinks it would be "huge" if the proposal next week relates to pooled investment funds and allowing for various registered funds like interval funds to invest in private companies and permitting non-accredited investors to invest indirectly therein.

Another step the SEC might consider could be further loosening of accreditation standards. "Currently, the SEC staff requires that registered funds that invest a significant amount of their portfolio in private companies can only be sold to accredited investors," Pangas said.

The agency voted in December to propose a new extension of the accredited investor definition, moving to include financial professionals with certain qualifications and certifications.

John Mahon, a partner at **Schulte Roth & Zabel**, believes that the SEC may be looking to change and expand the definition of accredited investor due to the reference to the '33 Act in the press release. "If the SEC decides to change the scope of the "accredited investor" definition to include more individual investors, I'd expect to see more privately offered 1940 Act products, such as so-called "private" registered closed-end funds and BDCs," Mahon said.

Pangas found the proposed rule changes to the accredited investor definition – which would reconsider its "wealth-based" standard to those with professional certifications, designations, registered investment advisers, and others – "pretty underwhelming" and that most people were expecting or hoping for more significant changes.

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