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New Jobs for the JOBS Act: Implications of Recent SEC Rule 506(c) Guidance for 1940 Act-Only Registered Funds and Non-US Public Funds

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When Congress passed the Jumpstart Our Business Startups (JOBS) Act in 2012, one of its marquee reforms was directing the Securities and Exchange Commission (SEC) to lift the longstanding ban on "general solicitation" and "general advertising" in certain private offerings of securities. This change, implemented through Rule 506(c) of Regulation D under the Securities Act of 1933 (the 1933 Act), allows private funds and other issuers to broadly market their private securities offerings, provided they take "reasonable steps" to verify that all purchasers are accredited investors. At the time of its adoption, Rule 506(c) was expected to usher in a new era of flexibility for private capital raising.[1]

More than a decade later, however, Rule 506(c) has seen less adoption than anticipated. In the private funds context, issuers mostly have continued to rely on the traditional Rule 506(b) exemption, citing uncertainty around what constitutes adequate verification and concerns about increased compliance burdens. In March 2025, the SEC issued an interpretive letter (the March 2025 Letter) introducing an objective framework for satisfying the verification requirements of Rule 506(c). This new guidance is designed to reduce compliance uncertainty and operational complexity by providing a clearer and less intrusive path to verification, potentially paving the way for broader use of Rule 506(c).

The implications of the March 2025 Letter, however, may be broader than the fund industry initially appreciated. In particular, the guidance has the potential to ease some of the constraints faced by two categories of funds: 1940 Act-only funds, and non-US public funds. For 1940 Act-only funds—those registered under the Investment Company Act of 1940 (the 1940 Act), but offered exclusively through private placements without registration under the 1933 Act—the guidance may enable smoother integration into sponsors' broader product lineups, making these funds a more flexible option for reaching a wider pool of investors. Similarly, for non-US public funds—for example, funds offered publicly outside the US through regulatory frameworks such as Europe's Undertakings for Collective Investment in Transferable Securities (UCITS), which historically have often flatly prohibited investment by non-US persons—the guidance may enable these funds

to admit US institutional investors more effectively through private placements alongside Regulation S offerings. The following discussion explores these less-examined implications and considers how the March 2025 Letter could enhance the practical utility and marketability of both fund types.

Limitations of Rule 506(c)

Issuers seeking to avoid the 1933 Act's demanding registration requirements, essentially, the regulatory and financial burdens of conducting a public offering,[2] have long relied on a series of exemptions designed to facilitate private capital formation. Chief among these is Regulation D, a foundational component of the US private markets ecosystem. Regulation D provides a "safe harbor" for private offerings, allowing issuers to raise capital from US investors without the extensive disclosure, registration, and ongoing reporting obligations that accompany public offerings. Instead, public disclosure obligations are limited to filing a simple notice (Form D) with the SEC after the first sale of securities, greatly streamlining the process. Under the very popular Regulation D safe harbor,[3] Rule 506 provides an exemption without regard to the size of the offering, and is divided into two primary pathways: (1) Rule 506(b), and (2) Rule 506(c).

Rule 506(b) has long been the private fund industry standard, favored for its flexibility and simplicity. Under Rule 506(b), issuers are prohibited from engaging in general solicitation or public advertising,[4] and must instead rely on pre-existing, substantive relationships with potential investors. The rule allows for an unlimited number of "accredited investors"[5] and up to 35 sophisticated but unaccredited investors, provided the issuer has a "reasonable belief" that each investor qualifies. This "reasonable belief" standard typically is satisfied through investor self-certification, such as a completed questionnaire or written representation, making compliance straightforward and minimally intrusive.[6]

In 2012, Congress sought to modernize this regime with the passage of the JOBS Act,[7] which, through a statutory directive to the SEC, introduced Rule 506(c). Rule 506(c) was designed to open the door to broader capital formation by permitting general solicitation and public advertising—through websites, social media, and other channels—so long as all purchasers are accredited investors and the issuer takes "reasonable steps" to verify their status.[8] This marked a significant departure from the relationship-driven approach of Rule 506(b), theoretically facilitating issuers' efforts to reach a much wider pool of sophisticated investors.

Despite these apparent advantages, market adoption of Rule 506(c) has fallen far short of expectations.[9] As of the end of 2023, Rule 506(b) offerings raised approximately $1.7 trillion, while Rule 506(c) offerings accounted for only $125 billion, roughly 7 percent of total Regulation D capital formation.[10]

Several structural and market-based factors explain Rule 506(c)'s historically low uptake by the fund industry. A major one is the vagueness of the SEC guidance on the "reasonable steps" requirement[11]—generally considered to impose a higher standard than the "reasonable belief" standard under Rule 506(b).[12] While the SEC provided "non-exclusive and non-mandatory methods that satisfy the verification requirement," such as investors' tax returns, bank statements, or obtaining third-party certifications, it offered little clarity on what other steps might satisfy this requirement.[13] As a result, many sponsors were unsure whether alternative, less burdensome approaches would suffice. This uncertainty, combined with the intrusive nature of the recommended methods when facing off with the sophisticated institutional investor community, created significant compliance risk for fund sponsors, deterring the use of general solicitations.[14]

March 2025 Letter Offers Welcome Relief

In response to persistent concerns over the practical limitations of Rule 506(c), the SEC's Division of Corporation Finance issued the March 2025 Letter, which provides welcome interpretive guidance.[15]

This guidance directly addresses the verification hurdles that have long hindered more widespread use of general solicitation in private offerings by clarifying how issuers may satisfy the "reasonable steps" requirement for verifying accredited investor status.

Under the March 2025 guidance, an issuer may reasonably conclude that it has taken the required reasonable steps to verify accredited investor status if the following conditions are met:[16]

1. Bright line Minimum Investment Amounts:

- For natural persons, the purchaser must invest at least $200,000.
- For legal entities qualifying as accredited investors based on total assets, the purchaser must invest at least $1 million.
- For entities qualifying as accredited based on all equity owners being accredited investors, the investment must be at least $1 million, or $200,000 per equity owner if fewer than five natural person owners.

2. Written Representations:

- The purchaser must provide written representations confirming that they qualify as an accredited investor and that the investment is not financed by the issuer or any third party.

3. No Contrary Knowledge:

- The issuer must not have any actual knowledge indicating that the purchaser is not an accredited investor or that the investment is financed for the purpose of participating in the offering.

By allowing issuers to verify accredited investor status through high minimum investment thresholds and written representations, the guidance streamlines compliance and alleviates privacy concerns that previously discouraged both issuers and investors. This change is expected to make Rule 506(c) offerings more accessible and attractive, potentially encouraging broader use of general solicitation and expanding the pool of eligible investors. While the guidance does not fundamentally alter the regulatory framework, it addresses one of the most significant operational barriers to Rule 506(c) adoption and is widely seen as a pragmatic step toward balancing investor protection with capital formation.[17]

However, much of the discussion around the March 2025 Letter to date has focused on its impact for traditional private offerings, leaving a few other corners of the market less examined. In particular, the implications for 1940 Act-only funds and non-US public funds seeking to raise capital from US investors have received little attention to date. These less-examined areas will be explored below in greater detail.

More Seamless Integration of 1940 Act-Only Funds

While the federal securities laws offer fund sponsors a wide spectrum of possibilities for structuring, offering and operating investment funds, two broad categories of funds at opposite ends of the spectrum tend to dominate the space. At one end of the spectrum, investment companies registered under the 1940 Act and publicly offered under the 1933 Act may be offered and sold to a wide investor base, including retail investors, generally without any investor qualification requirements.[18] These funds, such as mutual funds, exchange-traded funds, and publicly offered closed-end funds, benefit from broad distribution channels but face extensive and costly disclosure obligations and substantial regulatory burdens.[19]

At the other end of the spectrum, private funds typically rely on the exclusion from the definition of "investment company" under Section 3(c)(1) or Section 3(c)(7) of the 1940 Act to avoid registration (together with most substantive regulation) under the 1940 Act, and they also offer their shares in private placements to avoid registration under the 1933 Act. The 3(c)(1) and 3(c)(7) exclusions, which are commonly used by hedge funds, private equity funds, and venture capital funds, provide broad structuring and investment strategy flexibility and minimal disclosure obligations or substantive regulation, but impose stringent limitations on investor eligibility. A private fund relying on Section 3(c)(1) of the 1940 Act generally must

limit itself to no more than 100 beneficial owners, while a fund relying on Section 3(c)(7) of the 1940 Act generally must limit its investors to "qualified purchasers."[20]

1940 Act-only registered funds occupy a distinct, hybrid position between these two models. These funds are registered under the 1940 Act (and therefore are subject to a full complement of 1940 Act substantive regulation) but offered solely through private placements, without registration under the 1933 Act. 1940 Act-only funds have historically been used for a limited set of special purposes. These include master funds in master-feeder structures where the only investors in the 1940 Act-only master fund are other funds (usually other registered funds in the same complex); money market funds or other short-term bond funds used for cash management purposes for other registered and unregistered funds, pooled vehicles or separate account clients (sometimes in the same fund complex, sometimes not); and portfolios for investment by separate account clients and institutional clients of the fund's manager or its affiliates.

While their uses in the market historically have been somewhat limited, 1940 Act-only funds can benefit from tax treatment as "regulated investment companies" under the Internal Revenue Code of 1986, as amended.[21] As a result, these products are becoming increasingly popular among a range of investors who desire a pooled vehicle with a tax-efficient structure but who do not want to deal with the inconvenience of receiving a Schedule K-1 (issued by entities, such as most private funds, that are treated as partnerships for tax purposes). In addition, by virtue of these funds being registered under the 1940 Act, the underlying assets of the fund are not considered to be "plan assets" under the Employee Retirement Income Security Act of 1975, as amended (ERISA), when ERISA plans invest in the fund, even if more than 25 percent of the fund's equity interests are held by ERISA plans.[22] This distinguishes 1940 Act-only funds from private funds and allows them to accept significant ERISA plan investments without triggering ERISA's fiduciary responsibility and prohibited transaction rules.

As a registered investment company, a 1940 Act-only fund is subject to generally the same substantive regulation under the 1940 Act as any other registered fund.[23] 1940 Act-only funds also are subject to much of the same periodic reporting and public disclosure requirements as other registered funds.[24] However, because their offerings of shares are not registered under the 1933 Act, 1940 Act-only funds may use a simplified form for filing their registration statements and are not required to file their full offering documents with the SEC. Their registration with the SEC is also effective upon filing, so there is no need for a new 1940 Act-only fund to await a declaration of effectiveness, or, in the case of a new series of an open-end registrant, for automatic effectiveness after a 75-day waiting period imposed by Rule 485(a) under the 1933 Act.

Because, however, 1940 Act-only funds do not register their offering of shares under the 1933 Act, they must rely on a private placement exemption. Similar to most other private funds, they historically have relied on the private placement safe harbor under Rule 506(b) under Regulation D of the 1933 Act. The Rule 506(b) prohibition on general solicitation has meant that sponsors have been required to treat marketing and communication regarding their 1940 Act-only funds differently from other registered funds in their complex. For example, offering documents for a 1940 Act-only fund typically would not sit alongside the prospectuses for other publicly offered registered funds on a sponsor's website. Similarly, sponsors would typically take care to ensure that a 1940 Act-only fund was not mentioned alongside other registered funds in the sponsor's public marketing materials. Having to maintain separate offering processes and controls for 1940 Act-only funds has historically introduced compliance burdens and complexities for registered fund sponsors.

The March 2025 Letter is well positioned to ease these burdens. Sponsors should now be able

to integrate 1940 Act-only funds into their broader product ecosystems more confidently, taking a harmonized approach to their overall fund lineup that previously was impractical given regulatory uncertainty associated with relying on Rule 506(c). With clearer standards on general solicitations, sponsors may present 1940 Act-only funds alongside public funds across websites, marketing materials, and investor communications, with the very real potential for enhancing operational efficiency and reducing compliance burdens.

The ability to conduct general solicitation may also further expand the distribution potential for 1940 Act-only funds. Unlike funds relying on 3(c)(7) exclusions, which must restrict sales to qualified purchasers,[25] 1940 Act-only funds can target a broader accredited investor base, including those sophisticated investors who meet accredited investor thresholds but not the "qualified purchaser" status required for Section 3(c)(7).

Increased flexibility to engage in general solicitations could make the 1940 Act-only wrapper especially attractive for funds that charge performance fees. Rule 205-3 under the Investment Advisers Act of 1940 (the Advisers Act) prohibits an investment adviser to a fund from charging performance-based fees unless all investors in the fund are "qualified clients."[26] Because the qualified client standard is generally higher than the standard for accredited investors, an investor who meets the qualified client standard generally will be an accredited investor.[27] Because a publicly offered registered investment company subject to a performance fee must limit its investors to qualified clients, the distribution options for such a fund will be no more expansive than the options available to a 1940 Act-only fund. While the publicly offered fund historically may have benefitted from the ability to freely conduct a general solicitation, the March 2025 Letter has the effect of leveling the playing field to some extent between a publicly offered fund with a performance fee and a 1940 Act-only fund. Both can now engage in general solicitations and sell only to qualified clients.[28]

Opening Foreign Public Funds to US Investors

Despite their global reach, strong regulatory credentials, and widespread popularity among institutional and retail investors abroad, non-US public funds—such as UCITS and other foreign-regulated vehicles—have faced significant barriers to entering the US market. These funds are widely regarded as high-quality investment products, often with investor protection measures comparable to, or even exceeding, those found in registered US funds. Nevertheless, US investors have remained largely unable to access these vehicles directly.[29]

A principal statutory barrier is Section 7(d) of the 1940 Act. Section 7(d) prohibits any non-US investment company from making a public offering of its securities in the United States unless the SEC grants an order permitting registration—a process that is rarely pursued or granted due to its complexity and the operational challenges it presents for non-US sponsors.[30] However, in the 1980s and 1990s, the SEC Staff issued a line of no-action letters that effectively allowed non-US funds to publicly offer securities outside the United States and still place a portion of their shares directly into the United States, as long as the funds were not conducting a "public" offering in the United States.[31] As a result, non-US public funds seeking to admit US investors generally are limited to simultaneous private placements, relying on exemptions from both the 1940 Act (typically Sections 3(c)(1) or 3(c)(7)) and the 1933 Act (typically Regulation D and Rule 506(b)).[32]

However, conducting both a public offering abroad and a private placement in the United States presents significant marketing challenges. Rule 506(b)'s prohibition on general solicitations in connection with private placements historically has meant that sponsors face risks and challenges to using publicly accessible websites or broadly disseminated materials to promote their funds to investors in the United States. These risks and challenges are

particularly acute in the digital age, particularly with the advent of the Internet, where information is easily accessible across borders and inadvertent overlap is difficult to control.[33]

The March 2025 Letter shows potential to lower the barriers to entry for non-US public funds securing placements into the US market. Managers of non-US public funds may find it easier to opportunistically admit large US institutional investors on a private placement basis without the need to implement the same degree of information controls that were historically required to avoid general solicitation concerns.[34] In practice, this means that a non-US fund could use its existing non-US prospectus as the primary disclosure document, supplemented by a targeted US wrapper that addresses the specific requirements of the US private placement regime. Importantly, sponsors would be able to expand their use of websites and social media to market to US persons, as the specter of inadvertently tripping over a "general solicitation" trigger no longer looms for such parallel US private offerings. This approach could streamline the offering process and reduce the administrative burden associated with preparing entirely separate US-specific materials.[35]

Many non-US sponsors may not be fully aware of the expanded flexibility now available under the US securities laws, particularly as it relates to the ability to accommodate unsolicited interest from institutional investors in the United States. With a better understanding of the flexibility introduced by the March 2025 Letter, sponsors of non-US public funds may be more open to considering investments from US institutions, provided the appropriate private placement procedures are followed. US institutional investors, in turn, may find greater receptivity from non-US funds that previously would have been reluctant to entertain their investment due to concerns over navigating the complexities of US securities regulation.

Note that where the investment adviser to the non-US public fund is not currently registered with the SEC, the fund management entity may still be able to avoid full SEC registration by qualifying as an exempt reporting adviser.[36] This status is available to advisers that limit their activities in the United States to advising private funds and meet certain other conditions, and it is subject to a lighter regulatory regime than full SEC registration.[37] This can further lower the barriers for non-US sponsors to admit US institutional investors, making cross-border fundraising more feasible and attractive.

In sum, these regulatory developments may facilitate greater participation by US institutional investors in non-US public funds, provided that sponsors and their advisers are aware of and able to navigate the evolving compliance landscape.

Conclusion

By providing an objective, measurable verification framework under Rule 506(c), the March 2025 Letter should help sponsors to privately placed funds access broader pools of accredited investors by leveraging general solicitation and general advertising campaigns, and scale offerings to an extent impractical in private placements that rely on Rule 506(b). The March 2025 Letter has the potential to increase the relative attractiveness of 1940 Act-only funds as a middle-ground solution between a full publicly offered registered fund and a private fund available only to qualified purchasers. The March 2025 Letter can meaningfully augment the ability of fund sponsors to integrate existing 1940 Act-only funds into their broader lineup of public funds and could make 1940 Act-only funds more attractive in comparison to publicly offered alternatives where a sponsor desires to charge a performance fee.

The March 2025 Letter also has significant implications for non-US public funds seeking access to US institutional capital. By clarifying the application of Rule 506(c) and easing verification burdens, non-US public funds may now find it more feasible to admit US institutional investors on a private placement basis without the need for extensive information controls or rigidly segregated US marketing

materials. This new flexibility may encourage greater participation by US investors in high-quality non-US public funds and facilitate more efficient cross-border fundraising.

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NOTES

1 *See* Barack Obama, U.S. President, Remarks on Signing the Jumpstart Our Business Startups Act (Apr. 5, 2012) (transcript available at *https://www.presidency.ucsb.edu/documents/remarks-signing-the-jumpstartour-business-startups-act*) ("[F]or startups and small businesses, this bill is a potential game changer. Right now you can only turn to a limited group of investors, including banks and wealthy individuals, to get funding. . . . Because of this bill, startups and small business will now have access to a big new pool of potential investors, namely, the American people.").

2 Registration under the 1933 Act is a costly, time-consuming, and complex process involving extensive disclosures, ongoing reporting obligations, and exposure to liability. A registered investment company intending to make a public offering is required to make an initial registration statement filing that is reviewed by the SEC Staff, is subject to SEC Staff comments that must be addressed and, for new registrants, must by declared effective by the SEC before the fund can sell any shares.

3 SEC Off. of the Advoc. for Small Bus. Cap. Formation, *Annual Report Fiscal Year 2024*, at 15 (2024), *https://www.sec.gov/files/2024-oasb-annual-report.pdf* (highlighting that pooled funds using Rule 506 have raised $1.7 trillion in 2023, significantly higher than other offerings); *see also* Scott Baugess, Rachita Gullapalli & Vladimir Ivanov, SEC Div. Econ. & Risk Analysis, "Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009-2017," at 9 (observing the same trends from 2009 to 2017).

4 *See* Rule 506(b)(1), which requires that offers and sales under Rule 506(b) satisfy the requirements of Rule 502. Rule 502(c), in turn, provides that "neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following: (1) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and (2) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising."

5 Rule 501 of Regulation D generally defines "accredited investor" to include, in addition to a broad range of institutional investors, individuals whose net worth (jointly with their spouse) exceeds $1 million (excluding their primary residence), or whose individual income exceeds $200 thousand in each of the two most recent years, or whose joint income with their spouse exceeds $300 thousand in each of those years and who has a reasonable expectation of reaching the same income level in the current year.

6 Allen C. Page, "Approaching the Tipping Point for Public-Private Offerings," 17 *J. Bus. & Tech. L.* 27, 35-36 (2021).

7 Pub. L. No. 112-106, sec. 201(a), 126 Stat. 306, 313 (Apr. 5, 2012).

8 *Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings*, Release No. 33-9415 (July 10, 2013) (Adopting Release); *see also* Obama, *supra* n.1.

9 *See* Sabrina T. Howell & Dean Parker, "VC Funds and Regulation D's Rule 506(c): Did Permitting General Solicitation Open the Door for Emerging and Underrepresented Managers?," 4 (2023), *https://www.sec.gov/files/howell-parker-sec-regulationd-report.pdf*. *See generally* Manning Gilbert Warren

III, "The False Promise of Publicly Offered Private Placements," 68 *SMU L. Rev* 899 (2015).

10 SEC Off. of the Advoc. for Small Bus. Cap. Formation, *supra* n.3.

11 *See* Rule (c)(2)(ii) ("The issuer shall take *reasonable steps* to verify that purchasers of securities sold in any offering under paragraph (c) of this section are accredited investors.") (emphasis added).

12 *See supra* n.6 and accompanying text; Howell & Parker, *supra* n.9, at 9-10.

13 Rule 506(c)(2)(ii), Instruction 1. In the 2013 Adopting Release, the SEC declined to establish a safe harbor for accredited investor verification under Rule 506(c), citing concerns that prescriptive rules could quickly become outdated as verification methods and technologies evolved. It also noted the potential for fraud and insufficient diligence by some third-party services, particularly in web-based offerings, and instead opted for a flexible, principles-based "reasonable steps" standard. *See* Adopting Release, *supra* n.8, at 22, 33 n.113.

14 Howell & Parker, *supra* n.9, at 36 ("[The reasonable steps] requirement might create substantial new paperwork costs, legal liability risk if investors are in fact not accredited, and awkwardness in asking investors for intimate financial information. Legal uncertainty could have a chilling effect, especially in the absence of a body of existing case law."); Page, *supra* n.6, at 27, 34-36 ("Rule 506(b) is simply less costly, more convenient, and less risky to utilize in most offerings than Rule 506(c), particularly when issuers have pre-existing relationships with accredited investors.").

15 *Latham & Watkins LLP*, SEC Letter (Mar. 12, 2025). Note that, while this SEC Staff letter is hosted on the SEC website under the heading "No-Action Letter," the incoming letter did not request no-action assurances and the Staff letter did not provide them. Instead, the letter was framed as the Staff's concurrence with the views reflected in the request letter: "Based on the representations in your letter, we agree the issuer could reasonably conclude that it has taken reasonable steps to verify that purchasers of securities sold in an offering under Rule 506(c) of Regulation D are accredited investors."

16 *Id.* at 3.

17 *See* "SEC Issues No-Action Letter Clarifying Rule 506(c) Accredited Investor Verification," Ropes & Gray LLP (March 14, 2025), *https://www.ropesgray.com/en/insights/alerts/2025/03/sec-issues-no-action-letter-clarifying-rule-506c-accredited-investor-verification*. Other barriers, of course, still remain. Howell and Parker point out, for example, that there are perceived and actual costs, legal risks, and negative signaling associated with the accredited investor verification requirements under Rule 506(c). *See* Howell & Parker, *supra* n.9, at 6.

18 *See generally* 1933 Act § 5. There are, however, certain exceptions to this general principle. As discussed below, registered funds charging performance fees must still limit such funds to "qualified clients" under Rule 205-3 of the Investment Advisers Act of 1940 (the Advisers Act). *See infra* n.26 for the definition of "qualified client." In addition, SEC Staff historically required registered closed-end funds investing 15 percent or more of their assets in private funds to restrict sales to "accredited investors." *See supra* n.5 for the definition of accredited investor. This informal Staff position, never codified by rule, was withdrawn as of May 19, 2025. *See* Paul S. Atkins, SEC Chairman, Prepared Remarks Before SEC Speaks (May 19, 2025), *https://www.sec.gov/newsroom/speeches-statements/atkins-prepared-remarks-sec-speaks-051925*.

19 *See supra* n.2.

20 "Qualified purchaser" is defined in Section 2(a)(51) of the 1940 Act and generally includes natural persons and companies that own at least $5 million in investments, as well as persons acting for their own account or the accounts of other qualified purchasers who, in the aggregate, own and invest on a discretionary basis at least $25 million in investments.

21 *See generally* I.R.C. §§ 851-55.

22 *See* 29 C.F.R. § 2510.3-101(h)(1) (excluding 1940 Act-registered investment companies from the definition of "plan assets").

[23] For example, 1940 Act-only funds are required to be overseen by a board of directors or trustees with independent members, to comply with the limitations on leverage under Section 18, the custody requirements under Section 17(f), affiliated transaction restrictions under Section 17(a) and, for open-end funds, the liquidity requirements under Rule 22e-4, among a host of other significant restrictions.

[24] 1940 Act-only funds are generally required to file quarterly portfolio holdings reports on Form N-PORT, semi-annual shareholder reports on Form N-CSR, annual census reports on Form N-CEN, and, for open-end and certain closed-end funds, annual updates to their registration statements on Form N-1A or Form N-2.

[25] *See supra* n.20 for the definition of "qualified purchaser."

[26] A "qualified client" under Rule 205-3(d) of the Advisers Act is generally defined to include individuals with at least $2.2 million in net worth (excluding primary residence) or $1.1 million in assets under management with the adviser. The SEC periodically adjusts these thresholds for inflation. *See Order Approving Adjustment for Inflation of the Dollar Amount Tests in Rule 205-3 under the Investment Advisers Act of 1940*, Release No. 5756 (June 17, 2021).

[27] *See supra* n.5 for the definition of "accredited investor."

[28] In order to take full advantage of the relief under the March 2025 Letter, the 1940 Act-only fund would, of course, be required to impose an investment minimum of $200,000, a higher minimum initial investment than is often observed in publicly offered registered funds with performance fees.

[29] Christopher D. Christian, Katheryn S. Cohen & Jennifer L. Wendell, "Offering UCITS to US Institutional Investors: A Post Dodd-Frank Overview," *Investment Lawyer*, Aug. 2012, at 2-3.

[30] Section 7(d) permits registration of non-US investment companies only if the SEC finds that the foreign arrangements and protections are "substantially equivalent" to those of the 1940 Act. The burdens of documentation, regulatory negotiation, and discretionary SEC review have left the process effectively unavailable for most non-US sponsors. *See Guidelines for Filing of Application for Order Permitting Registration of Foreign Investment Companies*, Release No. IC-3959 (Sept. 26, 1975).

[31] In *Touche, Remnant*, the SEC allowed a non-US fund to make a private offering of its securities in the United States without registering under the 1940 Act as long as it limited US beneficial owners to 100, consistent with the investor limit under the private fund exemption in Section 3(c)(1) of the 1940 Act. *Touche, Remnant & Co.*, SEC No-Action Letter (pub. avail. Aug. 27, 1984). *Goodwin* extended the logic of *Touche, Remnant* to the private fund exemption in Section 3(c)(7) of the 1940 Act, allowing a non-US fund to engage in private placements in the United States as long as the private offering in the United States results in only "qualified purchasers" being beneficial owners of the fund's shares. *Goodwin, Proctor & Hoar*, SEC No-Action Letter (pub. avail. Feb. 28, 1997). The principles emerging from these no-action letters is often referred to as the "Touche Remnant Doctrine."

[32] Note that, in these simultaneous transactions, non-US public funds must comply with Regulation S, which provides an exemption for offers and sales made outside the United States to non-US persons, provided there are no "directed selling efforts" in the United States. In *Goodwin,* the SEC Staff took the position that a contemporaneous offshore public offering compliant with Regulation S with a US private placement would not be integrated and be violative of Section 7(d). *See* Goodwin, *supra* n.31. This is now reflected in 1933 Act Rule 152(b)(2) ("Offers and sales made in compliance with . . . Regulation S . . . will not be integrated with other offerings."). In its Adopting Release for Rule 506(c), in response to questions from commenters regarding the impact of the use of general solicitation (under Rule 506(c)) on the availability of Regulation S, the SEC reiterated its position that "[c]oncurrent offshore offerings that are conducted

in compliance with Regulation S will not be integrated with domestic unregistered offerings that are conducted in compliance with Rule 506 or Rule 144A, as amended." *See* Adopting Release, *supra* n.8, at 56, 57 and n.177. Nevertheless, issuers conducting or contemplating such parallel offerings should also consider implementing robust disclosure in offering materials, as well as other procedural safeguards, to demonstrate compliance with Regulation S and to mitigate integration risk.

[33] The SEC has made clear that posting offering materials on a completely unrestricted internet website is generally inconsistent with the prohibition on general solicitation, and that sponsors must implement measures to prevent US persons from accessing offshore offering materials. *See Statement of the Commission Regarding Use of Internet Web Sites to Offer Securities, Solicit Securities Transactions or Advertise Investment Services Offshore*, Release No. 33-7516 (Mar. 23, 1998).

[34] Any such offering to US persons must comply with the requirements of Section 3(c)(1) or Section 3(c)(7) of the 1940 Act. *See supra* n.31. Like other offerings under Regulation D, offerings under Rule 506(c) would not be integrated with offshore offerings under Regulation S. *See supra* n.32.

[35] Fund managers should, of course, remain mindful of marketing restrictions in other jurisdictions outside of the United States. For instance, the Alternative Investment Fund Managers Directive (AIFMD) imposes specific requirements on the marketing of funds within the European Economic Area, and general solicitation in the United States may affect a manager's ability to comply with those rules or rely on exemptions such as reverse solicitation. Accordingly, managers should carefully assess the implications of non-US offering regimes before engaging in broad marketing efforts pursuant to Rule 506(c). *See* Ropes & Gray LLP, *supra* n.17.

[36] An "investment adviser [that] acts solely as an adviser to private funds and has assets under management in the United States of less than $150 [million]," may qualify as an exempt reporting adviser. Advisers Act § 80b-3.

[37] Exempt reporting advisers are not required to register with the SEC but must file Form ADV, Part 1A, and are subject to certain reporting and compliance obligations. Rule 204-4.